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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2423 and 2429

Unfair Labor Practice Proceedings: Miscellaneous and General Requirements

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Federal Labor Relations Authority amends portions of its regulations regarding unfair labor practice (ULP) proceedings (Part 2423) and miscellaneous and general requirements (Part 2429). The amendments are designed to streamline the existing regulations, facilitate dispute resolution, clarify the matters to be adjudicated, provide more flexibility to the participants in the ULP process, simplify the filing and service requirements, and promote confidence in ULP proceedings. Implementation of these changes enhances the ULP process, by raising the level of advocacy and assisting in the adjudication and resolution of ULP claims.

EFFECTIVE DATE: October 1, 1997.

ADDRESSES: Written comments received are available for public inspection during normal business hours at the Office of Case Control, Federal Labor Relations Authority, 607 14th Street, NW., Washington, DC 20424–0001.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Office of Case Control, at the address listed above or by telephone # (202) 482–6540.

SUPPLEMENTARY INFORMATION:

Background

The Federal Labor Relations Authority proposed revisions to Part 2423 of its regulations addressing unfair labor practice (''ULP'') proceedings, as well as to related miscellaneous and general requirements located at Part 2429 of its regulations. The proposed rule was published in the **Federal Register** and public comment was solicited on the proposed changes (62 FR 28378) (May 23, 1997). Prior to proposing the rule, the Federal Labor Relations Authority established a task force to evaluate the policies and procedures concerning the processing of an unfair labor practice complaint. The task force conducted focus groups and invited the public to submit written recommendations on ways to improve the post complaint ULP process (60 FR 11057) (Mar. 1, 1995).

Concurrent with issuing the proposed rule, the Authority invited comment on the proposed rule in two ways: by convening focus group meetings, in June 1997 in Chicago, IL and in Washington, DC, and by offering the public an opportunity to submit written comments. All comments, whether expressed orally in a focus group or submitted in writing, have been considered prior to publishing the final rule, although all comments are not specifically addressed in the section-by-section analysis, below. Revisions to the proposed rule are driven for the most part by suggestions and comments received from the public.

One commenter stated that in order to ensure that serious consideration was afforded to suggested revisions, the regulations should not be finalized until a lengthy time period after the close of the comment period. The process of revising the Authority's ULP regulations has been anything but precipitous. On the contrary, publication of the final rule marks the culmination of years of careful consideration of how to better the ULP process. The Authority has afforded full consideration to the advice offered by commenters. The improvements these essential and needed changes bring to the ULP process should be implemented without further delay.

Those commenters who suggested changes to subpart A of part 2423 are reminded that it will be revised during 1998. As a result, comments concerning subpart A (Filing, Investigating, Resolving, and Acting on Charges) will not be addressed at this time.

Sectional Analyses

Sectional analyses of the amendments and revisions to Part 2423—Unfair Labor Practice Proceedings and Part 2429—Miscellaneous and General Requirements are as follows:

Part 2423—Unfair Labor Practice Proceedings

Section 2423.1—Final rule is amended to reflect the October 1, 1997 effective date of subparts B, C, and D of this part.

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

Sections 2423.2–2423.11—Final rule as promulgated is the same as proposed rule.

Sections 2423.12–2423.19—These sections are reserved.

Subpart B—Post Complaint, Prehearing Procedures

Section 2423.20—Numerous commenters responded favorably to the transfer of various functions from the Regional Director to the Office of the Administrative Law Judge reflected in this and subsequent sections. Commenters acknowledged that this transfer promoted confidence in the system by properly recognizing the distinctions between prosecutorial and adjudicatory responsibilities.

One proposed change, having both support and opposition, was the proposal in paragraph (a) that the complaint specifically set out the ''relief sought.'' Those in favor of this change believed that this requirement would clarify issues and notify the charged parties of what was being requested of them. Those opposed contended that such a pleading requirement could hinder settlement and might be interpreted as placing a ceiling upon the remedy that ultimately could be awarded in the case. It was suggested that this pleading requirement would lead to complaints listing every conceivable remedy or, alternatively, multiple amendments of the complaint. Suggesters recommended a less onerous pleading requirement, such as requiring the pleading of only non-traditional remedies, in order to avoid ''locking'' the parties into positions that would jeopardize settlement discussions.

In addressing these concerns, the final regulation eliminates the requirement to plead the remedy sought in the complaint, but instead requires disclosing the relief sought prior to the hearing pursuant to § 2423.23. This modification was made in order to effectuate the underlying goal of

providing notice and clarification to the respondent, while, at the same time, allowing the parties the freedom to pursue resolution of the complaint without having established positions concerning the remedy desired.

It was suggested that ''affirmative defenses'' be made a part of the respondent's answer. Along these lines, one commenter suggested an amendment that any affirmative defenses not raised in the answer would be waived. On the other hand, one commenter indicated that even a ''no comment'' answer from a respondent should be an acceptable reply, at least until the General Counsel had proven his or her case. The final regulation remains unchanged, in this regard, from the proposed rule, requiring only that the respondent either admit, deny or explain allegations contained in the complaint. In seeking to balance the respective interests, the final rule treats the respondent's obligation to set out affirmative defenses in the same way that it addresses the General Counsel's obligation to describe the relief sought. As a result, at the prehearing disclosure stage, governed by § 2423.23, the respondent will be required to set forth any and all defenses. The regulation thus should serve the underlying goal of putting the parties on notice as to what the defenses are, without requiring more than is necessary in the answer itself. As the previous paragraph indicates, the interests of all parties are served by having the remedies and defenses set forth at the prehearing stage.

One commenter suggested that the Authority include a sentence in paragraphs (a) and (b) regarding the service and filing requirements. As stated in the proposed rule and unchanged in the final rule, all pleadings are subject to the filing and service requirements of part 2429 of the subchapter.

One commenter noted that in unusual circumstances, a hearing might begin less than 20 days after service of the complaint. In such cases, under the regulation as proposed, the answer would not have been filed and served prior to the beginning of the hearing. Paragraphs (b) and (c) have been revised to respond to this contingency and provide that the answer, and any amendments to the answer, must be filed and served, in any event, prior to the beginning of the hearing.

Paragraph (d) has been changed to note that the terms ''Administrative Law Judge'' and ''Judge'' are synonymous for the purposes of subparts B, C, and D.

Section 2423.21—Commenters favored the filing of motions with the Judge rather than with the Regional Director, as was required under the prior regulations. In response to commenters' concerns regarding the prehearing time deadlines set forth in the proposed rules (for prehearing disclosure, motions, and subpoenas), time deadlines are changed throughout the final rule. The final rule changes the time for filing of motions from 15 days before or after the specified event to 10 days. For prehearing motions, this 10-day prior to hearing deadline retains the same number of days as the current rule (5 CFR 2423.22(a)). The time for responses is unchanged. It is also noteworthy that the Judge has the authority to vary the timeliness provisions governing the filing of motions as necessary to meet the needs of a given case.

One commenter wanted to verify that all motions, including motions for summary judgment, are subject to filing and service requirements of part 2429. To ensure that this is understood, the last sentence of paragraph (a) has been clarified.

Paragraph (b) of this section has been subdivided into four parts in order to accommodate suggestions of commenters. As a result, the final regulation clarifies that responses to motions made during the hearing shall be made prior to the close of hearing, unless otherwise directed by the Judge, and that motions to correct the transcript shall be filed within 10 days of receiving the transcript, rather than within 15 days of hearing. Subsection (c) also now states that responses to motions filed with the Authority shall be filed within 5 days after service of the motion.

The reference to § 2429.11 in paragraph (d) has been changed to § 2423.31(c) as a result of the relocation of the unfair labor practice interlocutory appeals procedures to part 2423.

Section 2423.22—Final rule as promulgated is the same as proposed rule.

Section 2423.23—Most commenters favored early disclosure of information prior to hearing, believing that such an exchange would facilitate an early resolution of cases and avert ''trial by ambush.'' One commenter disagreed, stating that early exchange of information would not lead to earlier resolution via settlements; was unnecessary because the parties already generally know what evidence and arguments others in the case will offer; and would require extensive prehearing preparation far in advance of the date of hearing. Having carefully considered these opinions, the Authority continues to view prehearing disclosure as an important device that will facilitate dispute resolution and clarify the matters to be adjudicated. The parties are more likely to resolve disputes earlier in the ULP process if they are obliged to focus on their own and their opponents' evidence and theory of the case in advance of the hearing. By settling earlier, the Authority, the parties, and the witnesses avoid expending resources by preparing for and traveling to trials that are averted by settlement on the courthouse steps. On the other hand, if the dispute is not settled, early prehearing disclosure will enable the parties to knowledgeably and more efficiently prepare their cases without having to guess what evidence or theories others in the litigation will offer.

As noted in the comment to § 2423.21, several commenters suggested that the time deadlines in the proposed regulations should be modified. With regard to the number of days prior to the hearing that information is disclosed, although some favored the proposed 21 days, others asserted that 21 days was insufficient, and still others stated that 21 days was too far in advance of the hearing. One commenter suggested that disclosure should be 7 days prior to the prehearing conference. Suggestions to lengthen the time have been rejected because such a change would unduly increase the time prior to the hearing during which the parties would have to devote resources to case preparation. However, recommendations to truncate the period between disclosure and the hearing have been adopted.

The final rule changes the prescribed disclosure period from 21 to 14 days. Changing the time to 14 days will still allow for timely illumination of strategy concerning other prehearing activities, e.g., subpoenas or motions, as those time deadlines also have been adjusted based upon the change in the time for information disclosure. The 14-day deadline should also allay some commenters' concerns regarding prehearing administrative burdens and the potential that information will be unnecessarily prepared and exchanged in cases that may well be resolved before hearing.

As noted earlier in commentary concerning § 2423.21, if 14 days is not deemed an appropriate time to exchange information in a given case, a party may move the Judge, pursuant to § 2423.24(c)(1)(ii), to change the disclosure date or any other prehearing dates where appropriate. The final regulation has only established 14 days as the time period that will be controlling absent the changing of the time line by the Judge.

In response to queries about the meaning of the term ''shall exchange,'' the final regulations indicate that parties shall serve the documents on any other party in accordance with § 2429.27(b). This should clarify both acceptable methods of exchange and the fact that all parties—the General Counsel, the Respondent, and the Charging Party—are required to disclose and be served. With respect to such information, several commenters suggested that the Judge be served along with the parties, and that copies served on the Judge be made exhibits at hearing. The final regulation declines to provide for service to the Judge for the reason that disclosure is intended to put the parties on notice and not to create a record of the information exchanged in disclosure. The Judge will thus not need to review the information exchanged unless there is a dispute over disclosure, which would normally be handled at the prehearing conference, pursuant to § 2423.24(d).

As prompted by suggestions, the language relating to disclosure of documents has been modified to reflect that it only includes documents proposed to be offered into evidence. Thus, the requirement for document disclosure in paragraph (b) mirrors the requirement for witness disclosure in paragraph (a) in that both now refer to disclosing proposed lists of both witnesses and documents.

One commenter questioned the meaning of the requirement to disclose ''synopsis of testimony,'' suggesting that this phrase could be subjected to different interpretations, e.g., the facts about which the witness would testify, a summary of the testimony the witness would offer, or the allegation(s) in the complaint the witness would address. The first two examples would satisfy the ''synopsis of testimony'' requirement, but the third would be insufficient because it would not disclose the substance of the expected testimony.

One commenter suggested that in addition to the synopsis of testimony, a witness's prehearing statements should also be exchanged prior to the hearing. The final regulation declines to adopt, at this time, this suggested addition to the disclosure requirement; instead, until this matter is fully litigated, the Authority will maintain the rule presently in effect governing release of prehearing statements. Under long-settled current law, and pursuant to the Jencks Rule (*Jencks* v. *United States*, 353 U.S. 657 (1957)), a written statement previously obtained prior to the hearing is disclosable for the purpose of cross-examination after the witness has testified. *Department of Treasury, Internal Revenue Service, Memphis Service Center*, 16 FLRA 687 (1984). Of course, under the final rule, if parties have taken a statement from a witness and intend to introduce the written statement itself into evidence, such a statement will have to be disclosed in advance of the hearing pursuant to paragraph (b).

Some commenters recommended that the regulations specify the consequences for failing to comply with disclosure requirements. The final rule does not adopt this suggestion, but instead reserves to the Judge's discretion the power to impose sanctions in appropriate cases. Offering the Judge such discretion answers the concern of one commenter that sanctions would too often be levied against unsophisticated parties. The expectation is that the Judge will exercise prudence, consider all relevant factors, and impose appropriate sanctions when parties fail to act in good faith in meeting their respective prehearing disclosure obligations.

Finally, in response to suggestions, three changes have been made to paragraph (c). First, and as noted earlier, the final rule adds the relief sought to the information that must be disclosed 14 days prior to the hearing. Second, the word ''charges'' has been replaced with the more appropriate phrase ''allegations in the complaint.'' Third, several commenters noted that the requirement to disclose citations relied upon in support of a theory of the case or a defense is overly broad and could be interpreted to prevent a party from relying on a case precedent at a later stage in the litigation if the case was not exchanged in disclosure. The final regulation has been modified to delete the requirement that parties list citations to precedent.

Section 2423.24—Language has been added into paragraphs (b), (c), and (e) to reflect that the changing of hearing date or place, the issuing of a prehearing order, and imposition of sanctions may be ordered either by the Judge in his or her discretion, or on the motion of a party.

The final rule does not accept the recommendation of a commenter that paragraph (b) of the regulation recognize the authority of the Regional Director to order a change in the date, time, or place of the hearing when directed by the Judge. Any orders making such changes must be issued by the Judge.

Commenters generally, with one exception, favored prehearing conferences; one commenter suggested requiring prehearing conferences in every case. The Authority has concluded that at this time it is not necessary to mandate a prehearing conference in every case. As a result, the final rule in paragraph (d) retains the procedure that was proposed, with the Judge scheduling and conducting a conference at least 7 days before the hearing unless the Judge determines that a conference is not necessary and no party has moved for a prehearing conference. This process for the holding of prehearing conferences will be monitored; if it proves unwieldy, it will be altered. Many commenters objected to the Judge having the authority to assign one of the parties to draft a summary of the prehearing conference. This objection has been accommodated in the final regulations; thus, when a summary of a conference is necessary, it will be prepared and filed in the record by the Judge. In response to a commenter's suggestion, paragraph (d)(4) has been broadened to clarify that petitions to revoke subpoenas are a matter that may be considered at a prehearing conference.

Several commenters suggested that the Judge's sanction authority should be more expressly regulated. As noted in the commentary concerning § 2423.23, the final rule on sanctions does not establish specific penalties and procedures, opting instead to leave these matters to the discretion of the Judge. However, paragraph (e) has been clarified to reflect that an important purpose of sanctions is to ensure that a party's failing to comply with subpart B or C is not condoned. Also, in paragraph (e)(1), theories of violation, specific relief, and specific defenses have been included among the examples of items that a party may be precluded from pursuing if that party has failed to satisfy prehearing obligations.

Section 2423.25—One commenter suggested that implementation of an informal settlement be stayed pending the appeal by a charging party who objected to the settlement between the Regional Director and the respondent. Since this is already the practice under the current regulation, which has not been substantively altered by the proposed rule change, it does not appear necessary that stays be regulated by the final rule.

The settlement judge program, set out in paragraph (d), was favored, with commenters believing it will increase chances of settlement and reduce unnecessary litigation expense. Three suggestions have been incorporated in the final rule. First, the word ''informal'' has been stricken from the last sentence in the introductory paragraph, thus permitting a settlement official to conduct negotiations for any type of settlement. Second, the final rule has

been modified to clarify that information derived from settlement discussions will be inadmissible rather than confidential; thus, the final rule does not preclude the parties from discussing settlement. Third, the proposed paragraph (3), as modified, has been subdivided into two separate paragraphs.

Section 2423.26—Responding to a concern that motions for stipulations will add an additional step and time to the process, the final rule provides that such motions will be ruled upon expeditiously. The final rule also notes that individual briefs are required and must be filed within 30 days of the filing of the joint motion.

In response to suggestions, the final rule clarifies when stipulations to the Authority will be permitted. One commenter suggested that stipulations to the Authority be permitted when a United States Court of Appeals has already ruled on the legal issue in the case. It might well be that a motion to stipulate would be granted in such a case; however, it is not clear that a recommended decision of the Judge would be of no assistance in the resolution of every case falling into this category—especially if the Authority had not had an opportunity to consider the court's decision. Instead, the final rule permits stipulations when an adequate basis for application of established precedent exists. The final rule also provides the Authority discretion to grant the motion to stipulate in unusual circumstances.

Lastly, and also in response to comment, paragraph (d) has been added to the section noting that once a motion to stipulate has been granted, the Authority will adjudicate the case based upon the information in the stipulation and the briefs. It is anticipated that this provision will enable the Authority to avoid remanding cases to the parties for additions to the stipulation.

Section 2423.27—Most comments noted that codification of the summary judgment procedures should promote judicial economy.

As noted earlier, motions for summary judgment, like all written motions, are subject to the requirements of § 2423.21. In keeping with the time deadline changes in that section, the time for filing motions for summary judgment has changed from 15 days to 10 days prior to the hearing. In order to ensure that summary judgment motions do not interfere with the overall post complaint process, responses to motions for summary judgment must be filed within 5 days after the date of service of the motion instead of 10 days after service.

In response to a concern that such motions must, in every case, be filed at least 10 days prior to hearing, the final rule permits, with the approval of the Judge, motions for summary judgment to be filed less than 10 days in advance of the hearing. One commenter suggested that a party moving for summary judgment shortly in advance of a hearing be required to move for a postponement of the hearing so that those opposing the summary judgment motion would not be overloaded with the dual obligations of responding to the motion and preparing for trial. Although this suggestion has not been adopted, it is noted that any party, whether a movant for or an opponent of a summary judgment, may move the Judge to postpone the hearing pending a ruling on the motion for summary judgment.

The reference to § 2429.11 in paragraph (c) has been changed to § 2423.31(c) as a result of the relocation of the unfair labor practice interlocutory appeals procedures to part 2423.

Section 2423.28—Based upon one commenter's suggestion and in furtherance of unifying the rules governing the ULP process and ease of reference, the procedures governing subpoenas in an unfair labor practice proceeding have been moved from § 2429.7 to this section of the final rule. This section has been modeled after the revised § 2429.7 governing subpoena procedures in other FLRA proceedings.

Also, the time for requesting subpoenas has been adjusted to correspond with other prehearing disclosure deadlines, as discussed in the commentary concerning §§ 2423.21 and 2423.23. Thus, subpoena requests must be made not less than 10 days prior to the hearing, instead of the 15 days in the proposed regulations.

With regard to the subpoena process, many commenters suggested that subpoenas be issued ministerially with a minimum of involvement by the Judge in the issuance. The final rule addresses this concern in paragraph (c) by providing that subpoena requests filed with the Office of Administrative Law Judges will be automatically issued on an ex parte basis. The requesting party will be responsible for completion of the subpoena form and service of the subpoena. This change should avoid delays in issuing subpoenas and eliminate the potential problems of a Judge having to revisit a previous decision to issue a subpoena when a petition to revoke is filed.

In response to concerns about service, language has been added defining proper ''service'' for the subpoena. In the final rule, the process for service of a subpoena is different from the general service provisions of part 2429, in that registered or certified mail or personal delivery is required.

Section 2423.29—This section is reserved.

Subpart C—Hearing Procedures

Section 2423.30—Paragraph (b) has been edited for clarity in the final rule.

Section 2423.31—The final sentence in paragraph (a) has been edited for clarity in the final rule.

One commenter suggested that the last sentence in paragraph (b) could be interpreted as precluding a Judge from following the rules of evidence. This is neither the meaning nor intent of the sentence. The last sentence in paragraph (b) should be read in context of the entire paragraph. As such, the rules of evidence are a guide, but do not strictly govern the proceeding.

The final rule moves procedures governing interlocutory appeals from § 2429.11 to paragraph (c) of this section. This reorganization has been accomplished for the same reasons referenced in the commentary to the newly established § 2423.28, i.e., unifying unfair labor practice rules and ease of reference. Although provisions governing interlocutory appeals have been located in subpart C, which governs hearing procedures, these procedures would be equally applicable if a party were to challenge a prehearing determination of the Judge.

Substantively, one commenter suggested that the regulation require that the hearing be stayed while the certified interlocutory appeal is before the Authority. The final rule does not mandate such a stay, leaving this matter to the discretion of the Judge or the Authority. This flexibility would, in appropriate circumstances, allow segregable portions of a hearing to continue while an interlocutory appeal proceeded.

Voluminous commentary was received on the issue of bench decisions. While commenters appreciated the availability of such an option, most objected to the requirement that parties waive their rights to file exceptions and to obtain other forms of review. These concerns should be alleviated by the modifications contained in the final rule which is now denominated as paragraph (d) of this section. Under the final rule, all of the parties may jointly move the Judge to issue an oral bench decision at the close of the hearing. In filing such a motion, the parties waive their rights to file a posthearing brief to the Judge. If the Judge, relying on judicial discretion, grants the joint motion, the Judge will

render an oral decision which shall satisfy the requirements of § 2423.34(a)(1)–(5). Subsequent to the hearing, the Judge's oral decision will be transcribed. This transcription, together with any supplementary matter the Judge deems necessary, will be the written recommended decision which the Judge shall transmit to the Authority and serve on the parties. Exceptions to this recommended decision will be permitted. In response to queries about the relevance of ''the public interest'' to this process, the final rule has deleted this phrase.

The last paragraph in the section, formerly denominated as (d), has been redesignated as (e) in the final rule.

Section 2423.32—Comment was received noting that the proposed rule's requirement that the respondent have the burden of establishing defenses would cause confusion and controversy. One commenter noted that the respondent's burden varies depending upon the type of case and is not subject to a generic requirement. It was also pointed out that a respondent's burden is often a ''burden of going forward'' rather than a ''burden of proof.'' Noting these comments, and recognizing that the General Counsel has and retains the burden of proof in all cases, the final rule clarifies that the respondent shall have the burden of proving any ''affirmative'' defenses that it raises. Use of this more specific term serves to remind the respondent of its burden concerning certain defenses that it chooses to raise. This language is not intended to impose any additional burden on respondents; rather, it notifies respondents of their burden which is established in the case law.

Section 2423.33—The final rule is modified to account for waiver of the right to file posthearing briefs when bench decisions are issued, pursuant to § 2423.31(d).

Section 2423.34—In response to suggestions, summaries of prehearing conferences, as well as the basis for any ruling on sanctions, are specifically made part of the record, in order to document these matters and to allow the parties to except to any matter involving the prehearing conference or sanctions.

Sections 2423.35–2423.39—These sections are reserved.

Subpart D—Post-transmission and Exceptions to Authority Procedures

Section 2423.40—The final rule clarifies in paragraph (a), that a single document containing both exceptions to the Judge's decision and a brief in support of those exceptions, is contemplated. The final rule also expressly explains how separate arguments for each issue raised are to be set forth in the exceptions. The page limitation triggering the table of contents and legal authorities requirement has been raised from 20 to 25 pages. Parties should note that pursuant to § 2429.24(e) and § 2429.25, standard font sizes (12 point) and margins (1 inch) will be required.

The section heading and paragraph (b) have been altered to clarify the time within which to file oppositions to cross-exceptions. Commenters approved of the increased time—20 days—to file oppositions to exceptions as a valuable change.

Paragraph (c) has been added clarifying that reply briefs are not allowed, absent permission of the Authority.

Sections 2423.41–2423.42—Final rule as promulgated is the same as proposed rule.

Sections 2423.43–2423.49—These sections are reserved.

Part 2429—Miscellaneous and General Requirements

Section 2429.1—This section is removed and reserved.

Section 2429.7—As noted earlier, a separate section addressing subpoena process in ULP cases has been established in part 2423, § 2423.28. This section establishes subpoena processes for other Authority proceedings, pursuant to parts 2422, 2424, and 2425 and generally follows the procedures established for the issuance and revocation of subpoenas in ULP cases. The only significant difference between this section and the rules established in § 2423.28 involves the official who is authorized to issue and is revoke subpoenas.

Section 2429.11—As noted earlier, the procedures governing interlocutory appeals in unfair labor practice cases have been moved to § 2423.31(c). The final rule notes that such appeals will ordinarily not be considered, except as set forth in part 2423.

Section 2429.12—Almost all commenters endorsed the liberalization of service requirements allowing for first class mail and facsimile transmissions. The final rule adopts the proposed rule's service requirements.

In response to a suggestion, the final rule expands the list of documents that must be served to include amended complaints and withdrawals of complaints and amends the list of those who are required to serve to include the Regional Director when not acting as a party under part 2423. The reference in the proposed regulation to § 2429.7 has been changed in the final rule to subpoenas, as a result of subpoena sections appearing in both parts 2429 and 2423.

Also, the final rule has been revised to provide for the Authority's service by facsimile of time sensitive matters.

Section 2429.13—Final rule as promulgated is the same as proposed rule.

Section 2429.14—Final rule as promulgated is the same as proposed rule.

Section 2429.21—Final rule as promulgated is the same as proposed rule.

Section 2429.22—Commenters noted that when service is by facsimile, there is no reason to add 5 additional days to periods within which a party must act, as is done in the case of service by mail. The final regulation adopts this suggestion and has been modified to delete facsimile filing from this section.

Section 2429.24—As previously noted, parties uniformly and overwhelmingly supported the change allowing for filing by facsimile. In response to several requests, the 5-page limitation on facsimile filings with the Authority has been increased in the final rule to 10 pages. However, piecemeal filing is not permitted, as the 10-page limit applies to the entire individual document. This limit, however, will be strictly enforced and standard font sizes (12 point) and margins (1 inch) will be required.

Clarification was sought as to the term ''other similar matters'' with respect to documents appropriate for facsimile submissions. The final rule lists a number of items that may be filed by facsimile; with these examples offered in the regulation, further definition of this phrase is not considered feasible or prudent at this time. As in § 2429.12, the reference in the proposed regulation to § 2429.7 has been changed in the final rule to subpoenas, as a result of subpoena sections appearing in both parts 2429 and 2423.

Section 2429.25—The final rule includes one minor change to clarify that standard font sizes and margins will be required in all filings with the Authority.

Section 2429.27—Three minor changes have been incorporated into the final rule: First, in paragraph (b), the modifier of the word party has been changed from ''another'' to ''any other,'' thus clarifying that all parties, including the charging party, must be served; second, in paragraph (d), commercial delivery has been included as a method of service; and third, also in paragraph (d), the phrase ''date of transmission'' has been changed to ''date transmitted.''

List of Subjects

5 CFR Part 2423

Administrative practice and procedure, Government employees, Labor-management relations.

5 CFR Part 2429

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons set forth in the preamble, the Federal Labor Relations Authority amends parts 2423 and 2429 of its regulations as follows:

1. Part 2423 is revised to read as follows:

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

Sec.

2423.1 Applicability of this part.

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

2423.2 Informal proceedings.
2423.3 Who may file charges.
2423.4 Contents of the charge; supporting evidence and documents.
2423.5 Selection of the unfair labor practice procedure or the negotiability procedure.
2423.6 Filing and service of copies.
2423.7 Investigation of charges.
2423.8 Amendment of charges.
2423.9 Action by the Regional Director.
2423.10 Determination not to issue complaint; review of action by the Regional Director.
2423.11 Settlement prior to issuance of a complaint.
2423.12–2423.19 [Reserved]

Subpart B—Post Complaint, Prehearing Procedures

2423.20 Issuance and contents of the complaint; answer to the complaint; amendments; role of Office of the Administrative Law Judges.
2423.21 Motions procedure.
2423.22 Intervenors.
2423.23 Prehearing disclosure.
2423.24 Powers and duties of the Administrative Law Judge during prehearing proceedings.
2423.25 Post complaint, prehearing settlements.
2423.26 Stipulations of fact submissions.
2423.27 Summary judgment motions.
2423.28 Subpoenas.
2423.29 [Reserved]

Subpart C—Hearing Procedures.

2423.30 General rules.
2423.31 Powers and duties of the Administrative Law Judge at the hearing.
2423.32 Burden of proof before the Administrative Law Judge.
2423.33 Posthearing briefs.
2423.34 Decision and record.
2423.35–2423.39 [Reserved]

Subpart D—Post-Transmission and Exceptions to Authority Procedures

2423.40 Exceptions; oppositions and cross-exceptions; oppositions to cross-exceptions; waiver.
2423.41 Action by the Authority; compliance with Authority decisions and orders.
2423.42 Backpay proceedings.
2423.43–2423.49 [Reserved]

Authority: 5 U.S.C. 7134.

§ 2423.1 Applicability of this part.

This part is applicable to any charge of alleged unfair labor practices filed with the Authority on or after January 11, 1979, and any complaint filed on or after October 1, 1997.

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

§ 2423.2 Informal proceedings.

(a) The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the cooperative efforts of all persons covered by the program. To this end, it shall be the policy of the Authority and the General Counsel to encourage all persons alleging unfair labor practices and persons against whom such allegations are made to meet and, in good faith, attempt to resolve such matters prior to the filing of unfair labor practice charges with the Authority.

(b) In furtherance of the policy referred to in paragraph (a) of this section, and noting the six (6) month period of limitation set forth in 5 U.S.C. 7118(a)(4), it shall be the policy of the Authority and the General Counsel to encourage the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to the issuance of a complaint by the Regional Director.

(c) In order to afford the parties an opportunity to implement the policy referred to in paragraphs (a) and (b) of this section, the investigation of an unfair labor practice charge by the Regional Director will normally not commence until the parties have been afforded a reasonable amount of time, not to exceed 15 days from the filing of the charge, during which period the parties are urged to attempt to informally resolve the unfair labor practice allegation.

§ 2423.3 Who may file charges.

An activity, agency or labor organization may be charged by any person with having engaged in or engaging in any unfair labor practice prohibited under 5 U.S.C. 7116.

§ 2423.4 Contents of the charge; supporting evidence and documents.

(a) A charge alleging a violation of 5 U.S.C. 7116 shall be submitted on forms prescribed by the Authority and shall contain the following:

(1) The name, address and telephone number of the person(s) making the charge;

(2) The name, address and telephone number of the activity, agency, or labor organization against whom the charge is made;

(3) A clear and concise statement of the facts constituting the alleged unfair labor practice, a statement of the section(s) and paragraph(s) of chapter 71 of title 5 of the United States Code alleged to have been violated, and the date and place of occurrence of the particular acts; and

(4) A statement of any other procedure invoked involving the subject matter of the charge and the results, if any, including whether the subject matter raised in the charge:

(i) has been raised previously in a grievance procedure;

(ii) has been referred to the Federal Service Impasses Panel, the Federal Mediation and Conciliation Service, the Equal Employment Opportunity Commission, the Merit Systems Protection Board or the Special Counsel of the Merit Systems Protection Board for consideration or action; or

(iii) involves a negotiability issue raised by the charging party in a petition pending before the Authority pursuant to part 2424 of this subchapter.

(b) Such charge shall be in writing and signed and shall contain a declaration by the person signing the charge, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of that person's knowledge and belief.

(c) When filing a charge, the charging party shall submit to the Regional Director any supporting evidence and documents.

§ 2423.5 Selection of the unfair labor practice procedure or the negotiability procedure.

Where a labor organization files an unfair labor practice charge pursuant to this part which involves a negotiability issue, and the labor organization also files pursuant to part 2424 of this subchapter a petition for review of the same negotiability issue, the Authority and the General Counsel ordinarily will not process the unfair labor practice charge and the petition for review simultaneously. Under such circumstances, the labor organization must select under which procedure to proceed. Upon selection of one

procedure, further action under the other procedure will ordinarily be suspended. Such selection must be made regardless of whether the unfair labor practice charge or the petition for review of a negotiability issue is filed first. Notification of this selection must be made in writing at the time that both procedures have been invoked, and must be served on the Authority, the appropriate Regional Director and all parties to both the unfair labor practice case and the negotiability case. Cases which solely involve an agency's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained and which do not involve actual or contemplated changes in conditions of employment may only be filed under part 2424 of this subchapter.

§ 2423.6 Filing and service of copies.

(a) An original and four (4) copies of the charge together with one copy for each additional charged party named shall be filed with the Regional Director for the region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more regions may be filed with the Regional Director for any such region.

(b) Upon the filing of a charge, the charging party shall be responsible for the service of a copy of the charge (without the supporting evidence and documents) upon the person(s) against whom the charge is made, and for filing a written statement of such service with the Regional Director. The Regional Director will, as a matter of course, cause a copy of such charge to be served on the person(s) against whom the charge is made, but shall not be deemed to assume responsibility for such service.

(c) A charge will be deemed to be filed when it is received by the appropriate Regional Director in accordance with the requirements in paragraph (a) of this section.

§ 2423.7 Investigation of charges.

(a) The Regional Director, on behalf of the General Counsel, shall conduct such investigation of the charge as the Regional Director deems necessary. Consistent with the policy set forth in § 2423.2, the investigation will normally not commence until the parties have been afforded a reasonable amount of time, not to exceed 15 days from the filing of the charge, to informally resolve the unfair labor practice allegation.

(b) During the course of the investigation all parties involved will have an opportunity to present their evidence and views to the Regional Director.

(c) In connection with the investigation of charges, all persons are expected to cooperate fully with the Regional Director.

(d) The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the full cooperation of all parties involved and the voluntary submission of all potentially relevant information from all potential sources during the course of the investigation. To this end, it shall be the policy of the Authority and the General Counsel to protect the identity of individuals and the substance of the statements and information they submit or which is obtained during the investigation as a means of assuring the Authority's and the General Counsel's continuing ability to obtain all relevant information.

§ 2423.8 Amendment of charges.

Prior to the issuance of a complaint, the charging party may amend the charge in accordance with the requirements set forth in § 2423.6.

§ 2423.9 Action by the Regional Director.

(a) The Regional Director shall take action which may consist of the following, as appropriate:

(1) Approve a request to withdraw a charge;

(2) Refuse to issue a complaint;

(3) Approve a written settlement agreement in accordance with the provisions of part 2423;

(4) Issue a complaint; or

(5) Withdraw a complaint.

(b) Parties may request the General Counsel to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d). The General Counsel will initiate and prosecute injunctive proceedings under 5 U.S.C. 7123(d) only upon approval of the Authority. A determination by the General Counsel not to seek approval of the Authority for such temporary relief is final and may not be appealed to the Authority.

(c) Upon a determination to issue a complaint, whenever it is deemed advisable by the Authority to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d), the Regional Attorney or other designated agent of the Authority to whom the matter has been referred will make application for appropriate temporary relief (including a restraining order) in the district court of the United States within which the unfair labor practice is alleged to have occurred or in which the party sought to be enjoined resides or transacts business. Such temporary relief will not be sought unless the record establishes probable cause that an unfair labor practice is being committed, or if such temporary relief will interfere with the ability of the agency to carry out its essential functions.

(d) Whenever temporary relief has been obtained pursuant to 5 U.S.C. 7123(d) and thereafter the Administrative Law Judge hearing the complaint, upon which the determination to seek such temporary relief was predicated, recommends dismissal of such complaint, in whole or in part, the Regional Attorney or other designated agent of the Authority handling the case for the Authority shall inform the district court which granted the temporary relief of the possible change in circumstances arising out of the decision of the Administrative Law Judge.

§ 2423.10 Determination not to issue complaint; review of action by the Regional Director.

(a) If the Regional Director determines that the charge has not been timely filed, that the charge fails to state an unfair labor practice, or for other appropriate reasons, the Regional Director may request the charging party to withdraw the charge, and in the absence of such withdrawal within a reasonable time, decline to issue a complaint.

(b) If the Regional Director determines not to issue a complaint on a charge which is not withdrawn, the Regional Director shall provide the parties with a written statement of the reasons for not issuing a complaint.

(c) The charging party may obtain a review of the Regional Director's decision not to issue a complaint by filing an appeal with the General Counsel within 25 days after service of the Regional Director's decision. The appeal shall contain a complete statement setting forth the facts and reasons upon which it is based. A copy of the appeal shall also be filed with the Regional Director. In addition, the charging party should notify all other parties of the fact that an appeal has been taken, but any failure to give such notice shall not affect the validity of the appeal.

(d) A request for extension of time to file an appeal shall be in writing and received by the General Counsel not later than 5 days before the date the appeal is due. The charging party should notify the Regional Director and all other parties that it has requested an extension of time in which to file an appeal, but any failure to give such

notice shall not affect the validity of its request for an extension of time to file an appeal.

(e) The General Counsel may sustain the Regional Director's refusal to issue or re-issue a complaint, stating the grounds of affirmance, or may direct the Regional Director to take further action. The General Counsel's decision shall be served on all the parties. The decision of the General Counsel shall be final.

§ 2423.11 Settlement prior to issuance of a complaint.

(a) Prior to the issuance of any complaint or the taking of other formal action, the Regional Director will afford the Charging Party and the Respondent a reasonable period of time in which to enter into an informal settlement agreement to be approved by the Regional Director. Upon approval by the Regional Director and compliance with the terms of the informal settlement agreement, no further action shall be taken in the case. If the Respondent fails to perform its obligations under the informal settlement agreement, the Regional Director may determine to institute further proceedings.

(b) In the event that the Charging Party fails or refuses to become a party to an informal settlement agreement offered by the Respondent, if the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the Regional Director shall enter into the agreement with the Respondent and shall decline to issue a complaint. The Charging Party may obtain a review of the Regional Director's action by filing an appeal with the General Counsel in accordance with § 2423.10(c). The General Counsel shall take action on such appeal as set forth in § 2423.10(e).

§§ 2423.12–2423.19 [Reserved]

Subpart B—Post Complaint, Prehearing Procedures

§ 2423.20 Issuance and contents of the complaint; answer to the complaint; amendments; role of Office of Administrative Law Judges.

(a) *Complaint.* Whenever formal proceedings are deemed necessary, the Regional Director shall file and serve, in accordance with § 2429.12 of this subchapter, a complaint with the Office of Administrative Law Judges. The decision to issue a complaint shall not be subject to review. Any complaint may be withdrawn by the Regional Director prior to the hearing. The complaint shall set forth:

(1) Notice of the charge;

(2) The basis for jurisdiction;

(3) The facts alleged to constitute an unfair labor practice;

(4) The particular sections of 5 U.S.C., chapter 71 and the rules and regulations involved;

(5) Notice of the date, time, and place that a hearing will take place before an Administrative Law Judge; and

(6) A brief statement explaining the nature of the hearing.

(b) *Answer.* Within 20 days after the date of service of the complaint, but in any event, prior to the beginning of the hearing, the Respondent shall file and serve, in accordance with part 2429 of this subchapter, an answer with the Office of Administrative Law Judges. The answer shall admit, deny, or explain each allegation of the complaint. If the Respondent has no knowledge of an allegation or insufficient information as to its truthfulness, the answer shall so state. Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission. Motions to extend the filing deadline shall be filed in accordance with § 2423.21.

(c) *Amendments.* The Regional Director may amend the complaint at any time before the answer is filed. The Respondent then has 20 days from the date of service of the amended complaint to file an answer with the Office of Administrative Law Judges. Prior to the beginning of the hearing, the answer may be amended by the Respondent within 20 days after the answer is filed. Thereafter, any requests to amend the complaint or answer must be made by motion to the Office of Administrative Law Judges.

(d) *Office of Administrative Law Judges.* Pleadings, motions, conferences, hearings, and other matters throughout as specified in subparts B, C, and D of this part shall be administered by the Office of Administrative Law Judges, as appropriate. The Chief Administrative Law Judge, or any Administrative Law Judge designated by the Chief Administrative Law Judge, shall administer any matters properly submitted to the Office of Administrative Law Judges. Throughout subparts B, C, and D of this part, ''Administrative Law Judge'' or ''Judge'' refers to the Chief Administrative Law Judge or his or her designee.

§ 2423.21 Motions procedure.

(a) *General requirements.* All motions, except those made during a prehearing conference or hearing, shall be in writing. Motions for an extension of time, postponement of a hearing, or any other procedural ruling shall include a statement of the position of the other parties on the motion. All written motions and responses in subparts B, C, or D of this part shall satisfy the filing and service requirements of part 2429 of this subchapter.

(b) *Motions made to the Administrative Law Judge.* Prehearing motions and motions made at the hearing shall be filed with the Administrative Law Judge. Unless otherwise specified in subparts B or C of this part, or otherwise directed or approved by the Administrative Law Judge:

(1) Prehearing motions shall be filed at least 10 days prior to the hearing, and responses shall be filed within 5 days after the date of service of the motion;

(2) Responses to motions made during the hearing shall be filed prior to the close of hearing;

(3) Posthearing motions shall be filed within 10 days after the date the hearing closes, and responses shall be filed within 5 days after the date of service of the motion; and

(4) Motions to correct the transcript shall be filed with the Administrative Law Judge within 10 days after receipt of the transcript, and responses shall be filed within 5 days after the date of service of the motion.

(c) *Post-transmission motions.* After the case has been transmitted to the Authority, motions shall be filed with the Authority. Responses shall be filed within 5 days after the date of service of the motion.

(d) *Interlocutory appeals.* Motions for an interlocutory appeal of any ruling and responses shall be filed in accordance with this section and § 2423.31(c).

§ 2423.22 Intervenors.

Motions for permission to intervene and responses shall be filed in accordance with § 2423.21. Such motions shall be granted upon a showing that the outcome of the proceeding is likely to directly affect the movant's rights or duties. Intervenors may participate only: on the issues determined by the Administrative Law Judge to affect them; and to the extent permitted by the Judge. Denial of such motions may be appealed pursuant to § 2423.21(d).

§ 2423.23 Prehearing disclosure.

Unless otherwise directed or approved by the Judge, the parties shall exchange, in accordance with the service requirements of § 2429.27(b) of this subchapter, the following items at least 14 days prior to the hearing:

(a) *Witnesses.* Proposed witness lists, including a brief synopsis of the expected testimony of each witness;

(b) *Documents.* Copies of documents, with an index, proposed to be offered into evidence; and

(c) *Theories.* A brief statement of the theory of the case, including relief sought, and any and all defenses to the allegations in the complaint.

§ 2423.24 Powers and duties of the Administrative Law Judge during prehearing proceedings.

(a) *Prehearing procedures.* The Administrative Law Judge shall regulate the course and scheduling of prehearing matters, including prehearing orders, conferences, disclosure, motions, and subpoena requests.

(b) *Changing date, time, or place of hearing.* After issuance of the complaint or any prehearing order, the Administrative Law Judge may, in the Judge's discretion or upon motion by any party through the motions procedure in § 2423.21, change the date, time, or place of the hearing.

(c) *Prehearing order.* (1) The Administrative Law Judge may, in the Judge's discretion or upon motion by any party through the motions procedure in § 2423.21, issue a prehearing order confirming or changing:

(i) The date, time, or place of the hearing;

(ii) The schedule for prehearing disclosure of witness lists and documents intended to be offered into evidence at the hearing;

(iii) The date for submission of procedural and substantive motions;

(iv) The date, time, and place of the prehearing conference; and

(v) Any other matter pertaining to prehearing or hearing procedures.

(2) The prehearing order shall be served in accordance with § 2429.12 of this subchapter.

(d) *Prehearing conferences.* The Administrative Law Judge shall conduct one or more prehearing conferences, either by telephone or in person, at least 7 days prior to the hearing date, unless the Administrative Law Judge determines that a prehearing conference would serve no purpose and no party has moved for a prehearing conference in accordance with § 2423.21. If a prehearing conference is held, all parties must participate in the prehearing conference and be prepared to discuss, narrow, and resolve the issues set forth in the complaint and answer, as well as any prehearing disclosure matters or disputes. When necessary, the Administrative Law Judge shall prepare and file for the record a written summary of actions taken at the conference. Summaries of the conference shall be served on all parties in accordance with § 2429.12 of this subchapter. The following may also be considered at the prehearing conference:

(1) Settlement of the case, either by the Judge conducting the prehearing conference or pursuant to § 2423.25;

(2) Admissions of fact, disclosure of contents and authenticity of documents, and stipulations of fact;

(3) Objections to the introduction of evidence at the hearing, including oral or written testimony, documents, papers, exhibits, or other submissions proposed by a party;

(4) Subpoena requests or petitions to revoke subpoenas;

(5) Any matters subject to official notice;

(6) Outstanding motions; or

(7) Any other matter that may expedite the hearing or aid in the disposition of the case.

(e) *Sanctions.* The Administrative Law Judge may, in the Judge's discretion or upon motion by any party through the motions procedure in § 2423.21, impose sanctions upon the parties as necessary and appropriate to ensure that a party's failure to fully comply with subpart B or C of this part is not condoned. Such authority includes, but is not limited to, the power to:

(1) Prohibit a party who fails to comply with any requirement of subpart B or C of this part from, as appropriate, introducing evidence, calling witnesses, raising objections to the introduction of evidence or testimony of witnesses at the hearing, presenting a specific theory of violation, seeking certain relief, or relying upon a particular defense.

(2) Refuse to consider any submission that is not filed in compliance with subparts B or C of this part.

§ 2423.25 Post complaint, prehearing settlements.

(a) *Informal and formal settlements.* Post complaint settlements may be either informal or formal.

(1) Informal settlement agreements provide for withdrawal of the complaint by the Regional Director and are not subject to approval by or an order of the Authority. If the Respondent fails to perform its obligations under the informal settlement agreement, the Regional Director may reinstitute formal proceedings consistent with this subpart.

(2) Formal settlement agreements are subject to approval by the Authority, and include the parties' agreement to waive their right to a hearing and acknowledgment that the Authority may issue an order requiring the Respondent to take action appropriate to the terms of the settlement. The formal settlement agreement shall also contain the Respondent's consent to the Authority's application for the entry of a decree by an appropriate federal court enforcing the Authority's order.

(b) *Informal settlement procedure.* If the Charging Party and the Respondent enter into an informal settlement agreement that is accepted by the Regional Director, the Regional Director shall withdraw the complaint and approve the informal settlement agreement. If the Charging Party fails or refuses to become a party to an informal settlement agreement offered by the Respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the Regional Director shall enter into the agreement with the Respondent and shall withdraw the complaint. The Charging Party then may obtain a review of the Regional Director's action by filing an appeal with the General Counsel as provided in subpart A of this part.

(c) *Formal settlement procedure.* If the Charging Party and the Respondent enter into a formal settlement agreement that is accepted by the Regional Director, the Regional Director shall withdraw the complaint upon approval of the formal settlement agreement by the Authority. If the Charging Party fails or refuses to become a party to a formal settlement agreement offered by the Respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the agreement shall be between the Respondent and the Regional Director. The formal settlement agreement together with the Charging Party's objections, if any, shall be submitted to the Authority for approval. The Authority may approve a formal settlement agreement upon a sufficient showing that it will effectuate the policies of the Federal Service Labor-Management Relations Statute.

(d) *Settlement judge program.* The Administrative Law Judge, in the Judge's discretion or upon the request of any party, may assign a judge or other appropriate official, who shall be other than the hearing judge unless otherwise mutually agreed to by the parties, to conduct negotiations for settlement.

(1) The settlement official shall convene and preside over settlement conferences by telephone or in person.

(2) The settlement official may require that the representative for each party be present at settlement conferences and that the parties or agents with full settlement authority be present or available by telephone.

(3) The settlement official shall not discuss any aspect of the case with the hearing judge.

(4) No evidence regarding statements, conduct, offers of settlement, and concessions of the parties made in proceedings before the settlement official shall be admissible in any proceeding before the Administrative Law Judge or Authority, except by stipulation of the parties.

§ 2423.26 Stipulations of fact submissions.

(a) *General.* When all parties agree that no material issue of fact exists, the parties may jointly submit a motion to the Administrative Law Judge or Authority requesting consideration of the matter based upon stipulations of fact. Briefs of the parties are required and must be submitted within 30 days of the joint motion. Upon receipt of the briefs, such motions shall be ruled upon expeditiously.

(b) *Stipulations to the Administrative Law Judge.* Where the stipulation adequately addresses the appropriate material facts, the Administrative Law Judge may grant the motion and decide the case through stipulation.

(c) *Stipulations to the Authority.* Where the stipulation provides an adequate basis for application of established precedent and a decision by the Administrative Law Judge would not assist in the resolution of the case, or in unusual circumstances, the Authority may grant the motion and decide the case through stipulation.

(d) *Decision based on stipulation.* Where the motion is granted, the Authority will adjudicate the case and determine whether the parties have met their respective burdens based on the stipulation and the briefs.

§ 2423.27 Summary judgment motions.

(a) *Motions.* Any party may move for a summary judgment in its favor on any of the issues pleaded. Unless otherwise approved by the Administrative Law Judge, such motion shall be made no later than 10 days prior to the hearing. The motion shall demonstrate that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Such motions shall be supported by documents, affidavits, applicable precedent, or other appropriate materials.

(b) *Responses.* Responses must be filed within 5 days after the date of service of the motion. Responses may not rest upon mere allegations or denials but must show, by documents, affidavits, applicable precedent, or other appropriate materials, that there is a genuine issue to be determined at the hearing.

(c) *Decision.* If all issues are decided by summary judgment, no hearing will be held and the Administrative Law Judge shall prepare a decision in accordance with § 2423.34. If summary judgment is denied, or if partial summary judgment is granted, the Administrative Law Judge shall issue an opinion and order, subject to interlocutory appeal as provided in § 2423.31(c) of this subchapter, and the hearing shall proceed as necessary.

§ 2423.28 Subpoenas.

(a) *When necessary.* Where the parties are in agreement that the appearance of witnesses or the production of documents is necessary, and such witnesses agree to appear, no subpoena need be sought.

(b) *Requests for subpoenas.* A request for a subpoena by any person, as defined in 5 U.S.C. 7103(a)(1), shall be in writing and filed with the Office of Administrative Law Judges not less than 10 days prior to the hearing, or with the Administrative Law Judge during the hearing. Requests for subpoenas made less than 10 days prior to the hearing shall be granted on sufficient explanation of why the request was not timely filed.

(c) *Subpoena procedures.* The Office of Administrative Law Judges, or any other employee of the Authority designated by the Authority, as appropriate, shall furnish the requester the subpoenas sought, provided the request is timely made. Requests for subpoenas may be made ex parte. Completion of the specific information in the subpoena and the service of the subpoena are the responsibility of the party on whose behalf the subpoena was issued.

(d) *Service of subpoena.* A subpoena may be served by any person who is at least 18 years old and who is not a party to the proceeding. The person who served the subpoena must certify that he or she did so:

(1) By delivering it to the witness in person,

(2) By registered or certified mail, or

(3) By delivering the subpoena to a responsible person (named in the document certifying the delivery) at the residence or place of business (as appropriate) of the person for whom the subpoena was intended. The subpoena shall show on its face the name and address of the party on whose behalf the subpoena was issued.

(e)(1) *Petition to revoke subpoena.* Any person served with a subpoena who does not intend to comply shall, within 5 days after the date of service of the subpoena upon such person, petition in writing to revoke the subpoena. A copy of any petition to revoke a subpoena shall be served on the party on whose behalf the subpoena was issued. Such petition to revoke, if made prior to the hearing, and a written statement of service, shall be filed with the Office of Administrative Law Judges for ruling. A petition to revoke a subpoena filed during the hearing, and a written statement of service, shall be filed with the Administrative Law Judge.

(2) The Administrative Law Judge, or any other employee of the Authority designated by the Authority, as appropriate, shall revoke the subpoena if the person or evidence, the production of which is required, is not material and relevant to the matters under investigation or in question in the proceedings, or the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. The Administrative Law Judge, or any other employee of the Authority designated by the Authority, as appropriate, shall state the procedural or other ground for the ruling on the petition to revoke. The petition to revoke, any answer thereto, and any ruling thereon shall not become part of the official record except upon the request of the party aggrieved by the ruling.

(f) *Failure to comply.* Upon the failure of any person to comply with a subpoena issued and upon the request of the party on whose behalf the subpoena was issued, the Solicitor of the Authority shall institute proceedings on behalf of such party in the appropriate district court for the enforcement thereof, unless to do so would be inconsistent with law and the Federal Service Labor-Management Relations Statute.

§ 2423.29 [Reserved]

Subpart C—Hearing Procedures

§ 2423.30 General rules.

(a) *Open hearing.* The hearing shall be open to the public unless otherwise ordered by the Administrative Law Judge.

(b) *Administrative Procedure Act.* The hearing shall, to the extent practicable, be conducted in accordance with 5 U.S.C. 554–557, and other applicable provisions of the Administrative Procedure Act.

(c) *Rights of parties.* A party shall have the right to appear at any hearing in person, by counsel, or by other

representative; to examine and cross-examine witnesses; to introduce into the record documentary or other relevant evidence; and to submit rebuttal evidence, except that the participation of any party shall be limited to the extent prescribed by the Administrative Law Judge.

(d) *Objections.* Objections are oral or written complaints concerning the conduct of a hearing. Any objection not raised to the Administrative Law Judge shall be deemed waived.

(e) *Oral argument.* Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

(f) *Official transcript.* An official reporter shall make the only official transcript of such proceedings. Copies of the transcript may be examined in the appropriate Regional Office during normal working hours. Parties desiring a copy of the transcript shall make arrangements for a copy with the official hearing reporter.

§ 2423.31 Powers and duties of the Administrative Law Judge at the hearing.

(a) *Conduct of hearing.* The Administrative Law Judge shall conduct the hearing in a fair, impartial, and judicial manner, taking action as needed to avoid unnecessary delay and maintain order during the proceedings. The Administrative Law Judge may take any action necessary to schedule, conduct, continue, control, and regulate the hearing, including ruling on motions and taking official notice of material facts when appropriate. No provision of these regulations shall be construed to limit the powers of the Administrative Law Judge provided by 5 U.S.C. 556, 557, and other applicable provisions of the Administrative Procedure Act.

(b) *Evidence.* The Administrative Law Judge shall receive evidence and inquire fully into the relevant and material facts concerning the matters that are the subject of the hearing. The Administrative Law Judge may exclude any evidence that is immaterial, irrelevant, unduly repetitious, or customarily privileged. Rules of evidence shall not be strictly followed.

(c) *Interlocutory appeals.* Motions for an interlocutory appeal shall be filed in writing with the Administrative Law Judge within 5 days after the date of the contested ruling. The motion shall state why interlocutory review is appropriate, and why the Authority should modify or reverse the contested ruling.

(1) The Judge shall grant the motion and certify the contested ruling to the Authority if:

(i) The ruling involves an important question of law or policy about which there is substantial ground for difference of opinion; and

(ii) Immediate review will materially advance completion of the proceeding, or the denial of immediate review will cause undue harm to a party or the public.

(2) If the motion is granted, the Judge or Authority may stay the hearing during the pendency of the appeal. If the motion is denied, exceptions to the contested ruling may be filed in accordance with § 2423.40 of this subchapter after the Judge issues a decision and recommended order in the case.

(d) *Bench decisions.* Upon joint motion of the parties, the Administrative Law Judge may issue an oral decision at the close of the hearing when, in the Judge's discretion, the nature of the case so warrants. By so moving, the parties waive their right to file posthearing briefs with the Administrative Law Judge, pursuant to § 2423.33. If the decision is announced orally, it shall satisfy the requirements of § 2423.34(a)(1)–(5) and a copy thereof, excerpted from the transcript, together with any supplementary matter the judge may deem necessary to complete the decision, shall be transmitted to the Authority, in accordance with § 2423.34(b), and furnished to the parties in accordance with § 2429.12 of this subchapter.

(e) *Settlements after the opening of the hearing.* As set forth in § 2423.25(a), settlements may be either informal or formal.

(1) *Informal settlement procedure: Judge's approval of withdrawal.* If the Charging Party and the Respondent enter into an informal settlement agreement that is accepted by the Regional Director, the Regional Director may request the Administrative Law Judge for permission to withdraw the complaint and, having been granted such permission, shall withdraw the complaint and approve the informal settlement between the Charging Party and Respondent. If the Charging Party fails or refuses to become a party to an informal settlement agreement offered by the Respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the Regional Director shall enter into the agreement with the Respondent and shall, if granted permission by the Administrative Law Judge, withdraw the complaint. The Charging Party then may obtain a review of the Regional Director's decision as provided in subpart A of this part.

(2) *Formal settlement procedure: Judge's approval of settlement.* If the Charging Party and the Respondent enter into a formal settlement agreement that is accepted by the Regional Director, the Regional Director may request the Administrative Law Judge to approve such formal settlement agreement, and upon such approval, to transmit the agreement to the Authority for approval. If the Charging Party fails or refuses to become a party to a formal settlement agreement offered by the Respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the agreement shall be between the Respondent and the Regional Director. After the Charging Party is given an opportunity to state on the record or in writing the reasons for opposing the formal settlement, the Regional Director may request the Administrative Law Judge to approve such formal settlement agreement, and upon such approval, to transmit the agreement to the Authority for approval.

§ 2423.32 Burden of proof before the Administrative Law Judge.

The General Counsel shall present the evidence in support of the complaint and have the burden of proving the allegations of the complaint by a preponderance of the evidence. The Respondent shall have the burden of proving any affirmative defenses that it raises to the allegations in the complaint.

§ 2423.33 Posthearing briefs.

Except when bench decisions are issued pursuant to § 2423.31(d), posthearing briefs may be filed with the Administrative Law Judge within a time period set by the Judge, not to exceed 30 days from the close of the hearing, unless otherwise directed by the judge, and shall satisfy the filing and service requirements of part 2429 of this subchapter. Reply briefs shall not be filed absent permission of the Judge. Motions to extend the filing deadline or for permission to file a reply brief shall be filed in accordance with § 2423.21.

§ 2423.34 Decision and record.

(a) *Recommended decision.* Except when bench decisions are issued pursuant to § 2423.31(d), the Administrative Law Judge shall prepare a written decision expeditiously in every case. All written decisions shall be served in accordance with § 2429.12 of this subchapter. The decision shall set forth:

(1) A statement of the issues;

(2) Relevant findings of fact;

(3) Conclusions of law and reasons therefor;

(4) Credibility determinations as necessary; and

(5) A recommended disposition or order.

(b) *Transmittal to Authority.* The Judge shall transmit the decision and record to the Authority. The record shall include the charge, complaint, service sheet, answer, motions, rulings, orders, prehearing conference summaries, stipulations, objections, depositions, interrogatories, exhibits, documentary evidence, basis for any sanctions ruling, official transcript of the hearing, briefs, and any other filings or submissions made by the parties.

§§ 2423.35–2423.39 [Reserved]

Subpart D—Post-Transmission and Exceptions to Authority Procedures

§ 2423.40 Exceptions; oppositions and cross-exceptions; oppositions to cross-exceptions; waiver.

(a) *Exceptions.* Any exceptions to the Administrative Law Judge's decision must be filed with the Authority within 25 days after the date of service of the Judge's decision. Exceptions shall satisfy the filing and service requirements of part 2429 of this subchapter. Exceptions shall consist of the following:

(1) The specific findings, conclusions, determinations, rulings, or recommendations being challenged; the grounds relied upon; and the relief sought.

(2) Supporting arguments, which shall set forth, in order: all relevant facts with specific citations to the record; the issues to be addressed; and a separate argument for each issue, which shall include a discussion of applicable law. Attachments to briefs shall be separately paginated and indexed as necessary.

(3) Exceptions containing 25 or more pages shall include a table of contents and a table of legal authorities cited.

(b) *Oppositions and cross-exceptions.* Unless otherwise directed or approved by the Authority, oppositions to exceptions, cross-exceptions, and oppositions to cross-exceptions may be filed with the Authority within 20 days after the date of service of the exceptions or cross-exceptions, respectively. Oppositions shall state the specific exceptions being opposed. Oppositions and cross-exceptions shall be subject to the same requirements as exceptions set out in paragraph (a) of this section.

(c) *Reply briefs.* Reply briefs shall not be filed absent prior permission of the Authority.

(d) *Waiver.* Any exception not specifically argued shall be deemed to have been waived.

§ 2423.41 Action by the Authority; compliance with Authority decisions and orders.

(a) *Authority decision; no exceptions filed.* In the absence of the filing of exceptions within the time limits established in § 2423.40, the findings, conclusions, and recommendations in the decision of the Administrative Law Judge shall, without precedential significance, become the findings, conclusions, decision and order of the Authority, and all objections and exceptions to the rulings and decision of the Administrative Law Judge shall be deemed waived for all purposes. Failure to comply with any filing requirement established in § 2423.40 may result in the information furnished being disregarded.

(b) *Authority decision; exceptions filed.* Whenever exceptions are filed in accordance with § 2423.40, the Authority shall issue a decision affirming or reversing, in whole or in part, the decision of the Administrative Law Judge or disposing of the matter as is otherwise deemed appropriate.

(c) *Authority's order.* Upon finding a violation, the Authority shall, in accordance with 5 U.S.C. 7118(a)(7), issue an order directing the violator, as appropriate, to cease and desist from any unfair labor practice, or to take any other action to effectuate the purposes of the Federal Service Labor-Management Relations Statute.

(d) *Dismissal.* Upon finding no violation, the Authority shall dismiss the complaint.

(e) *Report of compliance.* After the Authority issues an order, the Respondent shall, within the time specified in the order, provide to the appropriate Regional Director a report regarding what compliance actions have been taken. Upon determining that the Respondent has not complied with the Authority's order, the Regional Director shall refer the case to the Authority for enforcement or take other appropriate action.

§ 2423.42 Backpay proceedings.

After the entry of an Authority order directing payment of backpay, or the entry of a court decree enforcing such order, if it appears to the Regional Director that a controversy exists between the Authority and a Respondent regarding backpay that cannot be resolved without a formal proceeding, the Regional Director may issue and serve on all parties a notice of hearing before an Administrative Law Judge to determine the backpay amount. The notice of hearing shall set forth the specific backpay issues to be resolved. The Respondent shall, within 20 days after the service of a notice of hearing, file an answer in accordance with § 2423.20. After the issuance of a notice of hearing, the procedures provided in subparts B, C, and D of this part shall be followed as applicable.

§§ 2423.43–2423.49 [Reserved]

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

2. The authority citation for part 2429 continues to read as follows:

Authority: 5 U.S.C. 7134.

§ 2429.1 [Removed and Reserved]

3. Section 2429.1 is removed and reserved

4. Section 2429.7 is amended by revising the heading and by removing the word ''subpena'' and substituting ''subpoena'' throughout the section and by revising paragraphs (c) through (f) to read as follows:

§ 2429.7 Subpoenas.

* * * * *

(c) A request for a subpoena by any person, as defined in 5 U.S.C. 7103(a)(1), shall be in writing and filed with the Regional Director, in proceedings arising under part 2422 of this subchapter, or with the Authority, in proceedings arising under parts 2424 and 2425 of this subchapter, not less than 10 days prior to the hearing, or with the appropriate presiding official(s) during the hearing. Requests for subpoenas made less than 10 days prior to the opening of the hearing shall be granted on sufficient explanation of why the request was not timely filed.

(d) The Authority, General Counsel, Regional Director, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, shall furnish the requester the subpoenas sought, provided the request is timely made. Requests for subpoenas may be made ex parte. Completion of the specific information in the subpoena and the service of the subpoena are the responsibility of the party on whose behalf the subpoena was issued. A subpoena may be served by any person who is at least 18 years old and who is not a party to the proceeding. The person who served the subpoena must certify that he or she did so:

(1) By delivering it to the witness in person,

(2) By registered or certified mail, or

(3) By delivering the subpoena to a responsible person (named in the

document certifying the delivery) at the residence or place of business (as appropriate) of the person for whom the subpoena was intended. The subpoena shall show on its face the name and address of the party on whose behalf the subpoena was issued. (e)(1) Any person served with a subpoena who does not intend to comply, shall, within 5 days after the date of service of the subpoena upon such person, petition in writing to revoke the subpoena. A copy of any petition to revoke a subpoena shall be served on the party on whose behalf the subpoena was issued. Such petition to revoke, if made prior to the hearing, and a written statement of service, shall be filed with the Regional Director in proceedings arising under part 2422 of this subchapter, and with the Authority, in proceedings arising under parts 2424 and 2425 of this subchapter for ruling. A petition to revoke a subpoena filed during the hearing, and a written statement of service, shall be filed with the appropriate presiding official(s).

(2) The Authority, General Counsel, Regional Director, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, shall revoke the subpoena if the person or evidence, the production of which is required, is not material and relevant to the matters under investigation or in question in the proceedings, or the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. The Authority, General Counsel, Regional Director, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, shall state the procedural or other ground for the ruling on the petition to revoke. The petition to revoke, any answer thereto, and any ruling thereon shall not become part of the official record except upon the request of the party aggrieved by the ruling.

(f) Upon the failure of any person to comply with a subpoena issued and upon the request of the party on whose behalf the subpoena was issued, the Solicitor of the Authority shall institute proceedings on behalf of such party in the appropriate district court for the enforcement thereof, unless to do so would be inconsistent with law and the Federal Service Labor-Management Relations Statute.

5. Section 2429.11 is revised to read as follows:

§ 2429.11 Interlocutory appeals.

Except as set forth in part 2423, the Authority and the General Counsel ordinarily will not consider interlocutory appeals.

6. Section 2429.12 is amended by revising paragraphs (a) and (c) to read as follows:

§ 2429.12 Service of process and papers by the Authority.

(a) *Methods of service.* Notices of hearings, decisions and orders of Regional Directors, decisions and recommended orders of Administrative Law Judges, decisions of the Authority, complaints, amended complaints, withdrawals of complaints, written rulings on motions, and all other papers required by this subchapter to be issued by the Authority, the General Counsel, Regional Directors, Hearing Officers, Administrative Law Judges, and Regional Directors when not acting as a party under part 2423 of this subchapter, shall be served personally, by first-class mail, by facsimile transmission, or by certified mail. Where facsimile equipment is available, rulings on motions; information pertaining to prehearing disclosure, conferences, orders, or hearing dates, and locations; information pertaining to subpoenas; and other similar or time sensitive matters may be served by facsimile transmission.

* * * * *

(c) *Proof of service.* Proof of service shall be verified by certificate of the individual serving the papers describing the manner of such service. When service is by mail, the date of service shall be the day when the matter served is deposited in the United States mail. When service is by facsimile, the date of service shall be the date the facsimile transmission is transmitted and, when necessary, verified by a dated facsimile record of transmission.

7. Section 2429.13 is revised to read as follows:

§ 2429.13 Official time for witnesses.

If the participation of any employee in any phase of any proceeding before the Authority, including the investigation of unfair labor practice charges and representation petitions and the participation in hearings and representation elections, is deemed necessary by the Authority, the General Counsel, any Administrative Law Judge, Regional Director, Hearing Officer, or other agent of the Authority designated by the Authority, the employee shall be granted official time for such participation, including necessary travel time, as occurs during the employee's regular work hours and when the employee would otherwise be in a work or paid leave status.

8. Section 2429.14 is revised to read as follows:

§ 2429.14 Witness fees.

(a) Witnesses, whether appearing voluntarily or pursuant to a subpoena, shall be paid the fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States. However, any witness who is employed by the Federal Government shall not be entitled to receive witness fees.

(b) Witness fees, as appropriate, as well as transportation and per diem expenses for a witness shall be paid by the party that calls the witness to testify.

9. Section 2429.21 is amended by revising paragraph (b) to read as follows:

§ 2429.21 Computation of time for filing papers.

* * * * *

(b) Except when filing an unfair labor practice charge pursuant to part 2423 of this subchapter, a representation petition pursuant to part 2422 of this subchapter, and a request for an extension of time pursuant to § 2429.23(a) of this part, when this subchapter requires the filing of any paper with the Authority, the General Counsel, a Regional Director, or an Administrative Law Judge, the date of filing shall be determined by the date of mailing indicated by the postmark date or the date a facsimile is transmitted. If no postmark date is evident on the mailing, it shall be presumed to have been mailed 5 days prior to receipt. If the date of facsimile transmission is unclear, the date of transmission shall be the date the facsimile transmission is received. If the filing is by personal or commercial delivery, it shall be considered filed on the date it is received by the Authority or the officer or agent designated to receive such materials.

* * * * *

10. Section 2429.22 is revised to read as follows:

§ 2429.22 Additional time after service by mail.

Except as to the filing of an application for review of a Regional Director's Decision and Order under § 2422.31 of this subchapter, whenever a party has the right or is required to do some act pursuant to this subchapter within a prescribed period after service of a notice or other paper upon such party, and the notice or paper is served on such party by mail, 5 days shall be added to the prescribed period: Provided, however, that 5 days shall not be added in any instance where an extension of time has been granted.

11. Section 2429.24 is amended by revising paragraph (e) to read as follows:

§ 2429.24 Place and method of filing; acknowledgment.

* * * * *

(e) All documents filed pursuant to this section shall be filed in person, by commercial delivery, by first-class mail, or by certified mail. Provided, however, that where facsimile equipment is available, motions; information pertaining to prehearing disclosure, conferences, orders, or hearing dates, times, and locations; information pertaining to subpoenas; and other similar matters may be filed by facsimile transmission, provided that the entire individual filing by the party does not exceed 10 pages in total length, with normal margins and font sizes.

* * * * *

12. Section 2429.25 is revised to read as follows:

§ 2429.25 Number of copies and paper size.

Unless otherwise provided by the Authority or the General Counsel, or their designated representatives, as appropriate, or under this subchapter, and with the exception of any prescribed forms, any document or paper filed with the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer, as appropriate, under this subchapter, together with any enclosure filed therewith, shall be submitted on 8½ x 11 inch size paper, using normal margins and font sizes, in an original and four (4) legible copies. Where facsimile filing is permitted pursuant to § 2429.24(e), one (1) legible copy, capable of reproduction, shall be sufficient. A clean copy capable of being used as an original for purposes such as further reproduction may be substituted for the original.

13. Section 2429.27 is amended by revising paragraphs (b) and (d) to read as follows:

§ 2429.27 Service; statement of service.

* * * * *

(b) Service of any document or paper under this subchapter, by any party, including documents and papers served by one party on any other party, shall be accomplished by certified mail, first-class mail, commercial delivery, or in person. Where facsimile equipment is available, service by facsimile of documents described in § 2429.24(e) is permissible.

* * * * *

(d) The date of service or date served shall be the day when the matter served is deposited in the U.S. mail, delivered in person, received from commercial delivery, or, in the case of facsimile transmissions, the date transmitted.

Dated: July 28, 1997.

Solly Thomas,

Executive Director, Federal Labor Relations Authority.

[FR Doc. 97–20244 Filed 7–30–97; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 3, 278, and 400

Department of Agriculture Civil Monetary Penalties Adjustment

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: In accordance with Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, this final rule adjusts civil monetary penalties imposed by agencies within USDA to incorporate an inflation adjustment.

EFFECTIVE DATE: This rule will become effective on September 2, 1997.

FOR FURTHER INFORMATION CONTACT: Rey Gonzalez, OCFO, FPD, USDA, Room 3022–S, 1400 Independence Avenue, SW, Washington DC 20250 (202) 720–1168.

SUPPLEMENTARY INFORMATION:

I. The Debt Collection Improvement Act of 1996

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101–410) (Act) was amended by the Debt Collection Improvement Act of 1996 (Pub. L. No. 104–134) to require Federal agencies to regularly adjust certain civil monetary penalties (CMP) for inflation. The Act applies to any CMP provided by law, except for any penalty under the Internal Revenue Code of 1986, the Tariff Act of 1930, the Occupational Safety and Health Act of 1970, and the Social Security Act. The Act defines CMP to be any penalty, fine, or other sanction in which a Federal statute specifies a monetary amount, a maximum amount, or a range of amounts for such penalty, fine, or sanction.

As amended, the Act requires each agency to make an initial inflation adjustment for all applicable CMP, and to make further inflation adjustments at least once every 4 years thereafter. The Debt Collection Improvement Act of 1996 stipulates that any increases in CMP due to the calculated inflation adjustments (i) applies only to violations which occur after the date the increase takes effect, which will be thirty (30) days after publication of this final rule; and (ii) the first adjustment may not exceed 10 percent of the penalty indicated.

Method of Calculation

Under the Act, the inflation adjustment for each applicable CMP is determined by increasing the minimum or maximum CMP amount or range of CMP's per violation or the range of minimum and maximum civil monetary penalties, as applicable, by the ''cost-of-living adjustment.'' The ''cost-of-living adjustment'' is defined as the percentage of each CMP by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted in accordance with the law. The adjustment of these penalties contained in this notice were limited in two ways by the Act. First, the initial adjustment of any penalty may not exceed 10 percent of the unadjusted penalty. Second, any calculated increase under this adjustment is subject to a specific rounding formula contained in the Act. As a result of the application of these rounding rules, some penalties may not be adjusted. Among the penalties adjusted in this notice, the length of time covered by the adjustment varied, which means the rate and the amount of the adjustment, if any, applied to these penalties also varied.

The rule contained in this notice reflects the initial adjustment to the listed civil monetary penalties required by the Act. This rule will be amended to reflect any subsequent adjustments to the listed civil monetary penalties made in accordance with the Act.

II. Civil Monetary Penalties Affected by This Rule

A number of USDA agencies including the Agricultural Marketing Service; the Federal Crop Insurance Corporation; the Animal and Plant Health Inspection Service; the Grain Inspection, Packers and Stockyards Administration; the Food Safety Inspection Service; the Food and Consumer Service; and the Forest Service administer laws which provide for the imposition of civil monetary penalties.

This final rule lists the specific penalty or penalty range for each civil monetary penalty covered by this rule and reflects the required inflation

adjustment. This final rule also amends regulations which currently specify civil monetary amounts, by deleting these amounts and where appropriate inserting a cross reference to this rule.

III. Waiver of Proposed Rulemaking

In developing this final rule, we are waiving the usual notice of proposed rulemaking and public comment procedures contained in 5 U.S.C. 553. We have determined that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking comports and is consistent with the statutory authority required by the Debt Collection Improvement Act of 1996, with no issue of policy discretion. Accordingly, we believe that opportunity for prior comment is unnecessary and contrary to the public interest, and are issuing these revised regulations as a final rule that will apply to all future cases.

IV. Procedural Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of Executive Order 12866, and has determined that it does not meet the criteria for a significant regulatory action. As indicated above, the provisions contained in this final rulemaking contained inflation adjustments in compliance with the Debt Collection Improvement Act of 1996 for specific applicable civil monetary penalties. The great majority of individuals, organizations and entities affected by these regulations do not engage in prohibited activities and practices, and as a result, we believe that any aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who may engage in prohibited behavior in violation of the statutes.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Regulatory Flexibility Act of 1995

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the agency was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 7 CFR Parts 3, 278 and 400

Administrative practice and procedure, Claims, Debt Management, Penalties.

Accordingly, 7 CFR parts 3, 278, and 400 are amended as set forth below:

PART 3—DEBT MANAGEMENT

7 CFR part 3 is amended by adding at the end the following new subpart:

Subpart E—Adjusted Civil Monetary Penalties

Authority: 28 U.S.C. 2461 note.

§ 3.91 Adjusted civil monetary penalties.

(a) *In General.* The Secretary will adjust the civil monetary penalties, listed in paragraph (b), to take account of inflation at least once every 4 years as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. No. 104–134).

(b) *Penalties. (1) Agricultural Marketing Service*— (i) Civil penalty for improper pesticide recordkeeping, codified at 7 U.S.C. 136i-1(d), has:

(A) A maximum of $550 in the case of the first offense, and

(B) A minimum of $1,100 in the case of subsequent offenses unless the Secretary determines that the person made a good faith effort to comply.

(ii) Civil penalty for a violation of unfair conduct rule under the Perishable Agricultural Commodities Act, in lieu of license revocation or suspension, codified at 7 U.S.C. 499b(5), has a maximum of $2,200.

(iii) Civil penalty for a violation of the licensing requirements under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499c(a), has—

(A) A maximum of $1,000 for each such offense and not more than $250 for each day it continues; or

(B) A maximum of $250 for each such offense if the Secretary determines the violation was not willful.

(iv) Civil penalty in lieu of license suspension under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499h(e), has a maximum of $2,000 for each violative transaction or each day the violation continues.

(v) Civil penalty for a violation of Export Apple and Pear Act, codified at 7 U.S.C. 586, has a minimum of $110 and a maximum of $11,000.

(vi) Civil penalty for a violation of the Export Grape and Plum Act, codified at 7 U.S.C. 596, has a minimum of $110 and a maximum of $11,000.

(vii) Civil penalty for a violation of an order issued by the Secretary, under the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 608c(14)(B), has a maximum of $1,100.

(viii) Civil penalty for failing to file certain reports under the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 610(c), has a maximum civil penalty of $110.

(ix) Civil penalty for a violation of seed program under the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum civil penalty of $27.50 and a maximum of $550.

(x) Civil penalty for a failure to collect an assessment or fee or for a violation of the Cotton Research and Promotion Act, codified at 7 U.S.C. 2112(b), has a maximum of $1,100.

(xi) Civil penalty for a violation of a cease and desist order or for deceptive marketing under the Plant Variety Protection Act, codified at 7 U.S.C. 2568(b), has a minimum of $550 and a maximum of $11,000.

(xii) Civil penalty for failing to pay, collect, remit any assessment or fee or for violating a program regarding Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(1), has a minimum of $550 and a maximum of $5,500.

(xiii) Civil penalty for failing to obey a cease and desist order under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(3), has a maximum of $550.

(xiv) Civil penalty for failing to pay, collect, remit any assessment or fee or for violating a program under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(1), has a minimum of $550 and a maximum of $5,500.

(xv) Civil penalty for failing to obey a cease and desist order for a program under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(3), has a maximum of $550.

(xvi) Civil penalty for failing to remit any assessment or fee or for violating a program under the Beef Research and Information Act, codified at 7 U.S.C. 2908(a)(2), has a maximum of $5,500.

(xvii) Civil penalty for failing to remit any assessment or for violating a program regarding wheat and wheat foods research, codified at 7 U.S.C. 3410(b), has a maximum of $1,100.

(xviii) Civil penalty for failing to pay, collect, or remit any assessment or fee

or violating a program under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(1), has a minimum $550 and a maximum of $5,500.

(xix) Civil penalty for failing to obey a cease and desist order under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(3), has a maximum of $550.

(xx) Civil penalty for a violation of an order under the Dairy Promotion Program, codified at 7 U.S.C. 4510(b), has a maximum of $1,100.

(xxi) Civil penalty for failing to pay, collect, or remit any assessment or fee or for violating the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(1), has a minimum civil penalty of $550 and a maximum of $5,500.

(xxii) Civil penalty for failing to obey a cease and desist order of the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(3), has a maximum civil penalty of $550.

(xxiii) Civil penalty for a violation of a program of the Pork Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 4815(b)(1)(A)(i), has a maximum of $1,100.

(xxiv) Civil penalty for failing to obey a cease and desist order under the Pork Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 4815(b)(3)(A), has a maximum of $550.

(xxv) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violating a program under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(1), has a minimum of $550 and a maximum of $5,500.

(xxvi) Civil penalty for failing to obey a cease and desist order for a program under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(3), has a maximum of $550.

(xxvii) Civil penalty for failing to pay, collect, or remit any assessments or fee or for a violation of program under the Pecan Promotion and Research Act, codified at 7 U.S.C. 6009(c)(1), has a minimum of $1,100 and a maximum of $11,000.

(xviii) Civil penalty for failing to obey a cease and desist order of the Pecan Promotion and Research Act, codified at 7 U.S.C. 6009(e), has a maximum of $1,100.

(xxix) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violating a program of the Mushroom Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6107(c)(1), has a minimum of $550 and a maximum of $5,500.

(xxx) Civil penalty for failing to obey a cease and desist order under the Mushroom Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6107(e), has a maximum of $550.

(xxxi) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violation of the Lime Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 6207(c)(1), has a minimum of $550 and a maximum of $5,500.

(xxxii) Civil penalty for failing to obey a cease and desist order under the Lime Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 6207(e), has a maximum of $550.

(xxxiii) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violating a program under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(c)(1), has a maximum civil penalty of $1,100.

(xxxiv) Civil penalty for failing to obey a cease and desist order under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(e), has a maximum of $5,500.

(xxxv) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violating a program of the Fluid Milk Promotion Act, codified at 7 U.S.C. 6411(c)(1)(A), has a minimum of $550 and a maximum civil penalty of $5,500; or in the case of a violation which is willful, codified at 7 U.S.C. 6411(c)(1)(B), has a minimum of $11,000 and a maximum of $110,000.

(xxxvi) Civil penalty for failing to obey a cease and desist order for a program under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(e), has a maximum of $5,500.

(xxxvii) Civil penalty for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act, codified at 7 U.S.C. 6519(a), has a maximum of $11,000.

(xxxviii) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violation of a program of the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act, codified at 7 U.S.C. 6808(c)(1), has a minimum of $530 and a maximum of $5,300.

(xxxix) Civil penalty for failing to obey a cease and desist order for a program of the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act, codified at 7 U.S.C. 6808(e), has a maximum of $5,300.

(xl) Civil penalty for a violation of program of the Sheep Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7107(c)(1), has a maximum of $1,030.

(xli) Civil penalty for failing to obey a cease and desist order for a program of the Sheep Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7107(e), has a maximum of $520.

(xlii) Civil penalty for a violation of an order or regulation issued under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(c)(1), has a minimum of $1,000 and a maximum of $10,000 for each violation.

(xliii) Civil penalty for a violation of a cease and desist order issued under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(e), has a minimum of $1,000 and a maximum of $10,000 for each day the violation occurs.

(xliv) Civil penalty for a violation of an order or regulation issued under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(c)(1), has a maximum of $1,000 for each violation.

(xlv) Civil penalty for a violation of a cease and desist order issued under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(e), has a maximum of $5,000 for each day the violation occurs.

(xlvi) Civil penalty for a violation of an order or regulation issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(c)(1), has a minimum of $500 and a maximum of $5,000 for each violation.

(xlvii) Civil penalty for a violation of a cease and desist order issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(e), has a maximum of $500 for each day the violation occurs.

(xlviii) Civil penalty for a violation of an order or regulation issued under the Popcorn Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7487, has a maximum of $1,000 for each violation.

(xlix) Civil penalty for a violation of an order or regulation issued under the egg surveillance provisions of the Eggs Product Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of $5,500 for each violation.

(2) *Animal and Plant Health Inspection Service*—(i) Civil penalty for a violation of the Act of January 31, 1942, plant and pest regulations, codified at 7 U.S.C. 149(b)(2), has a maximum of $1,100.

(ii) Civil penalty for a violation of the Federal Plant Pest Act, codified at 7

U.S.C. 150gg(b), has a maximum of $1,100.

(iii) Civil penalty for a violation of the Act of August 20, 1912 (commonly known as the Plant Quarantine Act), codified at 7 U.S.C. 163, has a maximum of $1,100.

(iv) Civil penalty for a violation of the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of $27.50 and a maximum of $550.

(v) Civil penalty for a violation of Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of $2,750; and knowing failure to obey a cease and desist order has a civil penalty of $1,650.

(vi) Civil penalty for a violation of Swine Health Protection Act, codified at 7 U.S.C. 3805(a), has a maximum of $11,000.

(vii) Civil penalty for a violation of Horse Protection Act, codified at 15 U.S.C. 1825(b)(1), has a maximum of $2,200.

(viii) Civil penalty for failure to obey Horse Protection Act disqualification, codified at 15 U.S.C. 1825(c), has a maximum of $3,300 and exhibition of disqualified horse, codified at 15 U.S.C. 1825(c), has a maximum of $3,300.

(ix) Civil penalty for a violation of the Act of August 30, 1890, codified at 21 U.S.C. 104, has a maximum of $1,100.

(xx) Civil penalty for a violation of the Act of May 29, 1884 (commonly known as the Animal Industry Act), codified at 21 U.S.C. 117(b), has a maximum of $1,100.

(xxi) Civil penalty for a violation of the Act of February 2, 1903 (commonly known as the Cattle Contagious Disease Act), codified at 21 U.S.C. 122, has a maximum of $1,100.

(xxii) Civil penalty for a violation of the Act of March 3, 1905, codified at 21 U.S.C. 127, has a maximum of $1,100.

(xxiii) Civil penalty for a violation of the Act of July 2, 1962, codified at 21 U.S.C. 134e(a)(2), has a maximum of $1,100.

(xxiv) Civil penalty for a violation of the Act of May 6, 1970, codified at 21 U.S.C. 135a(b), has a maximum of $1,100.

(xxv) Civil penalty for knowingly violating, or, if in the business, violating, with respect to terrestrial plants, any provision of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) any permit or certificate issued thereunder, or any regulation issued pursuant to section 9(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d), as set forth at 16 U.S.C. 1540(a) (other than regulations relating to recordkeeping or filing reports), (f), or (g) of the Endangered Species Act of 1973 (16 U.S.C. 1538(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d), (f), and (g)), has a maximum of $25,000.

(xxvi) Civil penalty for knowingly violating, or, if in the business, violating, with respect to terrestrial plants, any regulation issued under the Endangered Species Act (16 U.S.C. 1531 *et seq.*), as set forth at 16 U.S.C. 1540(a) [except as provided in subparagraph (O)], has a maximum of $12,000.

(xxvii) Civil penalty for any violation, with respect to terrestrial plants, of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), as set forth at 16 U.S.C. 1540(a) [except as provided in subparagraphs (O) and (P)], has a maximum of $500.

(3) *Food and Consumer Service*—(i) Civil penalty for hardship fine in lieu of disqualification, codified at 7 U.S.C. 2021(a), has a maximum of $11,000 per violation.

(ii) Civil penalty for trafficking in food coupons, codified at 7 U.S.C. 2021(b)(3)(B), has a maximum of $20,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is $40,000.

(iii) Civil penalty for the sale of firearms, ammunition, explosives, or controlled substances for coupons, codified at 7 U.S.C. 2021(b)(3)(C), has a maximum of $20,000 for each violation except that the maximum penalty for violations occurring during a single investigation is $40,000.

(iv) Civil penalty for any entity that submits a bid to supply infant formula to carry out the Special Supplemental Nutrition Program for Women, Infants and Children and discloses the amount of the bid, rebate or discount practices in advance of the bid opening or for any entity that makes a statement prior to the opening of the bids for the purpose of influencing a bid, codified at 42 U.S.C. 1786(h)(8)(H)(i), has a maximum of $100,000,000.

(4) *Food Safety and Inspection Service*—(i) Civil penalty for a violation of the Eggs Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum penalty of $5,500 for each violation.

(ii) Civil penalty for a failure to file timely certain reports, codified at 21 U.S.C. 467d, has a maximum civil penalty of $11 per day for each day the report is not filed.

(iii) Civil penalty for a failure to file timely certain reports codified at 21 U.S.C. 677, has a maximum civil penalty of $11 per day for each day the report is not filed.

(iv) Civil penalty for a failure to file timely certain reports codified at 21 U.S.C. 1051, has a maximum civil penalty of $11 per day for each day the report is not filed.

(5) *Forest Service*—(i) Civil penalty for a willful disregard of the prohibition against the export of unprocessed timber originating from Federal lands has a maximum of $550,000 per violation or three times the gross value of the unprocessed timber whichever is greater, codified at 16 U.S.C. 620d(c)(1)(A).

(ii) Civil penalty for a violation in disregard of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, has a maximum penalty of $82,500 per violation, codified at 16 U.S.C. 620d(c)(2)(A)(i).

(iii) Civil penalty for a person that should have known that an action was a violation of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, has a maximum penalty of $55,000 per violation, codified at 16 U.S.C. 620d(c)(2)(A)(ii).

(iv) Civil penalty for a willful violation of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, has a maximum penalty of $550,000 per violation, codified at 16 U.S.C. 620d(c)(2)(A)(iii).

(v) Civil penalty for a violation involving protections of caves, codified at 16 U.S.C. 4307(a)(2), has a maximum of $11,000.

(6) *Grain Inspection, Packers and Stockyards Administration*—(i) Civil penalty for a packer violation, codified at 7 U.S.C. 193(b), has a maximum of $11,000.

(ii) Civil penalty for livestock market agency, dealer, failure to register, codified at 7 U.S.C. 203, has a maximum of $550 and not more than $27.50 for each day the violation continues.

(iii) Civil penalty for a violation of stockyard rate, regulation or practice, codified at 7 U.S.C. 207(g), has a maximum civil penalty of $550 and not more than $27.50 for each day the violation continues.

(iv) Civil penalty for a stockyard owner, livestock market agency and dealer violations, codified at 7 U.S.C. 213(b), has a maximum of $11,000.

(v) Civil penalty for a stockyard owner, livestock market agency and dealer compliance order violations, codified at 7 U.S.C. 215(a), has a maximum of $550.

(vi) Civil penalty for a failure to file required reports, codified at 15 U.S.C. 50, has a maximum of $110.

(vii) Civil penalty for live poultry dealer violations, codified at 7 U.S.C. 228b-2(b), has a maximum of $22,000.

(viii) Civil penalty for a violation, codified at 7 U.S.C. 86(c), has a maximum civil penalty of $82,500.

(7) *Federal Crop Insurance Corporation*—Civil penalty for any person who willfully and intentionally provides materially false or inaccurate information to the Federal Crop Insurance Corporation or an approved insurance provider reinsured by the Federal Crop Insurance Corporation, codified at 7 U.S.C. 1506(n)(1)(A), has a maximum civil penalty of $10,000.

(8) *All USDA Agencies*—Civil penalty for work hours and safety violations, codified at 40 U.S.C. 328, has a maximum of $11 per day of violation.

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS, AND INSURED FINANCIAL INSTITUTIONS

1. The authority citation for part 278 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

§ 278.6 [Amended]

2. 7 CFR 278.6(a) is amended by—(a) striking ''$10,000'' and inserting ''an amount specified in § 3.91(b)(3)(A) of this title''; and (b) striking ''$20,000'' and inserting ''amount specified in Sec. 3.91(b)(3)(B) of this title''.

PART 400—FEDERAL CROP INSURANCE CORPORATION, GENERAL ADMINISTRATIVE REGULATIONS

1. The authority citation for part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(l).

§ 400.454 [Amended]

2. 7 CFR 400.454(a) introductory text is amended by striking ''$10,000'' and inserting ''an amount specified in § 3.91(b)(7) of this title''.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 97–19967 Filed 7–30–97; 8:45 am]

BILLING CODE 3410–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loan Interest Rates

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The current 18 percent per year federal credit union loan rate ceiling is scheduled to revert to 15 percent on September 9, 1997, unless otherwise provided by the NCUA Board (Board). A 15 percent ceiling would restrict certain categories of credit and adversely affect the financial condition of a number of federal credit unions. At the same time, prevailing market rates and economic conditions do not justify a rate higher than the current 18 percent ceiling. Accordingly, the Board hereby continues an 18 percent federal credit union loan rate ceiling for the period from September 9, 1997 through March 8, 1999. Loans and lines of credit balances existing prior to May 18, 1987, may continue to bear their contractual rate of interest, not to exceed 21 percent. The Board is prepared to reconsider the 18 percent ceiling at any time should changes in economic conditions warrant.

EFFECTIVE DATE: September 9, 1997.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia, 22314–3428.

FOR FURTHER INFORMATION CONTACT: Evan Gillette, Investment Officer, Office of Investment Services, at the above address, telephone number: (703) 518–6620.

SUPPLEMENTARY INFORMATION:

Background

Public Law 96–221, enacted in 1979, raised the loan interest rate ceiling for federal credit unions from 1 percent per month (12 percent per year) to 15 percent per year. It also authorized the Board to set a higher limit, after consulting with Congress, the Department of Treasury and other federal financial agencies, for a period not to exceed 18 months, if the Board determined that: (1) Money market interest rates have risen over the preceding 6 months; and (2) prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in growth, liquidity, capital and earnings.

On December 3, 1980, the Board determined that the foregoing conditions had been met. Accordingly, the Board raised the loan ceiling for 9 months to 21 percent. In the unstable environment of the first-half of the 1980s, the Board extended the 21 percent ceiling four times. On March 11, 1987, the Board lowered the loan rate ceiling from 21 percent to 18 percent effective May 18, 1987. This action was taken in an environment of falling market interest rates from 1980 to early 1987. The ceiling has remained at 18 percent to the present.

The Board believes that the 18 percent ceiling will permit credit unions to continue to meet their current lending programs, permit flexibility so that credit unions can react to any adverse economic developments, and ensure that any increase in the cost of funds would not affect the safety and soundness of federal credit unions.

The Board would prefer not to set loan interest rate ceilings for federal credit unions. Credit unions are cooperatives and balance loan and share rates consistent with the needs of their members and prevailing market rates. The Board supports free lending markets and the ability of federal credit union boards of directors to establish loan rates that reflect current market conditions and the interests of their members. Congress has, however, imposed loan rate ceilings since 1934. In 1979, Congress set the ceiling at 15 percent but authorized the Board to set a ceiling in excess of 15 percent, if conditions warrant. The following analysis justifies a ceiling above 15 percent, but at the same time does not support a ceiling above the current 18 percent. The Board is prepared to reconsider this action at any time should changes in economic conditions warrant.

Money Market Interest Rates

During the 16-month period following the Board's March 1996 decision to continue the 18 percent ceiling, short-term Treasury rates (3, 6 and 12 months) increased from 11 to 19 basis points (Table 1).

TABLE 1.—TREASURY RATES

Maturity	Yields as of Mar. 11, 1996 (percent)	Yields as of July 17, 1997 (percent)	Change in basis points
3-month	5.09	5.20	11
6-month	5.17	5.31	14
1-year	5.37	5.56	19

Treasury rates rose slightly during the recent six-month period from January 1 to July 17, 1997. Treasury rates on the 3, 6 and 12 month maturities increased

between 1 and 7 basis points (Table 2). During this period, the Federal Reserve (Fed) increased the overnight Fed Funds rate by 25 basis points to a target rate of 5.50 percent.

TABLE 2.—TREASURY RATES

Maturity	Yields as of Jan. 1, 1997 (percent)	Yields as of July 17, 1997 (percent)	Change in basis points
3-month	5.19	5.20	1
6-month	5.30	5.31	1
1-year	5.49	5.56	7

There are also expectations that rates may rise in the months ahead. The US economy has continued to expand. Since early 1996, employment growth and labor force participation has been quite strong, with unemployment rates declining from 5.6 percent (Dec. 1995) to 5.0 percent (June 1997).

Further declines in the unemployment rate, rising consumer confidence, continued income growth and a strong equity market have lead many to be concerned that consumer demand may rise at a faster pace in the months ahead. This could result in inflationary pressures and higher interest rates. Therefore, it is important to maintain the 18 percent ceiling. Lowering the interest rate ceiling at this time could cause an unnecessary burden on credit unions.

Financial Implications for Credit Unions

For at least 871, 28% [1] of the reporting credit unions, the most common rate on unsecured loans was above 15 percent. While the bulk of credit union lending is below 15 percent, small credit unions and credit unions that have instituted risk based lending programs require interest rates above 15 percent to maintain liquidity, capital, earnings and growth.

Loans to members who have not yet established a credit history or have weak credit histories have more credit risk. Credit unions must charge rates to cover the potential of higher than usual losses for such loans. There are undoubtedly more than 871 credit unions charging over 15 percent for unsecured loans to such members. Many credit unions have ''Credit Builder'' or ''Credit Rebuilder'' loans but only report the ''most common'' rate on the Call Report for unsecured loans.

[1] Of the 7,152 FCUs, 4,083 had zero balances in the 15 percent and above category or did not report a balance for the year-end 1996 reporting period.

Lowering the interest rate ceiling for credit unions will discourage credit unions from making these loans. Credit seekers' options will be reduced and most of the affected members will have no alternative but to turn to other lenders who will charge much higher rates.

Small credit unions will be particularly affected by a lower loan ceiling since they tend to have a higher level of unsecured loans, typically with lower loan balances. Thus, small credit unions making small loans to members with poor or no credit histories are struggling with far higher costs than the typical credit union. Both young people and lower income households have limited access to credit and, absent a credit union, often pay rates of 24 to 30 percent to other lenders. Rates between 15 and 18 percent are attractive to such members.

Table 3 shows the number of credit unions in each asset group where the most common rate is more than 15 percent for unsecured loans.

TABLE 3.—FEDERAL CREDIT UNIONS WITH MOST COMMON UNSECURED LOAN RATES GREATER THAN 15 PERCENT (DECEMBER 1996)

Peer group by asset size	Total all FCUs	Number of FCUs w/ loan rates>15%
$0–2 mil	2,132	231
$2–10 mil	2,490	317
$10–50 mil	1,733	208
$50 mil +	797	115
Total [1]	7,152	871

[1] Of this total, 4,083 had either a zero balance or did not report rate balances 15 percent and above.

Among the 871 credit unions where the most common rate is more than 15 percent for unsecured loans, 242 have 20 percent or more of their assets (Table 4) in this category. For these credit unions, lowering the rates would damage their liquidity, capital, earnings and growth.

TABLE 4.—FEDERAL CREDIT UNIONS WITH MOST COMMON UNSECURED LOAN RATES GREATER THAN 15 PERCENT AND MORE THAN 20 PERCENT OF ASSETS IN UNSECURED LOANS (DECEMBER 1996)

Peer group by asset size	Avg. percentage of loan rates >15% to assets	Number of FCUs meeting both criteria
$0–2 mil	43.8	108
$2–10 mil	29.6	75
$10–50 mil	26.8	45
$50 mil +	24.9	14
Total	35.1	242

In conclusion, the Board has continued the federal credit union loan interest rate ceiling of 18 percent per year for the period from September 9, 1997, through March 8, 1999. Loans and line of credit balances existing on May 16, 1987, may continue to bear interest at their contractual rate, not to exceed 21 percent. Finally, the Board is prepared to reconsider the 18 percent ceiling at any time during the extension period, should changes in economic conditions warrant.

Regulatory Procedures

Administrative Procedure Act

The Board has determined that notice and public comment on this rule are impractical and not in the public interest, 5 U.S.C. 553(b)(B). Due to the need for a planning period prior to the September 9, 1997, expiration date of the current rule, and the threat to the safety and soundness of individual credit unions with insufficient flexibility to determine loan rates, final action of the loan rate ceiling is necessary.

Regulatory Flexibility Act

For the same reasons, a regulatory flexibility analysis is not required, 5 U.S.C. 604(a). However, the Board has considered the need for this rule, and the alternatives, as set forth above.

Paperwork Reduction Act

There are no paperwork requirements.

Executive Order 12612

This final rule does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to federal credit unions.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Loan interest rates.

By the National Credit Union Administration Board on July 23, 1997.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR chapter VII as follows:

PART 701—[AMENDED]

1. The authority citation for Part 701 is revised to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Section 701.21(c)(7)(ii)(C) is revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(c) * * *

(7) * * *

(ii) * * *

(C) *Expiration.* After March 8, 1999, or as otherwise ordered by the NCUA Board, the maximum rate on federal credit union extensions of credit to members shall revert to 15 percent per year. Higher rates may; however, be charged, in accordance with paragraphs (c)(7)(ii) (A) and (B) of this section, on loans and line of credit balances existing on or before March 8, 1999.

* * * * *

[FR Doc. 97–19935 Filed 7–30–97; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 46 new animal drug applications (NADA's) from Solvay Animal Health, Inc., to Fort Dodge Animal Health, A Division of American Cyanamid Co.

EFFECTIVE DATE: July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Solvay Animal Health, Inc., 1201 Northland Dr., Mendota Heights, MN 55120, has informed FDA that it has transferred the ownership of, and all rights and interests in, the following approved NADA's to Fort Dodge Animal Health, A Division of American Cyanamid Co., P.O. Box 1339, Fort Dodge, IA 50501:

NADA No.	Drug Name
006–417	Recovr
006–103	Follutein
006–707	Sulquin 6–50
008–274	Pig Scour Tablets
009–035	Ophtaine
011–141	Unistat-2
011–482	Vetame Tabs and Injection
011–879	Rubfrafer Injection
012–198	Vetalog Parenteral
012–258	Panalog Ointment (Solvaderm)
013–624	Vetalog Tabs
014–250	Novastat
031–448	Rheaform Bolus
031–553	Esb3 Powder & Solution
032–319	Furox Aerosol Spray
032–738	Pacitran Soluble
033–127	Vetisulid Bolus
033–318	Vetisulid Injectable
033–319	Vetisulid Tabs
033–373	Vetisulid Powder
034–536	Aklomix
034–537	Novastat-3
034–705	Equipoise
035–388	Novastat-W
039–666	Unistat-3
040–181	Vetisulid Oral Suspension
046–146	Vetalog Cream
046–147	Dirocide Syrup
049–892	Spanbolet II
055–060	Potassium G penicillin
055–064	Redicillin (Princillin)
055–066	Redicillin (Princillin)
055–071	Redicillin (Princillin)
065–130	Crystaline Pro Penicillin
065–174	Crysticillin 300 A.S. Vet
065–410	Tetra–Sal Soluble
091–192	Renografin 76
091–240	Renovist
091–327	Gastrogratin
093–512	Dirocide Tabs
096–676	Panalog Cream
099–388	Vetalog Oral Powder
126–232	Calfspan
131–808	Dirocide Syrup

NADA No.	Drug Name
139–913	Equron
140–909	Sulka-S-Bolus

Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor. The drug labeler code assigned to Solvay Animal Health is being retained as the drug labeler code for the new sponsor.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for ''Solvay Animal Health, Inc.'' and by alphabetically adding a new entry for ''Fort Dodge Animal Health, A Division of American Cyanamid Co., P.O. Box 1339, Fort Dodge, IA 50501'' and in the table in paragraph (c)(2) in the entry for ''053501'' by removing the sponsor name and address ''Solvay Animal Health, Inc., 1201 Northland Dr., Mendota Heights, MN 55120'' and adding in its place ''Fort Dodge Animal Health, A Division of American Cyanamid Co., P.O. Box 1339, Fort Dodge, IA 50501''.

Dated: July 22, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–20249 Filed 7-30-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 524

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for three approved new animal drug applications (NADA's) from Syntex Animal Health, Inc., Division of Syntex Agribusiness, Inc., to Medicis Dermatologics, Inc.

EFFECTIVE DATE: July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Syntex Animal Health, Inc., Division of Syntex Agribusiness, Inc., 3401 Hillview Ave., P.O. Box 10850, Palo Alto, CA 94303, has informed FDA that it has transferred ownership of, and all rights and interests in NADA's 15–151 (*fluocinolone acetonide, neomycin sulfate cream*), 15–152 (*fluocinolone acetonide cream*), and 15–298 (*fluocinolone acetonide solution*) to Medicis Dermatologics, Inc., 4343 East Camelback Rd., suite 250, Phoenix, AZ 85018–2700. Accordingly, the agency is amending the regulations in 21 CFR 524.981a, 524.981b, and 524.981c to reflect the transfer of ownership. The agency is also amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) by alphabetically adding a new listing for Medicis Dermatologics, Inc.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for ''Medicis Dermatologics, Inc.'' and in the table in paragraph (c)(2) by numerically adding a new entry for ''099207'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* * * *
Medicis Dermatologics, Inc., 4343 East Camelback Rd., suite 250, Phoenix, AZ 85018–2700.	099207
* * *	* * * *

(2) * * *

Drug labeler code	Firm Name and address
* * *	* * * *
099207	Medicis Dermatologics, Inc., 4343 East Camelback Rd., suite 250, Phoenix, AZ 85018–2700.
* * *	* * * *

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 524.981a [Amended]

4. Section 524.981a *Fluocinolone acetonide cream* is amended in paragraph (b) by removing ''000033'' and adding in its place ''099207''.

§ 524.981b [Amended]

5. Section 524.981b *Fluocinolone acetonide solution* is amended in paragraph (b) by removing ''000033'' and adding in its place ''099207''.

§ 524.981c [Amended]

6. Section 524.981c *Fluocinolone acetonide, neomycin sulfate cream* is amended in paragraph (b) by removing ''000033'' and adding in its place ''099207''.

Dated: July 23, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–20248 Filed 7-30-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Animal Drugs, Feeds, and Related Products; Change of Sponsor; Corrections

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** of June 30, 1997 (62 FR 35075 at 35076). The document amended the animal drug regulations to reflect the change of sponsor for 52 approved new animal drug applications (NADA's) from Fermenta Animal Health Co. to Boehringer Ingelheim Animal Health, Inc. The document was published with two inadvertent errors. This document corrects those errors.

EFFECTIVE DATE: July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

In FR Doc. 97–16967, appearing on page 35075, in the **Federal Register** of Monday, June 30, 1997, the following corrections are made: On page 35076, in the first column, in amendment 11, in the third line, ''(a)(6)'' is corrected to read ''(b)(6)''; and on the same page, in the second column, in amendment 19, beginning in the fourth line, ''000069, 054273, and 057561'' is corrected to read ''000069, 054273, 057561, and 059130''.

Dated: July 21, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–20250 Filed 7-30-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 556

Tolerances for Residues of New Animal Drugs in Food; Apramycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Elanco Animal Health, A Division of Eli Lilly & Co. The supplemental NADA's provide for revised tolerances for total residues of apramycin (i.e., the safe concentration) in edible swine tissues.

EFFECTIVE DATE: July 31, 1997.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1644.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, is sponsor of supplemental NADA 106–964 that provides for the use of Apralan® (apramycin sulfate) soluble powder in swine drinking water and supplemental NADA 126–050 that provides for the use of Apralan® (apramycin sulfate) Type A medicated article in swine feed, both for control of porcine colibacillosis (weanling pig scours) caused by strains of *Escherichia coli* sensitive to apramycin. These supplemental NADA's provide for a change in the tolerance for total residues of apramycin (i.e., the safe concentration) in edible swine tissues as provided in § 556.52 (21 CFR 556.52). Review of these supplements involved a review of new toxicology studies and information in the original approvals.

In evaluating these supplements, FDA's Center for Veterinary Medicine also considered that the proof of human food safety for antimicrobial animal drug residues includes a determination of their antimicrobial activity for all antimicrobial new animal drug products. In the absence of studies to determine the microbiological safety of antimicrobial drug residues, the acceptable daily intake (ADI) for apramycin is limited to 25 micrograms per kilogram (μg/kg) of body weight per day (for appropriate studies see ''Guidance: Microbial Testing of Antimicrobial Drug Residues in Food,'' January, 1996). As indicated in the freedom of information summaries, the safe concentration for total apramycin residues is established at 5 parts per million (ppm) for muscle, 15 ppm for liver, and 30 ppm for fat and kidney. These revised safe concentrations warrant removal of the existing tolerances for total residues in § 556.52, because those tolerances are now incorrect. Because this approval does not result in a different tolerance than that currently codified for marker residue in swine kidney, and because the sponsor did not petition FDA to change the tolerance, the tolerance of 0.1 ppm in swine kidney remains codified. FDA is also codifying the ADI for apramycin of 25 μg/kg of body weight per day. The supplement is

approved as of June 24, 1997, and the regulations in § 556.52 are revised to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 556 is amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

2. Section 556.52 is revised to read as follows:

§ 556.52 Apramycin.

A tolerance of 0.1 part per million is established for parent apramycin (marker residue) in kidney (target tissue) of swine. The acceptable daily intake (ADI) for total residues of apramycin is 25 micrograms per kilogram of body weight per day.

Dated: July 21, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–20081 Filed 7-30-97; 8:45 am]

BILLING CODE 4160–01–F

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure for E–Z Trials

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final Rule.

SUMMARY: This document eliminates the sunset provision from the procedures governing the E–Z Trial program and continues the E–Z Trial program as part of the Commission Rules of Procedure, as codified in Title 29 of the Code of Federal Regulations as Part 2200. In addition, this document implements revisions to the procedural rules governing the E–Z Trial program which are intended to assist the E–Z Trial process in meeting its objective of allowing parties in less complex cases to argue their cases before the Commission with as few legal formalities as possible.

DATES: Effective July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, (202) 606–5410, Occupational Safety and Health Review Commission, 1120 20th Street NW, 9th Floor, Washington DC 20036–3419.

SUPPLEMENTARY INFORMATION: On June 24, 1997, the Occupational Safety and Health Review Commission published in the **Federal Register** (62 FR 34031) proposed changes to the procedural rules governing the E–Z Trial program. The Commission would like to thank those who took the time and interest to submit comments.

The Secretary of Labor responded by stating that it appears that many of the concerns she initially had with the E–Z Trial program can be avoided if the Commission continues to exercise sound judgment in the designation of cases for E–Z Trial, to be receptive to motions by either party to modify or discontinue the procedure, and to conduct pre-hearing conferences in such a manner as to prevent surprises at trial. The Secretary also expressed her wish that the Commission remain open to future modifications of the rule as it gains experience with the E–Z Trial program.

The Commission has evaluated the E–Z Trial program during its pilot stage and has decided to eliminate the sunset provision of the E–Z Trial procedures and to maintain E–Z Trial as part of the Commission's Rules of Procedure. The Commission notes that E–Z Trial has reduced the time necessary to try and reach a decision in cases of the type eligible for E–Z Trial from 423 days to 141 days—a two-thirds reduction. In addition, feedback received from the focus groups held concerning E–Z Trial reflects that the program has realized many of its other goals. The comments received in response to the proposed amendments raise issues which the Commission hopes its modified procedures adequately address and the Commission remains open to future modifications as the need may arise.

1. Eligibility for E–Z Trial

The Commission proposed amending Rule 202 to make cases involving a fatality or an allegation of willfulness ineligible for E–Z Trial. The Commission also proposed that cases having an aggregate proposed penalty of more than $10,000, but not more than $20,000, may be considered for E–Z Trial designation at the discretion of the Chief Administrative Law Judge. The Commission received no comments specifically opposing these changes. Accordingly, the Commission adopts the proposed amendments.

2. Disclosure of Information

Currently, Rule 206 requires the Secretary of Labor to disclose to the employer copies of the narrative (Form OSHA 1–A) and the worksheet (Form OSHA 1–B), or their equivalents, within 12 working days after a case has been designated for E–Z Trial. The Commission proposed amending the rule to require the Secretary to provide the employer with reproductions of any photographs or videotapes that the Secretary intends to use at the hearing within 30 calendar days of designation for E–Z Trial.

One commentator suggested that the Secretary should be required to disclose all photographs or videotapes, not just the ones the Secretary anticipates using at the hearing. The commentator stated that there may be photographs or videotapes which would be helpful to an employer's defense, but which the Secretary does not intend to use, and noted that under the proposed rule, the Secretary is not required to disclose such evidence. While the Commission expects that the Secretary would turn over such material without being required to do so, in order to make it clear that no loophole exists in the E–Z Trial procedures and because the E–Z Trial process favors disclosure over the traditional avenues of discovery, the Commission has decided that the Secretary should provide to the employer as part of the disclosure requirement any exculpatory evidence, including photographs and videotapes. Accordingly, the Commission has revised Rule 206 to include the

disclosure of any exculpatory material the Secretary has in her possession.

3. Pre-hearing Conference

The proposed rule provides that the pre-hearing conference be conducted as soon as practicable after the employer has received the narrative and worksheet under the provisions of Rule 206. One commentator suggested that the pre-hearing conference be held only after the employer has also received any photographs or videotapes so that the employer has the benefit of all mandatory disclosure before the pre-hearing conference. The commentator expressed concern that allowing the pre-hearing conference to go forward without the employer's prior access to any photographs or videotapes places the employer in an unfair position. Because Rule 207 requires the parties to set forth an agreed statement of issues and facts, witnesses and exhibits, defenses, motions, and any other pertinent matter including affirmative defenses at the pre-hearing conference, the commentator noted that an employer may not be properly prepared to do so without the photographs and videotapes.

We acknowledge the interest in having an employer fully prepared for the pre-hearing conference, and we note that under the proposed rule, there is no requirement that the Judge hold the pre-hearing conference before the employer receives any photographs or videotapes. We expect that generally the pre-hearing conference will be scheduled after the employer is in receipt of any photographs and videotapes. However, the Commission has decided to adopt the proposed rule which allows the Judge to exercise his or her discretion to conduct the pre-hearing conference at any time after the employer is in receipt of the narrative and the worksheet.

4. Hearing

One of the objectives of the E–Z Trial process is to expeditiously adjudicate less complex cases. As a result, the Commission believes that cases proceeding under the E–Z Trial process should be exempt from Rule 60, which requires that the parties be given notice of the time, place, and nature of the hearing at least thirty days in advance of the hearing. Because the cases designated for E–Z Trial contain relatively few citation items and do not involve complex matters of fact or law, the Commission believes that the parties will not be harmed by allowing the Judge to schedule the hearing with less than 30 days notice. Accordingly, the Commission has revised Rule 209 to reflect the exemption from Rule 60.

List of Subjects in 29 CFR Part 2200

Administrative practice and procedure, Hearing and appeal procedures.

For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission amends Title 29, Chapter XX, Part 2200, Subpart M of the Code of Federal Regulations as follows:

PART 2200—RULES OF PROCEDURE

1. The authority citation for part 2200 continues to read as follows:

Authority: 29 U.S.C. 661(g).

2. Section 2200.201 is amended by removing paragraph (b) and the designation for paragraph (a).

3. Section 2200.202 is revised to read as follows:

§ 2200.202 Eligibility for E–Z Trial.

(a) Those cases selected for E–Z Trial will be those that do not involve complex issues of law or fact. Cases appropriate for E–Z Trial would generally include those with one or more of the following characteristics:

(1) Relatively few citation items,

(2) An aggregate proposed penalty of not more than $10,000,

(3) No allegation of willfulness or a repeat violation,

(4) Not involving a fatality,

(5) A hearing that is expected to take less than two days, or

(6) A small employer whether appearing pro se or represented by counsel.

(b) Those cases with an aggregate proposed penalty of more than $10,000, but not more than $20,000, if otherwise appropriate, may be selected for E–Z Trial at the discretion of the Chief Administrative Law Judge.

4. Section 2200.206(a) is revised to read as follows:

§ 2200.206 Disclosure of information.

(a) *Disclosure to employer.* (1) Within 12 working days after a case is designated for E–Z Trial, the Secretary shall provide the employer, free of charge, copies of the narrative (Form OSHA 1–A) and the worksheet (Form OSHA 1–B), or their equivalents.

(2) Within 30 calendar days after a case is designated for E–Z Trial, the Secretary shall provide the employer with reproductions of any photographs or videotapes that the Secretary anticipates using at the hearing.

(3) Within 30 calendar days after a case is designated for E–Z Trial, the Secretary shall provide to the employer any exculpatory evidence in the Secretary's possession.

(4) The Judge shall act expeditiously on any claim by the employer that the Secretary improperly withheld or redacted any portion of the documents, photographs, or videotapes on the grounds of confidentiality or privilege.

* * * * *

5. Section 2200.207(a) is amended by revising the first sentence to read as follows:

§ 2200.207 Pre-hearing conferences.

(a) *When held.* As early as practicable after the employer has received the documents set forth in § 2200.206(a)(1), the presiding Judge will order and conduct a pre-hearing conference.* * *

* * * * *

6. Section 2200.209(a) is revised to read as follows:

§ 2200.209 Hearing.

(a) *Procedures.* As soon as practicable after the conclusion of the pre-hearing conference, the Judge will hold a hearing on any issue that remains in dispute. The hearing will be in accordance with subpart E of these rules, except for § 2200.60, 2200.73, and 2200.74 which will not apply.

* * * * *

Dated: July 25, 1997.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 97–20130 Filed 7–30–97; 8:45 am]

BILLING CODE 7600–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 173–0044a; FRL–5867–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Sacramento Metropolitan Air Quality Management District and Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern negative declarations from the Sacramento Metropolitan Air Quality Management District (SMAQMD) and the Santa Barbara County Air Pollution Control District (SBCAPCD). The SMAQMD submitted negative declarations for two source categories that emit volatile organic compounds (VOC): Plastic Parts

Coating: Business Machines and Plastic Parts Coating: Other. The SBCAPCD submitted negative declarations for six source categories that emit VOC: Industrial Wastewater, Plastic Parts Coating: Business Machines, Plastic Parts Coating: Other, Industrial Cleaning Solvents, Offset Lithography, and Shipbuilding Coatings. The SMAQMD and the SBCAPCD have certified that these source categories are not present in their respective Districts and this information is being added to the federally approved State Implementation Plan. The intended effect of approving these negative declarations is to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on September 29, 1997 unless adverse or critical comments are received by September 2, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Comments must be submitted to Julie Rose at the Region IX office listed below. Copies of the submitted negative declarations are available for public inspection at EPA's Region IX office and also at the following locations during normal business hours.

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Air Docket (6102), U.S. Environmental Protection Agency, 401 ''M'' Street, SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION:

I. Applicability

The revisions being approved as additional information for the California SIP include negative declarations from the SMAQMD regarding two source categories: Plastic Parts Coating: Business Machines and Plastic Parts Coating: Other and negative declarations from SBCAPCD regarding six source categories: Industrial Wastewater, Plastic Parts Coating: Business Machines, Plastic Parts Coating: Other, Industrial Cleaning Solvents, Offset Lithography, and Shipbuilding Coatings. The negative declarations were submitted by the California Air Resources Board (CARB) to EPA on June 6, 1996 for SMAQMD and July 12, 1996 for SBCAPCD.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the SMAQMD within the Sacramento Metropolitan Area (SMA) and the SBCAPCD within the Santa Barbara-Santa Maria-Lompoc Area (SBSMLA). 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172 (a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(b)(2) of the CAA, Congress statutorily adopted the requirement that States must develop reasonably available control technology (RACT) rules for sources ''covered by a Control Techniques Guideline (CTG) document issued by the Administrator between November 15, 1990 and the date of attainment.'' On April 28, 1992, in the **Federal Register**, EPA published a CTG document which indicated EPA's intention to issue CTGs for eleven source categories and EPA's requirement to prepare CTGs for two additional source categories within the same timeframe. This CTG document established time tables for the submittal of a list of applicable sources and the submittal of RACT rules for those major sources for which EPA had not issued a CTG document by November 15, 1993. The CTG specified that states were required to submit RACT rules by November 15, 1994 for those categories for which EPA had not issued a CTG document by November 15, 1993.

Section 182(b)(2) applies to areas designated as nonattainment prior to enactment of the amendments and classified as moderate or above as of the date of enactment. The SMA is classified as severe;[1] therefore, SMA was subject to the post-enactment CTG requirement and the November 15, 1994 deadline. The SBSMLA is classified as moderate;[2] therefore, SBSMLA was also subject to the post-enactment CTG requirements and the November 15, 1994 deadline. For source categories not represented within the portions of the SMA and the SBSMLA designated nonattainment for ozone, EPA requires the submission of a negative declaration certifying that those sources are not present.

The SMAQMD negative declarations were adopted on May 2, 1996 and submitted by the State of California on June 6, 1996. The SBCAPCD negative declarations were adopted on May 16, 1996 and submitted by the State of California on July 12, 1996. The SMAQMD negative declarations were found to be complete on June 27, 1996 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and are being finalized for approval into the SIP as additional information. The SMAQMD negative declarations were found to be complete on January 18, 1997 pursuant to EPA's completeness criteria and are being finalized for approval into the SIP as additional information.

This document addresses EPA's direct-final action for the SMAQMD negative declarations for Plastic Parts Coating: Business Machines and Plastic Parts Coating: Other. The submitted negative declarations represent two of the thirteen source categories listed in EPA's CTG document.[4] The submitted

[1] Sacramento Metropolitan Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). The Sacramento Metropolitan Area was reclassified from serious to severe on June 1, 1995. See 60 FR 20237 (April 25, 1995).

[2] The Santa Barbara-Santa Maria-Lompoc Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107 (d) and 181 (a) upon the date of enactment of the CAA. See 55 FR (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[4] SMAQMD has submitted rules for four source categories: Aerospace, Clean Up Solvents, Offset Lithography, and Volatile Organic Liquid Storage Tanks. SMAQMD has developed rules for Autobody Refinishing and Wood Furniture and is in the

Continued

negative declarations certify that there are no VOC sources in these source categories located inside SMAQMD's portion of the SMA. VOCs contribute to the production of ground level ozone and smog. These negative declarations were adopted as part of SMAQMD's effort to meet the requirements of section 182(b)(2) of the CAA.

This document also addresses EPA's direct-final action for the SBCAPCD negative declarations for: (1) Industrial Wastewater, (2) Plastic Parts Coating: Business Machines, (3) Plastic Parts Coating: Other, (4) Industrial Cleaning Solvents, (5) Offset Lithography, and (6) Shipbuilding Coatings. The submitted negative declarations represent six of the thirteen source categories listed in EPA's CTG document.[5] The submitted negative declarations certify that there are no VOC sources in these source categories located inside the SBCAPCD. VOCs contribute to the production of ground level ozone and smog. These negative declarations were adopted as part of SBCAPCD's effort to meet the requirements of section 182(b)(2) of the CAA.

III. EPA Evaluation and Action

In determining the approvability of a negative declaration, EPA must evaluate the declarations for consistency with the requirements of the CAA and EPA regulations, as found in section 110 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

An analysis of SMAQMD's emission inventory revealed that there are no sources of VOC emissions from Plastic Parts Coating: Business Machines and Plastic Parts Coating: Other. SMAQMD's review of their permit files also indicated that these source categories do not exist in the SMAQMD. In a document adopted on May 2, 1996, SMAQMD certified that SMAQMD does not have any major stationary sources in these source categories located within the federal ozone nonattainment planning area.

An analysis of SBCAPCD's emission inventory revealed that there are no sources of VOC emissions from Industrial Wastewater, Plastic Parts Coating: Business Machines, Plastic Parts Coating: Other, Industrial Cleaning Solvents, Offset Lithography, and Shipbuilding Coatings. SBCAPCD's review of their permit files also indicated that these source categories do not exist in the SBCAPCD. In a document adopted on May 16, 1996, SBCAPCD certified that SBCAPCD does not have any major stationary sources in these source categories located within the federal ozone nonattainment planning area.

EPA has evaluated these negative declarations and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. SMAQMD's negative declarations for Plastic Parts Coating: Business Machines and Plastic Parts Coating: Other and SBCAPCD's negative declarations for Industrial Wastewater, Plastic Parts Coating: Business Machines, Plastic Parts Coating: Other, Industrial Cleaning Solvents, Offset Lithography, and Shipbuilding Coatings are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 29, 1997 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 29, 1997.

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

IV. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the

process of developing rules for SOCMI Distillation, Reactors, and Batch Processing. Negative declarations will be developed for the two remaining categories.

[5] SBCAPCD has submitted rules for four source categories: Aerospace, Autobody Refinishing, Volatile Organic Liquid Storage Tanks, and Wood Furniture. SBCAPCD is developing negative declarations for the remaining three source categories.

private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 29, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated July 16, 1997.

Felicia Marcus,

Regional Administrator.

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.222 is being amended by adding paragraph (a) (2) and (a)(3) to read as follows:

§ 52.222 Negative declarations.

(a) * * *

(2) Sacramento Metropolitan Air Quality Management District.

(i) Plastic Parts Coating: Business Machines and Plastic Parts Coating: Other were submitted on June 6, 1996 and adopted on May 2, 1996.

(3) Santa Barbara County Air Pollution Control District.

(i) Industrial Wastewater, Plastic Parts Coating: Business Machines, Plastic Parts Coating: Other, Industrial Cleaning Solvents, Offset Lithography, and Shipbuilding Coatings were submitted on July 12, 1996 and adopted on May 16, 1996.

* * * * *

[FR Doc. 97–20217 Filed 7–30–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC032–2006; FRL–5864–4]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, New Source Review Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the District of Columbia. This revision amends the District's new source review program including the regulations for the preconstruction permitting new major sources and major modifications in nonattainment areas. This action is being taken under the provisions of the Clean Air Act for the approval of SIP revisions.

EFFECTIVE DATE: This final rule is effective on September 2, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Ave, S.E., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 566–2068.

SUPPLEMENTARY INFORMATION: On October 22, 1993, the District of Columbia submitted new source review (NSR) regulations that were subsequently disapproved by EPA in a direct final rulemaking on March 24, 1995. (60 FR 15483). Pursuant to section 179 of the Clean Air Act (CAA), EPA's disapproval required the imposition of sanctions in two phases starting 18 months after disapproval unless and until the deficiencies were corrected. The first sanction, which started on October 24, 1996, required 2:1 emission offsets for the construction of new and modified sources. The second sanction, which was to be imposed 6 months later, would have required the withholding of federal highway funds for all new highway projects in the District.

The District submitted revised NSR regulations on May 2, 1997, which corrected the deficiencies. On June 2, 1997, EPA published a notice of proposed rulemaking (NPR) approving the District's NSR program (62 FR 29682). On the same day, EPA published and solicited comment on an interim final rule that stayed application of the offset sanction and deferred imposition of the highway sanction, based on EPA's proposed full approval of the District's NSR program (62 FR 29668). No public comments were received on the NPR or the interim final rule.

The intended effect of this action is to approve the District's NSR program for the permitting of major new and modified sources pursuant to the requirements of the CAA. Other specific requirements of the NSR program and the rationale for EPA's proposed action were explained in the NPR and will not be restated here. As a consequence of today's final approval of the District's NSR regulations as a SIP revision, the sanctions resulting from EPA's March 24, 1995 disapproval action are hereby lifted and no longer applicable.

Final Action

EPA is approving the new source review (NSR) program as a revision to the District of Columbia SIP. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the District is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 29, 1997. Filing a petition for reconsideration by the Administrator of this final rule to approve the District of Columbia New Source Review program does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Incorporation by reference.

Dated: July 17, 1997.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart J—District of Columbia

2. Section 52.470 is amended by adding paragraph (c)(37) to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) * * *

(37) Revisions to the District of Columbia Municipal Regulations submitted on May 2, 1997 and May 9, 1997 by the District of Columbia Department of Consumer and Regulatory Affairs:

(i) Incorporation by reference.

(A) Letter of April 29, 1997 from the Department of Consumer and Regulatory Affairs transmitting new source review (NSR) program.

(B) Regulations adopted on April 29, 1997; Title 20 of the District of Columbia Municipal Regulations (DCMR) Chapter 2, sections 200 (as amended), 201, 202, 204 (as amended), 206, 299 and the amended definition of ''modification'' in Chapter 1, section 199.

(ii) Additional material.

(A) Remainder of May 2, 1997 State submittal.

(B) District Register for May 9, 1997.

[FR Doc. 97–20214 Filed 7–30–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD037–3015; FRL–5864–8]

Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final conditional approval.

SUMMARY: EPA is granting conditional approval of a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision establishes and requires the implementation of an enhanced motor vehicle inspection and maintenance (I/M) program in the counties of Anne Arundel, Baltimore, Calvert, Carroll, Cecil, Charles, Frederick, Harford, Howard, Montgomery, Prince George's, Queen Anne's, Washington, and the City of Baltimore. The intended effect of this action is to conditionally approve the Maryland enhanced motor vehicle I/M program. EPA is conditionally approving Maryland's SIP revision based on the fact that: Maryland's SIP is deficient in certain aspects with respect to the requirements of the Act and EPA's I/M program regulations, and Maryland has made a commitment in a letter, dated December 23, 1996, to work with EPA to address and correct all deficiencies as necessary to ensure full compliance with I/M requirements by a date certain within one year from September 2, 1997. This action is taken under section 110 of the 1990 Clean Air Act (CAA, or the Act).

EFFECTIVE DATE: This final rule is effective on September 2, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building,

Philadelphia, Pennsylvania 19107 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti at 215–566–2174 or Jeffrey M. Boylan at 215–566–2094 at the EPA Region III address above, or via e-mail at boylan.jeffrey@epamail.epa.gov. or magliocchetti.catherine@epamail.epa.gov

SUPPLEMENTARY INFORMATION:

I. Background

On October 31, 1996, (61 FR 56183), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed conditional approval of Maryland's enhanced inspection and maintenance program, submitted on July 11, 1995 and amended on March 27, 1996, by the Maryland Department of the Environment (MDE). A description of Maryland's submittal and EPA's rationale for its proposed action were presented in the NPR and will not be restated here.

II. Public Comments/Response to Public Comments

EPA received comments from two citizens, and from the Maryland Department of the Environment. The individual comments are listed below, followed by EPA's response.

Comment #1: One citizen disagreed with the idea of car emission testing in general, stating that he thought that money budgeted to EPA could be better spent elsewhere.

Response #1: EPA maintains that enhanced vehicle emission inspection programs, such as the one designed by Maryland, are one of the most cost-effective air pollution control technologies available today. Mobile sources contribute significantly to the ozone nonattainment problem in the State of Maryland, and citizens can contribute to improving air quality by keeping their vehicles well maintained. The Vehicle Emissions Inspection Program, or VEIP, developed by Maryland will help decrease the amount of ozone-forming pollutants in the state at a modest cost to the consumer. Administration and implementation of the VEIP is funded at the state level, from transportation funding and from the collection of inspection fees by the state and its contractor. In addition, vehicle testing is required by the Clean Air Act for serious and severe ozone nonattainment areas, such as those in Maryland.

Comment #2: Another citizen commented that Maryland's VEIP should be delayed until inspection & maintenance programs in the neighboring states of Pennsylvania, Virginia, Delaware, and West Virginia are put into effect.

Response #2: Under the Clean Air Act (the Act), Pennsylvania, Virginia and Delaware were all originally required to develop and implement inspection & maintenance programs similar to the program developed in Maryland as of 1995. West Virginia is not currently required to implement an inspection & maintenance program under the requirements of the Act since the entire state has met the national ambient air quality standards for ozone and carbon monoxide.

Pennsylvania, Virginia, and Delaware are all moving forward with inspection & maintenance programs and each of these states has submitted I/M program revisions to their respective State Implementation Plans, as required by the Act. EPA has issued final rulemakings granting conditional, interim approvals to Pennsylvania and Virginia's I/M plans (PA published on January 28, 1997 at 62 FR 4004; and VA published on May 15, 1997 at 62 FR 26745), and Delaware received a final conditional approval for its plan on May 19, 1997 at 62 FR 27195. Programs in Pennsylvania and Virginia are required to start by November 1997 under the terms of the relevant conditional approvals. EPA anticipates full start-up of both programs in October of 1997. Delaware's I/M program enhancements have been implemented since January of 1995.

The following comments were submitted by MDE. In those places where clarification or background on a comment is necessary in order to understand the comment, EPA has summarized what the state is required to do as a condition of the rulemaking:

Comment #3: In the notice of proposed rulemaking, EPA cited a deficiency under 40 CFR 51.350 regarding the interpretation of Maryland's enabling legislation to run the inspection & maintenance program. As a condition for approval, EPA stated that Maryland must either provide an opinion from the State Attorney General's Office that offers the State's interpretation on the sunset date as being no earlier than November 15, 2005; or in the absence of such an opinion, provide EPA with new legislative authority that allows for such an extended sunset date for the program.

MDE commented that it maintains that legal authority exists for the program to continue for so long as is required by federal law, and that the sunset provision allows for the State to revisit the program and enact any needed legislative actions at the time of program extension. However, MDE has committed to asking the Attorney General's Office for a confirmation of the matter.

Response *#3:* Despite MDE's comment, EPA still needs confirmation from the State's Attorney General on this subject, as conditioned in the notice of proposed rulemaking. As specified in the notice, if the Attorney General, the state official authorized to interpret state law, does not hold a similar interpretation of the statute, new legislative authority will be required.

Comment #4: MDE commented that EPA and MDE need to reach agreement on whether all of the procedures and assumptions used in Maryland's modeling demonstration, for fulfillment of the requirements under 40 CFR 51.351 of the I/M rule, were appropriate and consistent with EPA regulations and guidelines. MDE may require clarification on some issues since EPA policy has been changing in response to evolving technology (e.g., recent developments in evaporative system testing). Maryland expects confirmation that I/M modeling and program requirements are being equitably applied to all states.

Response *#4:* EPA will continue to work with MDE with regard to the appropriate assumptions and inputs for the modeling of the performance standard demonstration. For clarification regarding EPA's policy on evaporative testing, MDE should refer to guidance issued on November 5, 1996, entitled, I/M Evaporative Emissions Tests, and December 23, 1996 guidance, entitled, I/M Evaporative Emissions Tests—An Addendum, which outline EPA's current testing and modeling methodologies.

EPA hereby confirms that I/M program and modeling requirements are being equitably applied to all states, and further verifies that Maryland is not being held to a higher standard for purposes of modeling the program performance standard.

Comment #5: MDE will provide an explanation of how subject vehicles in the program area are identified. MDE also requests clarification and guidance from EPA on the requirements for identification of vehicles routinely operated in, but not necessarily registered in the program area.

Response *#5:* EPA anticipates clarification from MDE as to how vehicles operating on Federal Facilities will be identified, and the protocol that

will be used by the State in order to assure that vehicles operating on federal installations are covered by the program. In addition, EPA will provide MDE with additional guidance on the identification of other vehicles routinely operated, but not registered in the program area (i.e. rental vehicles, fleet vehicles, etc).

Comment #6: MDE commented that its regulations specifically prohibit the inspection contractor from performing emissions-related repairs. Since the inspection contractor is the only entity performing initial tests in Maryland, the State believes this requirement has been satisfied. Further, Maryland questions the applicability of this requirement to a centralized I/M program.

Response #*6:* Under 40 CFR 51.357 of the I/M rule, initial tests must be performed without repair or adjustment at the inspection facility, prior to the test. EPA agrees with MDE's comment, and believes that since the inspection contractor is prohibited from performing emissions-related repairs under the State's regulation, that this requirement of the federal regulation has been satisfied.

Comment #7: Also under 40 CFR 51.357, EPA has conditioned approval of the I/M program on MDE's providing EPA with all applicable State regulations addressing the testing of vehicles with switched engines, and vehicles with no certified engine configuration. MDE commented that its State's laws and regulations prohibit tampering and the applicable sections will be provided to EPA confirming that this section of the federal I/M rule has been fulfilled.

Response #*7:* Based on Maryland's response, no changes are necessary to this part of the condition. EPA anticipates documentation from the state to be provided. EPA reiterates that the State should specifically delineate the areas of its anti-tampering laws and regulations that address engine switching and testing of vehicles with no certified engine configuration.

Comment #8: Under 40 CFR 51.360, EPA asked Maryland to fully document the criteria that will be used in the State for granting hardship exemptions or extensions for the program. MDE commented that Maryland will continue its current practice of granting short extensions for persons whose financial situations do not allow for repairs to be conducted immediately. Maryland will provide a description of this practice to EPA.

Response #*8:* EPA accepts MDE's above explanation as sufficient for fulfilling this condition, so long as a ''short'' extension period is clearly defined and reasonable to EPA. EPA awaits MDE's description of its practice, consistent with this response.

Comment #9: MDE will provide EPA with a description of Maryland's program to handle out-of-state exemptions, and MDE's mechanism to enforce vehicle transfer requirements when motorists move into the I/M area. MDE will also provide documentation on the citing of motorists for noncompliance with the vehicle registration requirement. MDE also reiterated its need for further guidance from EPA on how to identify vehicles operating in, but not registered in an I/M area.

Response #*9:* EPA anticipates the documentation referred to by MDE for out-of-state exemptions, and for noncompliance citations. Please see Comment 5 for EPA's response on MDE's guidance request.

Comment #10: MDE will provide EPA with clarification on the State's practice of vehicle impoundment when a motorist is cited for driving with a suspended registration.

Response #*10:* EPA anticipates this documentation.

Comment #11: MDE commented that Maryland will continue to use its system of month/year registration stickers as a visible means of compliance with registration in the State. MDE will alert EPA if any changes to this procedure occur in the future.

Response #*11:* EPA accepts MDE's discussion on this procedure, and no further action is required of MDE with respect to this aspect of the condition.

Comment #12: MDE requests additional information and guidance from EPA as to exactly what exemption triggering elements need examination.

Response #*12:* EPA needs confirmation from MDE that any exemptions that would allow vehicles to by-pass an inspection test, such as the diesel exemption and the electric car exemption, are either checked by confirmation of the VIN, or by physical examination of the vehicle. If VIN records cannot confirm exemption status of the vehicle, MDE should confirm the exemption by physically examining the vehicle before the exemption is granted.

Comment #13: MDE questions the applicability of some or all of the requirements under 40 CFR 51.362 of the federal I/M rule to a registration-based enforcement program. EPA has asked Maryland to demonstrate that an acceptable enforcement program exists, and that this program should include the procedures used for auditing the program and a penalty schedule for missing documentation from the program's inspection stations.

Response #*13:* EPA views the requirements under this section as appropriate and reasonable measures that states are required to implement in both centralized and decentralized I/M programs. The intent of this section of the I/M rule is to control and eliminate fraudulent acts by those most closely responsible for implementation of the I/M program. In Maryland's specific situation, these requirements are meant to provide another means of verifying proper conduct by the State's contractor, and its employees, who are responsible for dealing with customers in the inspection lanes. EPA expects that Maryland will fulfill this condition, as described in the NPR.

Comment #14: MDE commented that it has instituted an auditing program that is likely the costliest and strictest in the nation. MDE will provide a description to EPA.

Response #*14:* EPA anticipates MDE's description of its auditing program.

Comment #15: MDE will review its enforcement authority under its contract with the inspection contractor and provide EPA with information regarding the penalty structure set up to make sure the contractor is in compliance with the State's regulations.

Response #*15:* EPA anticipates this documentation from the State.

Comment #16: Maryland will ensure that the inspector certification program includes recertification requirements. Maryland proposes to accomplish this administratively, rather than by adopting regulations.

Response #*16:* EPA accepts Maryland's proposal for fulfilling this requirement; however, MDE must provide EPA with the administrative procedures manual, or description of this practice as part of the SIP support material, in order to comply with this requirement for approval purposes. Recertification need not be done through regulation, but must be an explicit, enforceable SIP requirement.

Comment #17: In response to EPA's condition under 40 CFR § 51.368, Maryland will review the State provision for protection of whistle blowers and provide the information to EPA. With regard to public complaints, Maryland is very responsive to all complaints received and provides prompt investigation and corrective action as required. The State will document this aspect of the program in the form of a complaint response plan.

Response #*17:* EPA anticipates MDE's response to this condition.

Comment #18: MDE commented that a copy of the final regulation revision

and documentation of the public hearing process will be submitted to EPA.

Response #*18:* EPA anticipates receipt of this documentation.

Comment #19: MDE commented that confounding factors in the State could potentially affect the current program start-up schedule, previously slated for June 1, 1997.

Response #*19:* EPA recognizes that potential problems with the State's program and its contractor may affect timely implementation of the program. As is stated in the NPR, Maryland must start mandatory testing of all subject vehicles as soon as possible or by November 15, 1997 at the latest.

Comment #20: Maryland does not understand the rationale for requiring a county-by-county analysis of the performance standard. MDE states that the federal I/M rule requires that ''Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements.'' Since its inclusion in the Ozone Transport Region causes Maryland to be subject to enhanced I/M requirements, Maryland believes that the EPA rule should be interpreted to treat the I/M counties as one area in calculating emissions factors relative to the performance standard.

Response #*20:* EPA agrees with MDE's interpretation of this requirement, and will allow MDE to submit an amalgamated performance standard analysis.

Comment #21: In the Technical Support Document, EPA explained that MDE must use the default compliance rate of 96% for modeling purposes, or provide EPA with documentation supporting the 100% rate used in its current analysis. MDE responded that it believes documentation supporting a compliance rate greater than 96% can be provided to EPA.

Response #*21:* EPA welcomes such supporting documentation from the State, and advises MDE to use whatever the appropriate compliance rate is, as supported by State-generated evidence.

Comment #22: Maryland commented that it believes that it followed EPA guidance in calculating RSD reductions. Maryland does not know of any requirement to ''subtract out'' the minimum RSD component in calculating RSD credits for an I/M program.

Response #*22:* MDE should refer to EPA's guidance on RSD credit issuance, User Guide and Description for Interim Remote Sensing Program Credit Utility. As is stated in this guidance, programs can only receive extra credit for a remote sensing component if the State's program goes above and beyond what is already required in the federal I/M rule. EPA is not requiring MDE to ''subtract out'' the minimum RSD component. Rather, EPA is stating that additional credit for a remote sensing program will only be granted if the State follows the EPA guidance and institutes testing above and beyond what is already required in the federal I/M rule. A state such as Maryland, that is only complying with the minimum on-road testing requirements, as explained at 40 CFR 51.371, is not eligible for more credit under the performance standard. Should MDE chose to expand its RSD component, additional credit could be claimed, as explained in the above-named guidance document.

Comment #23: MDE commented that it commits to adopting and using EPA non-invasive pressure testing procedures when they become available, and MDE will therefore take full credit for pressure testing in the performance standard. MDE will revise the SIP revision language to reflect this commitment.

Response #*23:* In June of 1996, EPA issued draft technical guidance which included draft procedures and specifications for a fuel-fill pipe pressure test. EPA will soon issue final, revised technical guidance on the fuel-fill pipe pressure procedures, and expects that Maryland will adopt this test under the above referenced commitment, and use this ''non-invasive'' procedure to test the integrity of the vehicle's fuel system. MDE should refer to the High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications: IM240 and Functional Evaporative System Tests, (Revised Technical Guidance, DRAFT), dated June 1996, the November 5, 1996 memo from Margo Oge, I/M Evaporative Emissions Tests, and the December 23, 1996 memo from Leila Cook, I/M Evaporative Emissions Tests—An Addendum. EPA also cautions the state that the full pressure test must be in place for at least one full test cycle before the evaluation year, in order for MDE to take credit for 100% pressure credit in modeling the performance standard.

Comment #24: MDE would like clarification from EPA as to whether the requirements of 40 CFR 51.355—Test Frequency & Convenience—have been met. It is noted that EPA did not cite any deficiencies in the NPR for this section, however, the TSD did include a discussion on Maryland's enforcement system safeguards, and the need for further action by the state with respect to the penalty for noncompliance with the program.

Further, MDE commented that it is unclear as to whether EPA expects MDE to correct another deficiency cited in the TSD under this section, but not in the NPR. In the TSD, EPA stated that it was unclear from Maryland's regulations whether or not the inspection contractor is required to give out-of-cycle inspections to those other than used vehicle dealers, or new residents of the State. This was cited as a deficiency in the TSD, but not the NPR.

Response #*24:* As is mentioned in the TSD discussion on this section, this problem is also addressed under the Motorist Compliance Enforcement Section—40 CFR 51.361. In the NPR, EPA chose not to duplicate conditions relating to the same failure, even though the TSD may have discussed the same problem under multiple sections. EPA does have a condition relating to the cited failure on enforcement safeguards and penalties (as discussed in the TSD and reiterated by MDE in its comment letter), however, MDE should address this deficiency under the Motorist Compliance Enforcement Section.

With respect to out-of-cycle testing, EPA did not place a condition on the State to make a correction for this TSD-cited deficiency. Furthermore, EPA here clarifies that the TSD erroneously stated that provisions need to be made to test these types of vehicles. In fact, EPA's regulation requires only that stations be required to adhere to regular testing hours and to test any subject vehicle presented for a test during its test period. EPA believes this requirement has been met by the State's SIP revision.

Therefore, for the purposes of this rulemaking, MDE does not have any conditions placed on the State under 40 CFR 51.355, and no remedy is required by the State under this section.

Comment #25: MDE has requested clarification of the requirements under 40 CFR 51.356 for SIP approval. Specifically, clarification is requested regarding the I/M rule requirement that the program provide for allowing inspections of vehicles registered in other program areas, and for issuance of certificates of compliance or waiver.

Response #*25:* As stated in the TSD, EPA could not find any provisions in the SIP that explicitly allow for inspections of vehicles outside of the program area, and for the issuance of certificates of compliance or waiver. However, since EPA understands that Maryland is investigating the idea of reciprocity with surrounding states for purposes of compliance with the program requirements, EPA assumes that Maryland intends on extending the

option of out of state inspections to those requesting it. For the purposes of rulemaking, EPA has not placed any conditions on the State therefore, with respect to this component of the I/M program at this time. If however EPA discovers problems with the reciprocity issue in the future, EPA will commence a SIP call to remedy this problem.

Comment #26: Also under 40 CFR 51.356, MDE would like clarification as to what is required in order to meet the federal fleet installations testing requirement. MDE will provide an update on the discussions with US GSA and US DoD, however, MDE would like to know what further is required for SIP approval.

Response #*26:* The TSD states that Maryland's SIP revision does not speak to the requirement that specifically the Federal installation managers show proof of inspection for all Federal employee-owned vehicles operated on the installation. However, the Maryland SIP revision does state that ''the federal agency has the responsibility of ensuring that its employees comply, with MVA's guidance.'' EPA believes that this statement satisfies this intent of this section of the rule, and no further action is required by MDE in order for SIP approval. EPA would however, welcome any further information that the Department can provide with respect to federal fleet testing issues, specifically relating to discussions with US GSA and US DoD. EPA here notes that the District of Columbia is also engaging US GSA and US DoD in discussions on fleet testing in the Washington Metropolitan area, and that it may be instructive for Maryland, the District of Columbia and the Commonwealth of Virginia to engage in these discussions together at this time.

Comment #27: MDE has also asked for clarification under 40 CFR 51.356, as to what is required for SIP approval in relation to special exemptions. MDE noted that it will quantify the special exemptions extended to motorists under the VEIP program, however, MDE would like clarification as to what is required for SIP approval.

Response #*27:* EPA anticipates MDE's clarifications of the special exemptions categories, and believes that this clarification can be made under the enhanced performance standard section, 40 CFR 51.351. There are no further SIP requirements for special exemptions, provided that the program meets the performance standard, taking exemptions into account.

Comment #28: MDE commented that under 40 CFR 51.358, it has satisfied the dual exhaust sampling requirements. In the TSD, EPA cited a deficiency for this section, stating that the SIP does not contain provisions for sampling dual exhaust vehicles. MDE cited Appendix G of SIP revision 95–06, page RFP38.

Response #*28:* EPA has reviewed the cite provided by MDE and concurs that the simultaneous testing requirement has indeed been met under the SIP. EPA notes that the TSD will be amended to correct this oversight, however no conditions are affected since none were cited in the NPR for this element.

Comment #29: MDE has asked for clarification under 40 CFR 51.358 as to whether or not the SIP is deficient with respect to the requirement to update test equipment to accommodate new technology vehicles and changes to the program. Under this section of the TSD, EPA commented that the SIP does not appear to address this element. However the NPR cites this requirement as being met through the annual reporting requirement.

Response #*29:* EPA believes that the above reference requirement has been met by Maryland through its annual reporting requirement, as found in the SIP revision under Section II.P.2.. EPA will amend the TSD to reflect this, however, no changes will be made to the NPR conditions, since none were imposed under this section.

Comment #30: MDE commented that the NPR discussion under 40 CFR 51.358 notes that all requirements of this section are approvable, however, the TSD notes that Quality Assurance requirements and procedures for the evaporative system functional test equipment are not included in the SIP revision. MDE further commented that it will provide EPA with the appropriate requirements and procedures when EPA approved specifications for the pressure test become available.

Response #*30:* EPA expects that the requirements under this section will be met when the state is able to provide revised pressure testing procedures for the SIP. MDE can fulfill the Quality Assurance requirements for the pressure test specifications when the pressure test specification is approved by EPA, adopted by Maryland and submitted to EPA as a revision to the SIP.

Comment #31: MDE would like clarification as to whether or not a deficiency exists with respect to counterfeit resistancy of vehicle inspection reports. No deficiency was cited in the NPR, however, the TSD reported that Maryland does not have a specific requirement aimed at making documents counterfeit resistant, and that the program certificates do not carry an official seal. MDE further commented that this requirement should not be applicable to a state with registration denial as the enforcement mechanism.

Response #*31:* As is cited in the NPR, EPA believes that Maryland has an adequate measure to ensure counterfeit resistance, i.e., unique identification numbers given on each Vehicle Inspection Report (VIR), coupled with accountability of the lane inspectors for each numbered VIR. EPA notes that the official seal requirement has not been met by the state, however, EPA believes the unique serial number method is adequate for maintaining counterfeit resistantancy. EPA also concurs with MDE's assessment regarding applicability of this requirement (i.e., offical seal) to programs using registration denial. Nothing further is required by the state in order to meet this section of the rule.

Comment #32: MDE commented that the TSD cites a deficiency regarding ensuring that compliance documents cannot be stolen or removed without being damaged. The NPR does not cite such deficiency. MDE would like clarification as to what is required of Maryland to comply with this section. Further MDE questioned the applicability of this section to a program using registration denial as the enforcement mechanism.

Response #*32:* EPA concurs with MDE's assessment regarding applicability of this requirement to programs using registration denial. Nothing further needs to be done by the state to meet the requirements of this section.

Comment #33: MDE commented that under the section relating to Waivers and Compliance via Diagnostic Inspections (40 CFR 51.360), all of the vehicles that are the subject of extensions for the program are actually inspected in the biennial test cycle and neither the compliance rate, nor emissions reductions are affected by this practice. Maryland requests clarification regarding what deficiency, if any exists for this section.

Response #*33:* EPA agrees with MDE's rationale regarding compliance rate calculations, and emissions reductions. EPA further accepts MDE's clarification contained in its comment letter, that hardship extensions do not actually constitute compliance waivers from the program, and therefore do not excuse the motorist from meeting the requirements of the program, but merely extend the amount of time afforded to the motorist for compliance with the program. EPA accepts this explanation as sufficient for purposes of satisfying this condition under this section of the rule. No further documentation needs to be provided by MDE for this condition.

Comment #34: MDE commented that the TSD cites the quality control section of waiver issuance as being unapprovable. MDE requests clarification from EPA regarding this TSD cited deficiency.

Response #*34:* EPA has reviewed the TSD and believes this citation of a deficiency is a typographical error. EPA will amend the TSD to reflect an approvable citation for this requirement. EPA notes that no change is necessary for the NPR, since no condition was cited for this section.

Comment #35: MDE commented that it will address the evaporative system total purge flow check when the evaporative system tests are implemented. MDE requests that EPA clarify what is required under this section for approval.

Response #*35:* EPA noted in the TSD that the purge system pass/fail results did not include the evaporative test total purge flow achieved during the test. However, EPA did not cite this as a deficiency in the NPR since MDE has committed to changing its purge specifications when EPA makes non-invasive purge procedures available. EPA will reassess the requirements of this section when the non-invasive procedures become available. This requirement may or may not be a part of the revised non-invasive testing specifications, and so EPA did not cite a lack of this data as a deficiency at this time. EPA will clarify what exactly is required when non-invasive specifications become available, and MDE is instructed to consult EPA guidance on pressure testing specifications for SIP revision purposes.

Comment #36: MDE notes that the NPR cites all requirements of 40 CFR 51.370 as having been met. However, the TSD cites a deficiency with regard to recall campaign number for vehicles with unresolved recalls. MDE wants clarification as to whether this is a SIP deficiency, and what is required of Maryland under this section. MDE further requests guidance from EPA on complying with the recall provisions of the I/M rule.

Response #*36:* MDE should ensure that the data system includes the recall campaign number for vehicles with unresolved recalls, however, under the NPR, no further documentation needs to be submitted to EPA to demonstrate that this requirement has been met at this time, and no condition has been placed on the State for this deficiency since guidance does not currently exist on how to accomplish this task at this time. EPA will assist MDE in developing methods for ensuring that this data be included in Maryland's system in the future.

III. Conditional Approval

Under the terms of EPA's October 31, 1996 notice of proposed conditional approval rulemaking (61 FR 56183), Maryland was required to make commitments to remedy deficiencies with the I/M program SIP (as specified in the above notice) within twelve months of the effective date of today's final conditional approval notice. On December 23, 1996, Jane T. Nishida, Secretary of the MDE, submitted a letter to David L. Arnold, Chief, Ozone/CO and Mobile Source Section, EPA Region III, committing to address and correct, by a date certain, all of the deficiencies listed in EPA's October 31, 1996 NPR.

Because Maryland has submitted the commitment letter called for in EPA's October 31, 1996 NPR, EPA is today taking final conditional approval action upon the Maryland I/M SIP, under section 110 of the CAA.

IV. Final Rulemaking Action

EPA is conditionally approving Maryland's enhanced I/M program as a revision to the Maryland SIP, based upon certain conditions. Should the State fail to fulfill the conditions by the deadline of no more than one year from September 29, 1997, this conditional approval will convert to a disapproval pursuant to CAA section 110(k). In that event, EPA would issue a letter to notify the State that the conditions had not been met, and that the approval had converted to a disapproval.

V. Administrative Requirements

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

A. Executive Order 12866

This action has been delegated to the Regional Administrator for decision-making and signature. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the 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, 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 flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 29, 1997.

Filing a petition for reconsideration by the Administrator of this final rule to conditionally approve the Maryland enhanced I/M SIP does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Administrative Procedures Act).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Reporting and record keeping requirements.

Dated: July 18, 1997.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1072 is added to read as follows:

§ 52.1072 Conditional approval.

(a) The State of Maryland's July 11, 1995 submittal for an enhanced motor vehicle inspection and maintenance (I/M) program, and the March 27, 1996 amendment to the original SIP revision is conditionally approved based on certain contingencies. The following conditions listed in paragraphs (a)(1) through (a)(15) of this section must be addressed in a revised SIP submission. Along with the conditions listed in paragraphs (a)(1) through (a)(15) of this section is a separate detailed I/M checklist explaining what is required to fully remedy the deficiencies found in the proposed notice of conditional approval. This checklist is found in the Technical Support Document (TSD), located in the docket of this rulemaking, that was prepared in support of the proposed conditional I/M rulemaking action for Maryland. By no later than one year from September 29, 1997, Maryland must submit a revised SIP that meets the following conditions for approvability:

(1) Fully adopt and submit to EPA as a SIP revision, final regulations and documentation of the public hearing process addressing Maryland's March 27, 1997 amendment to the SIP pertaining to proposed regulatory changes to the VEIP, as a result of the flexibility afforded to Maryland from federal and state legislative changes.

(2) Provide confirmation from the State Attorney General's Office clearly stating that Maryland's interpretation of the sunset date of the program is no earlier than November 15, 2005, or in the absence of such an opinion, submit to EPA new legislative authority allowing for such an extended sunset date of the program.

(3) Submit to EPA a modeling demonstration of the program using the appropriate assumptions and methodology (see TSD and the Response to Public Comments section of this rule for detailed discussions) demonstrating compliance with the I/M performance standard for the years 2002 and 2005 (excluding the year 1999, as recommended by EPA).

(4) Obtain and/or demonstrate to EPA that adequate funding and tools exist for the years 1997 and 1998, including a detailed explanation of the number of personnel dedicated to quality assurance, data analysis, program administration, and enforcement. In addition, Maryland needs to provide budget allotments for equipment resources. EPA notes that an update of the budget information is adequate to satisfy this condition.

(5) Provide an explanation to EPA of how all subject vehicles in the program will be identified, which includes an estimate of the number of unregistered vehicles operated in the program area. Subsequent to EPA issuing guidance, Maryland needs to document how vehicles that are routinely operated in the program but not registered in the program area are identified.

(6) Provide to EPA applicable sections of state laws and regulations specifically addressing engine switching and testing of vehicles with no certified engine configuration. Maryland needs to commit to adopting non-invasive purge test procedures when EPA specifications become available. In addition, EPA expects Maryland to submit written procedures for the gas-cap check and to adopt the non-invasive fuel-fill pipe pressure specifications and procedures when EPA issues the final technical guidance.

(7) Submit to EPA written specifications for the gas cap check procedures referenced in Maryland's regulations.

(8) Provide to EPA a description of how Maryland's current practice of issuing short term extensions because of economic hardship is granted, which reasonably and clearly defines the time frame of the extension period.

(9) Submit to EPA documentation of how Maryland will handle out-of-state exemptions, employ mechanisms to enforce vehicle transfer requirements when owners move into the program area, and cite motorists for noncompliance with the registration requirement. Maryland will need to clarify its practice on vehicle impoundment when a motorist is cited for driving with a suspended registration. In addition, EPA needs verification on vehicle exemption triggering elements which allow the subject vehicle to by-pass an inspection test. Confirmation by VIN check or physical examination of the subject vehicle needs to be included in the SIP revision, as a means of ensuring validation of the exemption triggering elements.

(10) Demonstrate to EPA that enforcement program oversight is quality controlled and quality assured. Maryland needs to provide a procedures document that details the specifics of the implementation of the enforcement program oversight including information management activities, activities of enforcement involved in

monitoring the program, and auditing the enforcement. Quality control and assurance needs to address penalty structures, periodic auditing and analysis, program effectiveness, and in use fleet compliance via parking lot surveys and road side pullovers.

(11) Provide a description to EPA of Maryland's auditing program that will include a minimum number of covert vehicles that are used for auditing purposes, covert and overt performance audits of inspectors, audits of stations and inspectors records, equipment audits, and formal training of all state I/M enforcement officials and auditors.

(12) Submit to EPA documentation regarding the set up of Maryland's penalty structure used to ensure the contractor is in compliance with State regulations. The penalty schedule must be applied to the contractor, stations, and inspectors. Information should include administrative & judicial responsibilities & procedures, and a description of the funding allocations.

(13) Submit to EPA an administrative procedures manual or description of the practice of inspector recertification which must occur at least every two years.

(14) Submit to EPA State regulations documenting provisions for the protection of whistle blowers. In addition, Maryland needs to provide documentation of how it investigates and responds to complaints made by the public.

(15) Maryland must start mandatory testing of all subject vehicles as soon as possible, or by November 15, 1997 at the latest.

(b) [Reserved]

[FR Doc. 97–20219 Filed 7–30–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7669]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Michigan: Maple Grove, township of, Saginaw County	260891	June 6, 1997	
Montana:			
Ekalaka, town of, Carter County	300111	.....do	July 16, 1976.
Pondera County, unincorporated areas	300056	.....do	
Washington: Springdale, town of, Stevens County	530264	.....do	May 2, 1975.
Kentucky:			
Shelbyville, city of, Shelby County	210376	June 9, 1997	
Braken County, unincorporated areas	210021	.....do	June 10, 1977.
North Dakota: Cass County, unincorporated areas	385362	June 10, 1997	
Nebraska: Garden County, unincorporated areas	310096	.....do	
Indiana: Montgomery County, unincorporated areas	180445	June 11, 1997	Oct. 13, 1978.
Michigan:			
West Branch, township of, Marquette County	260993	.....do	
Groveland, township of, Oakland County	260992	.....do	
Arcadia, township of, Lapeer County	260991	.....do	
Ohio: Montezuma, village of, Mercer County	390396	.....do	May 28, 1976.
Texas: Dimmit County, unincorporated areas	480789	.....do	Jan. 31, 1978.
Illinois: McDonough County, unincorporated areas	170999	June 17, 1997	Jan. 2, 1981.
Michigan:			
Kinderhook, township of, Branch County	260361	June 19, 1997	
Algansee, township of, Branch County	260994	.....do	
Maine: Mariaville, town of, Hancock County	230286	June 30, 1997	Mar. 14, 1975.
New Hampshire: Chester, town of, Rockingham County.	330182	.....do	Feb. 21, 1975.
Georgia:			
Hartwell, city of, Hart County	130480	.....do	
Clay County, unincorporated areas	130554	.....do	
Lanier County, unincorporated areas	130555	.....do	
Kentucky:			
Fort Thomas, city of, Campbell County	210038	.....do	June 25, 1976.
Mason County, unincorporated areas	210259	.....do	Dec. 31, 1976.
North Carolina: [1] Youngsville, town of, Franklin County	370494	.....do	Sept. 15, 1978.
Michigan: Ovid, township of, Branch County	260362	.....do	Nov. 5, 1976.
Ohio: Mineral City, village of, Tuscarawas County	390842	.....do	Oct. 6, 1978.
North Dakota: Traill County, unincorporated areas	380130	.....do	Dec. 16, 1980.
South Dakota: Burke, city of, Gregory County	460161	.....do	
New Eligibles—Regular Program			
Montana: Big Timber, city of, Sweet Grass County	300106	June 6, 1997	NFSHA.
California: [2] Chico, city of, Butte County	060746	June 11, 1997	Sept. 29, 1989.
Missouri: [3] Farley, village of, Platte County	290292	June 20, 1997	June 4, 1987.
North Carolina:			
[4] Chocowinity, town of, Beaufort County	370289	June 30, 1997	Feb. 4, 1987.
[5] East Arcadia, town of, Bladen County	370496	.....do	Sept. 1, 1989.
[6] Faison, town of, Duplin and Sampson Counties	370495	.....do	July 4, 1989.
Michigan: Greenwood, township of, Wexford County	260947	Dec. 20, 1996, Emerg; June 30, 1997, Reg	NSFHA.
Arizona: [7] Sahuarita, town of, Pima County	040137	June 30, 1997	Aug. 19, 1997.
Washington: Mercer Island, city of, King County	530083	.....do	NSFHA.
Withdrawn			
Kansas: Simpson, city of, Mitchell County	200229	June 25, 1975, Emerg; Jan. 1, 1987, Reg.; June 11, 1997, With.	Jan. 1, 1987.
Reinstatements			
Kentucky:			
Smithland, city of, Livingston County	210147	Nov. 3, 1975, Emerg; Sept. 16, 1988, Reg; Sept. 16, 1988, Susp; June 6, 1997, Rein.	Sept. 16, 1988.
Worthville, city of, Carroll County	210049	May 24, 1976, Emerg; July 17, 1986, Reg; July 17. 1986, Susp; June 6, 1997, Rein.	July 17, 1986.
Regular Program Conversions			
Region II			
New Jersey: Bridgewater, township of, Somerset County.	340432	June 5, 1997, Suspension Withdrawn	June 5, 1997.
Region III			
Pennsylvania: East Cocalico, township of, Lancaster County.	420547	.....do	do.
Region IV			
Florida: Okaloosa County, unincorporated areas	120173	.....do	do.
Region VI			
Louisiana: Shreveport, city of, Caddo and Bossier Parishes.	220036	.....do	do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Texas:			
Austin, city of, Travis County	480624	.....do	do.
Dallas, city of, Dallas, Denton, Collin, Rockwall, and Kaufman Counties.	480171	.....do	do.
Orange, city of, Orange County	480512	.....do	do.
Orange County, unincorporated areas	480510	.....do	do.
Rowlett, city of, Dallas and Rockwell Counties	480185	.....do	do.
Travis County, unincorporated areas	481026	.....do	do.
Region VII			
Nebraska:			
Dodge County, unincorporated areas	310068	.....do	do.
Scribner, city of, Dodge County	310071	.....do	do.
Region IX			
Arizona: Navajo County, unincorporated areas	040066	.....do	do.
California:			
Glenn County, unincorporated areas	060057	.....do	do.
Lompoc, city of, Santa Barbara County	060334	.....do	do.
Mono County, unincorporated areas	060194	.....do	do.
Santa Barbara, unincorporated areas	060331	.....do	do.
Sonoma, city of, Sonoma County	060383	.....do	do.
Nevada: Douglas County, unincorporated areas	320008	.....do	do.
Region X			
Oregon: Aurora, city of, Marion County	410156	.....do	do.
Region IX			
California: Vista, city of, San Diego County	060297	June 19, 1997, Suspension Withdrawn	June 19, 1997.
Region X			
Oregon: Marion County, unincorporated areas	410154	.....do	do.
Washington: Okanogan County, unincorporated areas	530117	.....do	do.

[1] The Town of Youngsville has adopted the Franklin County (CID# 370377) Flood Hazard Boundary Map dated 9–15–78.
[2] The City of Chico has adopted the Butte County (CID# 060017) Flood Insurance Rate Map dated 9–29–89.
[3] The Village of Farley has adopted the Platte County (CID# 290475) Flood Insurance Rate Map dated 6–4–87 panel 0100.
[4] The Town of Chocowinity has adopted the Beaufort County (CID# 370013) Flood Insurance Rate Map dated 2–4–87 panel 0190B.
[5] The Town of East Arcadia has adopted the Bladen County (CID# 370293) Flood Insurance Rate Map dated 9–1–89, panels 0012 and 0013.
[6] The Town of Faison has adopted the Duplin County (CID# 370083) Flood Insurance Rate Map dated 7–4–89 and the Sampson County (CID# 370220) Flood Insurance Rate Map dated 7–16–91.
[7] The Town of Sahuarita has adopted the Pima County (CID# 040073) Flood Insurance Rate Map dated 8–19–97.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: July 22, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–20233 Filed 7–30–97; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications,* 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: July 31, 1997.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted July 16, 1997, and released July 25, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 285C1 and adding Channel 285C3 at Telluride.

3. Section 73.202(b), the Table of FM Allotments under Florida, is amended

by removing Channel 243C and adding Channel 243C1 at Fort Walton Beach.

4. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 288A and adding Channel 288C3 at Jesup.

5. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 265C and adding Channel 264C at Gooding.

6. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 297C3 and adding Channel 298C2 at Lake Arthur.

7. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by removing Channel 228C3 and adding Channel 228C at Lahaina.

8. Section 73.202(b), the Table of FM Allotments under Maine, is amended by removing Channel 256B1 and adding Channel 256B at Bar Harbor.

9. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 282C and adding Channel 282C1 at Baraga.

10. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 245C3 and adding Channel 245C2 at Indianola.

11. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 229A and adding Channel 229C1 at Conrad.

12. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 228C and adding Channel 228C1 at Laughlin.

13. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 279C1 and adding Channel 279A at Alamogordo; by removing Central, Channel 237C1; and by adding Santa Clara, Channel 237C1.

14. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 267A and adding Channel 267C3 at Wartburg.

15. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 237A and adding Channel 237C3 at Shell Lake.

Federal Communicatons Commission.

John A. Karousos,

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

[FR Doc. 97–20164 Filed 7–30–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–25; RM–8981]

Radio Broadcasting Services; Fife Lake, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 240A to Fife Lake, Michigan, as that community's first FM broadcast service in response to a petition filed by Fife Lake Broadcasting Company. *See* 62 FR 4224, January 29, 1997. The coordinates for Channel 240A at Fife Lake are 44–34–36 and 85–20–54. Canadian concurrence has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective September 8, 1997. The window period for filing applications for Channel 240A at Fife Lake, Michigan, will open on September 8, 1997, and close on October 9, 1997.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–25, adopted July 16, 1997, and released July 25, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Fife Lake, Channel 240A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–20163 Filed 7–30–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–227; RM–8910]

Radio Broadcasting Services; Glenrock, Wyoming

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Vixon Valley Broadcasting, allots Channel 252A at Glenrock, Wyoming, as the community's first local aural transmission service. *See* 61 FR 60067, November 26, 1996. Channel 252A can be allotted at Glenrock in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 252A at Glenrock are North Latitude 42–51–30 and West Longitude 105–52–24. With this action, this proceeding is terminated.

DATES: Effective September 8, 1997. The window period for filing applications for Channel 252A at Glenrock, Wyoming, will open on September 8, 1997, and close on October 9, 1997.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–227, adopted July 16, 1997, and released July 25, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Glenrock, Channel 252A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–20162 Filed 7–30–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–97, RM–9047]

Radio Broadcasting Services; Mt. Juliet and Belle Meade, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 294A from Mt. Juliet to Belle Meade, Tennessee, and modifies the Station WNPL construction permit to specify Belle Meade as the community of license. *See* 60 FR 14384, March 25, 1997. As a result, Channel 294A is now allotted to Belle Meade, Tennessee, and the Station WNPL construction permit now specifies Belle Meade as the community of license. The reference coordinates for the Channel 294A allotment at Belle Meade, Tennessee, are 36–11–08 and 86–45–15. With this action, the proceeding is terminated.

EFFECTIVE DATES: September 8, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* adopted July 16, 1997, and released July 25, 1997. 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. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 294A at Mt. Juliet, and adding Belle Meade, Channel 294A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–20161 Filed 7–30–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–151; RM–8808, RM–8891]

Radio Broadcasting Services; Bear Creek and Pocono Pines, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Keymarket of NEPA, Inc., allots Channel 290A at Pocono Pines, Pennsylvania, as the community's first local aural transmission service (RM–8891). We also deny the proposal filed by Victor A. Michael, Jr., requesting the allotment of Channel 290A at Bear Creek, PA (RM–8808). *See* 61 FR 43033, August 20, 1996. Channel 290A can be allotted to Pocono Pines in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.1 kilometers (8.2 miles) northwest to avoid short-spacings to the licensed and construction permit sites of Station WNWK(FM), Channel 290B1, Newark, New Jersey. The coordinates for Channel 290A Pocono Pines are North Latitude 41–09–17 and West Longitude 75–35–52. Since Pocono Pines is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

DATES: Effective September 8, 1997. The window period for filing applications for Channel 290A at Pocono Pines, Pennsylvania, will open on September 8, 1997, and close on October 9, 1997.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–151, adopted July 16, 1997, and released July 25, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

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

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–20165 Filed 7–30–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. 97–038; Notice 01]

RIN 2127–AG71

Federal Motor Vehicle Theft Prevention Standard; Final Listing of Model Year 1998 High-Theft Vehicle Lines

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule announces NHTSA's determination for model year

(MY) 1998 high-theft vehicle lines that are subject to the parts-marking requirements of the Federal motor vehicle theft prevention standard, and high-theft lines that are exempted from the parts-marking requirements because the vehicles are equipped with antitheft devices determined to meet certain statutory criteria, for MY 1998, pursuant to the statute relating to motor vehicle theft prevention.

EFFECTIVE DATE: The amendment made by this final rule is effective July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Motor Vehicle Theft Group, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: The ''Anti Car Theft Act of 1992'' amended the law relating to the parts-marking of major component parts on designated high-theft vehicle lines and other motor vehicles. One amendment made by the Anti Car Theft Act was to 49 U.S.C. 33101(10), where the definition of ''passenger motor vehicle'' now includes a ''multipurpose passenger vehicle or light duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight.'' Since ''passenger motor vehicle'' was previously defined to include passenger cars only, the effect of the Anti Car Theft Act is that certain multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines may be determined to be high-theft vehicles, subject to the Federal motor vehicle theft prevention standard (49 CFR part 541).

The purpose of the theft prevention standard is to reduce the incidence of motor vehicle theft by facilitating the tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major component vehicle parts. The theft prevention standard requires motor vehicle manufacturers to inscribe or affix VINs onto covered original equipment major component parts, and to inscribe or affix a symbol identifying the manufacturer and a common symbol identifying the replacement component parts for those original equipment parts, on all vehicle lines selected as high-theft.

Another amendment made by the Anti Car Theft Act was to 49 U.S.C. 33103. This section required NHTSA to promulgate a parts-marking standard applicable to major parts installed by manufacturers of ''passenger motor vehicles (other than light duty trucks) in not to exceed one-half of the lines not designated under 49 U.S.C. 33104 as high-theft lines.'' NHTSA published the final rule amending 49 CFR Part 541, which now includes the definitions of MPV and LDT, and major component parts. (See 59 FR 64164, December 13, 1995.)

49 U.S.C. 33104(a)(3) specifies that NHTSA shall select high-theft vehicle lines, with the agreement of the manufacturer, if possible. Section 33104(d) provides that once a line has been designated as likely high-theft, it remains subject to the theft prevention standard unless that line is exempted under Section 33106. Section 33106 provides that a manufacturer may petition to have a high-theft line exempted from the requirements of section 33104, if the line is equipped with an antitheft device as standard equipment. The exemption is granted if NHTSA determines that the antitheft device is likely to be as effective as compliance with the theft prevention standard in reducing and deterring motor vehicle thefts.

The agency annually publishes the names of the lines which were previously listed as high-theft, and the lines which are being listed for the first time and will be subject to the theft prevention standard beginning with MY 1998. It also identifies those lines that are exempted from the theft prevention standard for the 1998 model year because of standard equipment antitheft devices.

For MY 1998, the agency selected three new vehicle lines as likely to be high-theft lines, in accordance with the procedures published in 49 CFR part 542. The newly selected lines are the Kia Motors S–II, the Subaru Forester (MPV), and the Toyota Sienna (MPV). In addition to these three vehicle lines, the list of high-theft vehicle lines includes all lines previously selected as high theft and listed for prior model years.

On April 8, 1996, the final listing of high-theft lines for the MY 1997 vehicle lines was published in the **Federal Register** (61 FR 15390). The final listing identified vehicle lines that were listed for the first time and became subject to the theft prevention standard beginning with the 1997 model year. However, the agency was subsequently informed that several of those lines are no longer being manufactured for sale in the United States. Therefore, the following vehicle lines have been deleted from Appendix A of this listing: the Chrysler Dodge Spirit and Plymouth Acclaim, the Ford Tempo and Mercury Topaz, the Hyundai Excel and Scoupe, and the Mitsubishi Pickup.

The list of lines that have been exempted by the agency from the parts-marking requirements of Part 541 includes high-theft lines newly exempted in full beginning with MY 1998. The two vehicle lines newly exempted in full are the General Motors Cadillac Seville and Pontiac Sunfire. Furthermore, Appendix A has been amended to reflect a name change for the General Motors Oldsmobile Cutlass Supreme. It has been renamed the Oldsmobile Intrigue beginning with MY 1998.

The vehicle lines listed as being subject to the parts-marking standard have previously been selected as high-theft lines in accordance with the procedures set forth in 49 CFR Part 542. Under these procedures, manufacturers evaluate new vehicle lines to conclude whether those new lines are likely to be high theft. The manufacturer submits these evaluations and conclusions to the agency, which makes an independent evaluation; and, on a preliminary basis, determines whether the new line should be subject to the parts-marking requirements. NHTSA informs the manufacturer in writing of its evaluations and determinations, together with the factual information considered by the agency in making them. The manufacturer may request the agency to reconsider the preliminary determinations. Within 60 days of the receipt of these requests, the agency makes its final determination. NHTSA informs the manufacturer by letter of these determinations and its response to the request for reconsideration. If there is no request for reconsideration, the agency's determination becomes final 45 days after sending the letter with the preliminary determination. Each of the new lines on the high-theft list has been the subject of a final determination under either 49 U.S.C. 33103 or 33104.

Similarly, the lines listed as being exempt from the standard have previously been exempted in accordance with the procedures of 49 CFR part 543 and 49 U.S.C. 33106.

Therefore, NHTSA finds for good cause that notice and opportunity for comment on these listings are unnecessary. Further, public comment on the listing of selections and exemptions is not contemplated by 49 U.S.C. Chapter 331.

For the same reasons, since this revised listing only informs the public of previous agency actions and does not impose additional obligations on any party, NHTSA finds for good cause that the amendment made by this notice

should be effective as soon as it is published in the **Federal Register**.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this rule and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also considered this notice under Executive Order 12866. As already noted, the selections in this final rule have previously been made in accordance with the provisions of 49 U.S.C. 33104, and the manufacturers of the selected lines have already been informed that those lines are subject to the requirements of 49 CFR part 541 for MY 1998. Further, this listing does not actually exempt lines from the requirements of 49 CFR part 541; it only informs the general public of all such previously granted exemptions. Since the only purpose of this final listing is to inform the public of prior agency actions for MY 1998, a full regulatory evaluation has not been prepared.

2. Regulatory Flexibility Act

The agency has also considered the effects of this listing under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the effect of this final rule is simply to inform the public of those lines that are subject to the requirements of 49 CFR part 541 for MY 1998. The agency believes that the listing of this information will not have any economic impact on small entities.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule, and determined that it will not have any significant impact on the quality of the human environment.

4. Federalism

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

5. Civil Justice Reform

This final rule does not have a retroactive effect. In accordance with section 33118 when the Theft Prevention Standard is in effect, a State or political subdivision of a State may not have a different motor vehicle theft prevention standard for a motor vehicle or major replacement part. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909. Section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

PART 541—[AMENDED]

1. The authority citation for Part 541 continues to read as follows:

Authority: 49 U.S.C. 33102–33104 and 33106; delegation of authority at 49 CFR 1.50.

2. In Part 541, Appendices A, A–I and A–II are revised to read as follows:

APPENDIX A TO PART 541.—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD

Manufacturer	Subject lines
Alfa Romeo	Milano 161.
	164.
BMW	Z3.
	3 Car Line.
	6Car Line.
Chrysler	Chrysler Cirrus.
	Chrysler Executive, Sedan/Limousine.
	Chrysler Fifth Avenue/Newport.
	Chrysler Laser.
	Chrysler LeBaron/Town & Country.
	Chrysler LeBaron GTS.
	Chrysler's TC.
	Chrysler New Yorker Fifth Avenue.
	Chrysler Sebring.
	Chrysler Town & Country.[1]
	Dodge 600.
	Dodge Aries.
	Dodge Avenger.
	Dodge Colt.
	Dodge Daytona.
	Dodge Diplomat.
	Dodge Lancer.
	Dodge Neon.
	Dodge Shadow.
	Dodge Stratus.
	Dodge Stealth.
	Eagle Summit.
	Eagle Talon.
	Jeep Cherokee (MPV).[1]
	Jeep Grand Cherokee (MPV).[1]
	Jeep Wrangler (MPV).[1]
	Plymouth Caravelle.
	Plymouth Colt.
	Plymouth Laser.
	Plymouth Gran Fury.

APPENDIX A TO PART 541.—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD—Continued

Manufacturer	Subject lines
	Plymouth Neon.
	Plymouth Reliant.
	Plymouth Sundance.
	Plymouth Breeze.
Consulier	Consulier GTP.
Ferrari	Mondial 8.
	308.
	328.
Ford	Aspire.[1]
	Crown Victoria.[1]
	Ford Escort.[1]
	Ford Mustang.
	Ford Probe.
	Ford Taurus.[1]
	Ford Thunderbird.
	Lincoln Continental.
	Lincoln Mark.
	Lincoln Town Car.
	Mercury Capri.
	Mercury Cougar.
	Mercury Grand Marquis.[1]
	Mercury Sable.[1]
	Mercury Tracer.[1]
	Merkur Scorpio.
	Merkur XR4Ti.
General Motors.	Buick Electra.
	Buick Reatta.
	Buick Skylark.[1]
	Chevrolet Astro (MPV).[1]
	Chevrolet Beretta.[1]
	Chevrolet Caprice.[1]
	Chevrolet Corsica.[1]
	Chevrolet Lumina APV (MPV).[1]
	Chevrolet Monte Carlo (MYs 1987–88).
	Chevrolet Nova.
	Chevrolet Blazer (MPV).[1]
	Chevrolet S–10 Pickup.[1]
	Geo Prizm.[3]
	Geo Storm.[3]
	Geo Tracker (MPV).[1,3]
	GMC Jimmy (MPV).[1]
	GMC Safari (MPV).[1]
	GMC Sonoma Pickup.[1]
	Oldsmobile Achieva.[1]
	Oldsmobile Bravada.[1]
	Oldsmobile Cutlass Ciera.[1]
	Oldsmobile Cutlass Supreme (MYs 1988–1997).[2]
	Oldsmobile Intrigue.
	Pontiac Fiero.
	Pontiac Grand Am.[1]
	Pontiac Grand Prix.
	Saturn Sports Coupe.
Honda	Accord.[1]
	Civic.[1]
	CRV (MPV).[1]
	Passport.[1]
	Prelude.[1]
	Acura Integra.[1]
Hyundai	Accent.
	Sonata.[1]
	Tiburon.[1]
ISUZU	Impulse.
	Rodeo.[1]
	Stylus.
	Trooper/Trooper II.[1]
JAGUAR	XJ.

APPENDIX A TO PART 541.—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD—Continued

Manufacturer	Subject lines
	XJ–6.
	XJ–40.
KIA MOTORS	S-II.[2]
LOTUS	Elan.
MASERATI	Biturbo.
	Quattroporte.
	228.
MAZDA	GLC.
	626.
	MX–6.
	MX–5 Miata.
	MX–3.
MERCEDES-BENZ.	190 D.
	190 E.
	250D–T.
	260 E.
	300 SE.
	300 TD.
	300 SDL.
	300 SEC/500 SEC.
	300 SEL/500 SEL.
	420 SEL.
	560 SEL.
	560 SEC.
	560 SL.
MITSUBISHI	Cordia.
	Eclipse.
	Mirage.
	Montero (MPV).[1]
	Montero Sport (MPV).[1]
	Tredia.
	3000GT.
NISSAN	240SX.[1]
	Maxima.
	Pathfinder.[1]
	Sentra.[1]
	Stanza/Altima.[1]
PEUGEOT	405.
PORSCHE	924S.
SUBARU	XT.
	SVX.
	Forester (MPV).[2]
	Legacy.
SUZUKI	X90.[1]
	Samurai (MPV).[1]
	Sidekick (MPV).[1]
TOYOTA	4-Runner (MPV).[1]
	Avalon.
	Camry.
	Celica.
	Corolla/Corolla Sport.
	MR2.
	RAV4 (MPV).[1]
	Starlet.
	Sienna (MPV).[2]
	Tercel.[1]

APPENDIX A TO PART 541.—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD—Continued

Manufacturer	Subject lines
VOLKSWAGEN.	Audi Quattro.
	Rabbit.
	Scirocco.

[1] Lines added for MY 1997.
[2] Lines added for MY 1998.
[3] All Geo models will be replaced by the Chevrolet make identifier beginning with MY 1998.

APPENDIX A–I.—HIGH-THEFT LINES WITH ANTITHEFT DEVICES WHICH ARE EXEMPTED FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

Manufacturer	Subject lines
Austin Rover	Sterling.
BMW	5 Car Line.[1]
	7 Car Line
	8 Car Line.
Chrysler	Chrysler Conquest.
	Imperial.
General Motors.	Buick Park Avenue.[1]
	Buick Regal/Century.[1]
	Buick Riviera.
	Cadillac Allante.
	Cadillac Seville.[2]
	Chevrolet Cavalier.[1]
	Chevrolet Corvette.
	Chevrolet Lumina/Monte Carlo.
	Oldsmobile Aurora.
	Oldsmobile Toronado.
	Pontiac Sunfire.[2]
Honda	Acura CL.[1]
	Acura Legend (MYs 1987–1996).[3]
	Acura NS–X.
	Acura RL.
	Acura SLX.[1]
	Acura TL.
	Acura Vigor (MYs 1992–1995).[4]
Isuzu	Impulse (MYs 1987–1991).
Jaguar	XK8.[1]
Mazda	929.
	RX–7.
	Millenia.
	Amati 1000.
Mercedes-Benz.	124 Car Line (the models within this line are):
	300D.
	300E.
	300CE.
	300TE.
	400E.
	500E.
	129 Car Line (the models within this line are):
	300SL.
	500SL.
	600SL.
	202 Car Line.
	C-Class.
Mitsubishi	Galant.
	Starion.
	Diamante.
Nissan	300ZX.
	Infiniti M30.
	Infiniti QX4.[1]
	Infiniti Q45.
	Infiniti J30.
	Infiniti I.
Porsche	911.
	928.
	968.
	Boxster.
Saab	900.
	9000.
Toyota	Supra.
	Cressida.
	Lexus ES.
	Lexus GS.
	Lexus LS.
	Lexus SC.
Volkswagen	Audi 5000S.
	Audi 100.
	Audi 200.
	Audi A6.
	Audi S4.
	Audi S6.
	Audi Cabriolet.
	Volkswagen Cabrio.
	Volkswagen Corrado.
	Volkswagen Golf/GTI.
	Volkswagen Passat.[1]
	Volkswagen Jetta/Jetta III.

[1] Exempted in full beginning with MY 1997.
[2] Exempted in full beginning with MY 1998.
[3] Renamed the Acura RL beginning with MY 1997.
[4] Replaced by the Acura TL beginning with MY 1996.

APPENDIX A—II TO PART 541.—HIGH-THEFT LINES WITH ANTITHEFT DEVICES WHICH ARE EXEMPTED IN-PART FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

Manufacturers	Subject lines	Parts to be marked
General Motors	Buick LeSabre	Engine, Transmission.
	Cadillac Deville	Engine, Transmission.
	Cadillac Eldorado	Engine, Transmission.
	Cadillac Sixty Special[1]	Engine, Transmission.
	Oldsmobile 98	Engine, Transmission.
	Pontiac Bonneville	Engine, Transmission.

APPENDIX A—II TO PART 541.—HIGH-THEFT LINES WITH ANTITHEFT DEVICES WHICH ARE EXEMPTED IN-PART FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543—Continued

Manufacturers	Subject lines	Parts to be marked
	Pontiac Firebird	Engine, Transmission.
	Chevrolet Camaro	Engine, Transmission.
	Oldsmobile 88 Royale	Engine, Transmission.

[1] Renamed the Cadillac Concours beginning with MY 1994.

Issued on: July 23, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–20095 Filed 7–30–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92–33; Notice 4]

RIN 2127–AE36

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Final rule; technical amendment.

SUMMARY: This document amends S5.8.10 to substitute S5.8.1 for its erroneous internal reference to S5.7.1.

DATES: The amendment is effective July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202) 366–5263.

SUPPLEMENTARY INFORMATION: Standard No. 108 was amended on December 10, 1992 to add Paragraph S5.7 Conspicuity systems, and to redesignate as S5.8 Replacement Equipment, S5.8.1, and S5.8.2, the existing paragraphs S5.7 Replacement Equipment, S5.7.1, and S5.7.2. (57 FR 58406).

At the time of its redesignation, paragraph S5.7.2 specified that, unless otherwise specified in Standard No. 108, ''each lamp, reflective device, or item of associated equipment to which [the replacement equipment provisions of] section S5.7.1 applies may be labeled with the symbol DOT, which shall constitute a certification that it conforms to applicable Federal motor vehicle safety standards.'' The internal reference to S5.7.1 should have been changed to S5.8.1 with the redesignations, but it was not.

A subsequent amendment to Standard No. 108 on March 3, 1993, redesignated S5.8.2 as S5.8.10, also without revising the now-erroneous internal reference to S5.7.1 (58 FR 12183).

Accordingly, it is necessary for NHTSA to correct its oversight in the two previous redesignations by revising paragraph S5.8.10 to change its internal reference to S5.7.1 to S5.8.1. Because this is a technical amendment, prior notice and comment upon it are not required, and the amendment will become effective upon publication.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. In § 571.108, paragraph S5.8.10 is revised to read as set forth below:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S5.8.10 Unless otherwise specified in this standard, each lamp, reflective device, or item of associated equipment to which paragraph S5.8.1 applies may be labeled with the symbol DOT, which shall constitute a certification that it conforms to applicable Federal motor vehicle safety standards.

Issued on July 24, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–20093 Filed 7–30–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

Buy America; Rolling Stock, Technical Amendment

AGENCY: Federal Transit Administration, DOT.

ACTION: Technical amendment.

SUMMARY: This technical amendment restores appendices to § 661.11 of the agency's Buy America regulation, which governs procurements of rolling stock. These appendices were inadvertently deleted during a recent revision of the rule.

EFFECTIVE DATE: July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Rita Daguillard, Office of the Chief Counsel, 202–366–1936.

SUPPLEMENTARY INFORMATION: The Federal Transit Administration's (FTA) Buy America regulation, 49 CFR part 661, implements the domestic preference provisions of 49 U.S.C. 5323(j). Under these provisions, all iron, steel, and manufactured products procured with FTA funds must be of U.S. origin. Section 661.11 of the regulation governs procurements of rolling stock.

During a recent revision of the regulation (61 FR 6300, February 16, 1996), Appendix A (''General Waivers''), Appendix B (''Typical Components of Buses''), and Appendix C (''Typical Components of Rail Rolling Stock'') were inadvertently deleted. Today's technical amendment of the regulation restores those appendices. For the reasons set forth above, Title 49, Chapter VI of the Code of Federal Regulations is amended as set forth below:

PART 661—BUY AMERICA REQUIREMENTS—SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982, AS AMENDED

1. The authority citation for part 661 continues to read as follows:

Authority: 49 U.S.C. 5323(j) (formerly sec. 165, Pub. L. 97–424; as amended by sec. 337,

Pub. L. 100–17 and sec. 1048, Pub. L. 102–240); 49 CFR 1.51.

2. Section 661.11 is amended by adding Appendices A, B and C to read as follows:

§ 661.11 Rolling stock procurements.

* * * * *

Appendix A to § 661.11—General Waivers

(a) The provisions of § 661.11 of this part do not apply when foreign sourced spare parts for buses and other rolling stock (including train control, communication, and traction power equipment) whose total cost is 10 percent or less of the overall project contract cost are being procured as part of the same contract for the major capital item.

(b) [Reserved]

Appendix B to § 661.11—Typical Components of Buses

The following is a list of items that typically would be considered components of a bus. This list is not all-inclusive.

Engines, transmissions, front axle assemblies, rear axle assemblies, drive shaft assemblies, front suspension assemblies, rear suspension assemblies, air compressor and pneumatic systems, generator/alternator and electrical systems, steering system assemblies, front and rear air brake assemblies, air conditioning compressor assemblies, air conditioning evaporator/condenser assemblies, heating systems. passenger seats, driver's seat assemblies, window assemblies, entrance and exit door assemblies, door control systems, destination sign assemblies, interior lighting assemblies, front and rear end cap assemblies, front and rear bumper assemblies, specialty steel (structural steel tubing, etc.) aluminum extrusions, aluminum, steel or fiberglass exterior panels, and interior trim, flooring, and floor coverings.

Appendix C to § 661.11—Typical Components of Rail Rolling Stock

The following is a list of items that typically would be considered components of rail rolling stock. This list is not all inclusive.

Car shells, main transformer, pantographs, traction motors, propulsion gear boxes, interior linings, acceleration and braking resistors, propulsion controls, low voltage auxiliary power supplies, air conditioning equipment, air brake compressors, brake controls, foundation brake equipment, articulation assemblies, train control systems, window assemblies, communication equipment, lighting, seating, doors, door actuators, and controls, couplers and draft gear, trucks, journal bearings, axles, diagnostic equipment, and third rail pick-up equipment.

Issued On:July 25, 1997.

Gordon J. Linton,

Administrator.

[FR Doc. 97–20109 Filed 7–30–97; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD39

Endangered and Threatened Wildlife and Plants; Final Rule for 13 Plant Taxa From the Northern Channel Islands, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status for *Arabis hoffmannii* (Hoffmann's rock-cress), *Arctostaphylos confertiflora* (Santa Rosa Island manzanita), *Berberis pinnata* ssp. *insularis* (island barberry), *Castilleja mollis* (soft-leaved paintbrush), *Galium buxifolium* (island bedstraw), *Gilia tenuiflora* ssp. *hoffmannii* (Hoffmann's slender-flowered gilia), *Malacothamnus fasciculatus* ssp. *nesioticus* (Santa Cruz Island bushmallow), *Malacothrix indecora* (Santa Cruz Island malacothrix), *Malacothrix squalida* (island malacothrix), *Phacelia insularis* ssp. *insularis* (island phacelia), and *Thysanocarpus conchuliferus* (Santa Cruz Island fringepod) and threatened status for *Dudleya nesiotica* (Santa Cruz Island dudleya) and *Helianthemum greenei* (island rush-rose) pursuant to the Endangered Species Act of 1973, as amended (Act). The 13 plant taxa from the northern Channel Islands, California and their habitats have been variously affected or are currently threatened by one or more of the following: soil loss; habitat alteration by mammals alien to the Channel Islands (pigs, goats, sheep, donkeys, cattle, deer, elk, bison); direct predation by these same alien mammals; habitat alteration by native seabirds; habitat alteration due to vehicular traffic; overcollection for scientific or recreational purposes; competition with alien plant taxa; reduced genetic viability; depressed reproductive vigor; and the chance of random extinction resulting from small numbers of individuals and populations. A notice of withdrawal of the proposal to list *Dudleya blochmaniae* ssp. *insularis* (Santa Rosa Island dudleya), *Dudleya* sp. nov. ''East Point'' (munchkin dudleya), and *Heuchera maxima* (Island alum-root) which were proposed (July 25, 1995, 60 FR 37993) for listing along with the 13 taxa considered in this rule, is published concurrently with this final rule.

DATES: This rule becomes effective September 2, 1997.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours at the Ventura Field Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Tim Thomas or Connie Rutherford, Botanists, Ventura Field Office (see **ADDRESSES** section) (telephone number 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Arabis hoffmannii (Hoffmann's rock-cress), *Arctostaphylos confertiflora* (Santa Rosa Island manzanita), *Berberis pinnata* ssp. *insularis* (island barberry), *Castilleja mollis* (soft-leaved paintbrush), *Dudleya nesiotica* (Santa Cruz Island dudleya), *Galium buxifolium* (island bedstraw), *Gilia tenuiflora* ssp. *hoffmannii* (Hoffmann's slender-flowered gilia), *Helianthemum greenei* (island rush-rose), *Malacothamnus fasciculatus* ssp. *nesioticus* (Santa Cruz Island bushmallow), *Malacothrix indecora* (island malacothrix), *Malacothrix squalida* (Santa Cruz Island malacothrix), *Phacelia insularis* ssp. *insularis* (island phacelia), and *Thysanocarpus conchuliferus* (Santa Cruz Island fringepod) are California Channel Island endemics. The only species in this group that is not restricted to the four northern islands (Anacapa, Santa Cruz, Santa Rosa, and San Miguel) is the island rush-rose, with one population known from Santa Catalina Island.

Located offshore and south of Santa Barbara County, the four northern islands are the highest points on a 130 kilometer (km) (80 mile (mi)) long seamount (Dibblee 1982). They are included within the boundaries of the Channel Islands National Park (CINP). Anacapa Island is the smallest of the four northern islands and includes three smaller islands referred to as East, Middle, and West Anacapa, that total 2.9 square (sq) km (1.1 sq mi); it is the closest island to the mainland at a distance of 20 km (13 mi). East and Middle Anacapa islands are flat-topped, wave-cut terraces largely surrounded by steep cliffs. West Anacapa is the highest of the three, reaching 283 meters (m) (930 feet (ft)) above sea level. Santa Cruz

Island is the largest of the California Channel Islands at 249 sq km (96 sq mi) with the highest point being 753 m (2,470 ft) above sea level. Santa Rosa Island is 217 sq km (84 sq mi) in area and 475 m (1,560 ft) at its highest point. San Miguel Island, the westernmost of the northern group, is 37 sq km (14 sq mi) in area and 253 m (830 ft) in height. Santa Catalina Island, on which one population of *Helianthemum greenei* occurs, lies about 113 km (70 mi) to the southeast of the northern island group; it is 194 sq km (75 sq mi) in area and its highest elevation is 648 m (2,125 ft) (Power 1980).

The northern Channel Islands are managed primarily by Federal agencies. Anacapa Island is managed by the National Park Service (NPS) with an inholding for the U.S. Coast Guard lighthouse. The western 90 percent of Santa Cruz Island is privately owned and managed by The Nature Conservancy (TNC). The remaining 10 percent of the island is Federal land managed by the NPS. Santa Rosa Island is managed by the NPS. San Miguel Island is under the jurisdiction of the U.S. Department of the Navy (Navy), but the NPS has operational jurisdiction through a Memorandum of Agreement. Except for the City of Avalon, Santa Catalina Island is privately owned and managed by the Catalina Island Conservancy.

Anacapa was set aside (with Santa Barbara Island to the south) as a National Monument in 1938. In 1980, the U.S. Congress abolished the National Monument and incorporated its lands, waters and interests into National Park status, adding Santa Cruz Island and Santa Rosa Island (at that time privately owned) within the boundaries. The NPS acquisition of Santa Rosa Island in 1986 was accomplished by outright fee purchase from the Vail and Vickers Ranching Company. A cattle ranching operation and a subleased commercial deer and elk hunting operation on Santa Rosa Island are operating under 5-year renewable special use permits, renewable until the year 2011.

TNC acquired an easement for 4,800 hectares (ha) (12,000 acres (ac)) of Santa Cruz Island in 1978 and took ownership of nine-tenths of the island in 1987. TNC's general goals for preserve management include the preservation, protection, restoration, and understanding of the natural resources (Rob Klinger, TNC, Santa Cruz Island, pers. comm. 1994). Although a specific management plan for the Santa Cruz Island Preserve has not been developed, TNC has developed a strategic direction that will focus on managing feral pigs (*Sus scrofa*), fennel (*Foeniculum vulgare*), and fire. These activities include long-term monitoring of specific plant communities and rare plant populations; trial programs in feral pig removal, herbicide treatment of alien plant species, controlled burns in grassland and island pine communities; and research on specific species and the response of plant communities to removal of non-native mammals. A 5-year trial feral pig removal program was successful in removing all but a few pigs from a 2,400-ha (6,000-ac) exclosure on the south side of the island. The number of pigs fluctuates depending on precipitation and acorn crop. TNC also took immediate steps to remove cattle (*Bos taurus*) and sheep (*Ovis domesticus*) upon acquiring the property, but has been unable to manage the rapid spread of the alien plant, fennel, that resulted from the release of grazing pressure. TNC is exploring options for implementing island-wide feral pig removal and other management activities; these options may include developing an agreement with NPS for that agency to manage the island. Pig numbers are increasing on Santa Cruz Island (E. Painter *in litt.* 1997).

Subsequent to the relocation by missionaries of the native Chumash Indian populations from the islands to the mainland by 1814 (Hobbs 1983), land use practices on the islands focused on the introduction of a variety of livestock including sheep, goats (*Capra hircus*), cattle, pigs, burros (*Equus asinus*), and horses (*E. caballus*). Other alien mammal species were also introduced, including deer (*Odocoilius hemionus*), elk (*Cervus canadensis roosevelti*), bison (*Bison bison*), rabbits (*Oryctolagus cuniculus*), wild turkey (*Melegris gallopavo*), California quail (*Callipepla californica*), and chukar (*Alectoris chuckar*) for ranching and hunting purposes (Hochberg *et al.* 1980a, Minnich 1980, Jones *et al.* 1989).

The introduction of alien herbivores to the islands has had catastrophic effects on island vegetation. Pigs had been released on Santa Cruz Island by 1854 (Hobbs 1983). Records for Santa Cruz Island indicate that sheep had been introduced in the early 1830's; by 1875, sheep stocking was around 50,000 head (Hobbs 1983). In 1890, perhaps as many as 100,000 sheep grazed on Santa Cruz Island (Hochberg *et al.* 1980a). Droughts, exacerbated by overgrazing, occurred in 1864, 1870–72, 1877, 1893–1904, 1923–24, 1935, 1946–48, 1964, (Dunkle 1950, Johnson 1980) and most recently 1986–91 (Halvorson 1993). These episodes resulted in losses of livestock and other herbivores due to starvation (Johnson 1980, Sauer 1988). Manipulation of the vegetation by over 150 years of intensive grazing and browsing has resulted in the replacement of native plant communities with non-native grasslands (Minnich 1980, Hobbs 1983).

Several alien weedy plants have invaded the disturbed habitats of the islands. One of the most obvious problem species is fennel on Santa Cruz Island. Fennel and other aggressive non-native weed species displace native species and further threaten the ecological integrity of the island ecosystems (Smith 1989, Simberloff 1990). Research methods and results to date for the control of fennel were the topics of several presentations at the fourth Channel Islands symposium (Brenton and Klinger 1994, Dash and Gliessman 1994, Gliessman 1994).

Some progress has been made toward eliminating alien animals from the islands. TNC has eliminated the cattle and sheep from the western portion of Santa Cruz Island, and continues to prevent sheep from invading from the eastern portion of the island (Kelley 1997). The NPS purchased the east end of the Santa Cruz Island in February 1997 and initiated a sheep control program. The NPS has removed all the pigs from Santa Rosa Island. A program to control goats and pigs is being implemented on western Santa Catalina Island. However, no action has been taken to eliminate deer and elk from Santa Rosa Island, or pigs from the majority of Santa Cruz Island, or bison which have been introduced to Santa Catalina Island.

The floristics of the islands are composed of elements that have a variety of origins, and include relict populations of formerly wider-ranging species such as the endemic island ironwoods (*Lyonothamnus floribundus*) and disjunct species such as the Torrey pine (*Pinus torreyana*). Such species typically occur in canyons and on slopes with more moderate environments than those that prevail in surrounding areas. Island endemics, including all of the species in this final rule, have been discussed by Raven (1967), Philbrick (1980), and Wallace (1985). Fifty-four island endemic plant species are known from the northern Channel Islands; 15 species are single island endemics (Halvorson *et al.* 1987). Some of the most striking examples of extinction have occurred from islands around the world; from the Channel Islands, notable extinctions include the Santa Barbara Island song sparrow (*Melospiza melodia cooperi*) and Santa Cruz Island monkeyflower (*Mimulus brandegei*). Nine plant species have been extirpated from various islands

within the northern island group: three from Santa Cruz (*Malacothrix incana, Mimulus brandegei*, and *Sibara filifolia*), two from Santa Rosa (*Berberis pinnata* ssp. *insularis*, and *Helianthemum greenei*), and four from San Miguel (*Grindelia latifolia, Ceanothus megacarpus* ssp. *insularis, Rhamnus pirifolia*, and *Ericameria ericoides*) (Philbrick 1980, Halvorson *et al.* 1987, Clark *et al.* 1990).

The main habitat types on the islands include coastal dune, coastal bluff, coastal sage scrub, grasslands, chaparral, oak and ironwood woodlands, riparian woodlands, and conifer forest; various subdivisions of these types have been described by Dunkle (1950), Philbrick and Haller (1977), Minnich (1980), Clark *et al.* (1990), and Coonan *et al.* (1996). Coastal beach and associated dune habitats occur in the windiest sandy locations on the three westernmost islands. These coastal habitats appear to be relatively undisturbed compared to mainland sites where development and recreation have largely eliminated them. Coastal bluff habitat has provided a refugium for many plants from grazing by non-native animals (Minnich 1980, Halvorson *et al.* 1992).

The upland habitats were formerly mostly shrub-dominated and included coastal sage scrub and chaparral habitats. Historic reports indicate that these brushlands were impenetrable (Hochberg *et al.* 1980a). Historical photographs reveal a significant loss of woody vegetation from the islands during the last 100 years (Hobbs 1980, Minnich 1980). Coastal sage habitat is composed of soft-leaved, soft-stemmed plants that are easily broken by trampling and palatable to both browsers and grazers. The original coastal sage scrub habitat has been reduced by overgrazing to the extent that it persists only in locations inaccessible to grazing and browsing animals, such as bluffs and marginal habitat in patches of cactus (Minnich 1980, Hobbs 1983, Painter *in litt.* 1997). Coastal sage scrub habitat has increased in importance on Anacapa and San Miguel Islands where grazing has been removed (Johnson 1980).

The structure of the remnant chaparral habitats has also been modified by grazing and browsing, such that shrubs form arborescent (treelike) shapes or extremely low, prostrate forms. Continued browsing by deer and elk on Santa Rosa Island has created an open 'skeleton' community reticulated by game trails that provide access to nearly 100 percent of the habitat (Hochberg *et al.* 1980a; Tim Thomas, U.S. Fish and Wildlife Service (USFWS), pers. obs., 1993).

Grasslands are largely composed of non-native annual species and have greatly expanded at the expense of most other habitat types (Hobbs 1983, Cole and Liu 1994). The pre-grazing importance of cactus in the island communities will never be known. Overgrazing has resulted in the spread of cactus to areas denuded by livestock. Overgrazing on Santa Cruz Island facilitated the spread of cactus to the point that over 40 percent of the rangeland was rendered useless (Hochberg *et al.* 1980a). Cactus habitats on Santa Cruz and Santa Rosa Islands have been dramatically reduced to improve cattle operations by the introduction of biological controls (Hochberg *et al.* 1980a).

Island woodlands are dominated by unique endemic species and have also been heavily affected by grazing, browsing, and rooting animals seeking summer shelter and food (Clark *et al.* 1990, Halvorson 1993). Riparian woodlands are heavily modified physically and structurally, and in some areas they have been completely eliminated (Hochberg *et al.* 1980a, Minnich 1980). Normally, a canyon with year-round water will have well-developed riparian vegetation that includes willows (*Salix* spp.), sycamores (*Platanus racemosa*), cottonwoods (*Populus* spp.) and oaks (*Quercus* spp.). This vegetation would typically support a rich diversity of organisms, especially neo-tropical migratory bird species, but years of overutilization by introduced mammals have considerably reduced this formerly resource-rich habitat.

The bishop pine forests that are protected from grazing have well-developed foliar cover and pine reproduction (Hobbs 1978). In contrast, Clark *et al.* (1990) reported that bishop pine forests that are subjected to grazing lack the protective nutrient layer of ground litter and exhibit no reproduction.

Pigs, cattle, deer, elk, goats, sheep, and bison continue to threaten and further degrade whole ecosystems on the islands (Sauer 1988, Halvorson 1993). Many of the taxa in this rule survive only in areas that are inaccessible to the alien ungulates and then only on sites that are marginally suitable making their persistence tenuous (Painter *in litt.* 1997).

Discussion of the Taxa Included in This Rule

The current and historic distribution of the taxa included in this rule are shown in Table 1. Seven of these taxa are known only from one island, although two of these have been extirpated from other islands on which they occurred historically. The remaining six taxa currently occur on only two islands, although two of these six have been extirpated from a third island from which they were known historically. All but 3 of the 13 taxa are known from five or fewer populations.

Arabis hoffmannii (Hoffmann's rock-cress) was described by Philip Alexander Munz as *Arabis maxima* var. *hoffmannii* in 1932 based on specimens collected by Ralph Hoffmann at the ''sea cliffs east of Dick's Harbor,'' now known as Platts Harbor, on Santa Cruz Island in 1932 (Rollins 1936). T.S. Brandegee had collected this rock-cress as early as 1888 from an unspecified location on Santa Cruz Island. In 1936, Reed Clark Rollins elevated the taxon to species status by publishing the name *Arabis hoffmannii*. This nomenclature was retained in the most recent treatment of the genus (Rollins 1993).

Arabis hoffmannii is a slender, herbaceous, monocarpic (flowering once then dying) perennial in the mustard (Brassicaceae) family. The one to several stems reach 0.6 m (2.0 ft) high, and have slightly toothed basal leaves. The white to lavender flowers, comprised of four petals 1 centimeter (cm) (0.4 inch (in)) long, are found at the tips of the stems. The slightly curved fruits are borne on long stalks (siliques). The only other rock-cress that occurs on the islands, *Arabis glabra* var. *glabra*, is a taller plant with cream-colored flowers.

TABLE 1

Scientific name	Growth form	Number of populations	Distribution					
			mA	wA	CR	RO	MI	CA
Arabis hoffmannii	Perennial	4		h	x	x		
Arctostaphylos confertiflora	Shrub	<10				x		
Berberis pinnata ssp. *insularis*	Shrub or vine	3		h	x	h		

TABLE 1—Continued

Scientific name	Growth form	Number of populations	Distribution					
			mA	wA	CR	RO	MI	CA
Castilleja mollis	Perennial	2				x	h	
Dudleya nesiotica	Succulent	1			x			
Galium buxifolium	Sub-shrub	10			x		x	
Gilia tenuiflora ssp. *hoffmannii*	Annual	3				x		
Helianthemum greenei	Sub-shrub	14			x	h		x
Malacothamnus fasciculatus ssp. *nesioticus.*	Shrub	2			x			
Malacothrix indecora	Annual	2			x	x	h	
Malacothrix squalida	Annual	(3)	x		x		x	
Phacelia insularis ssp. *insularis*	Annual	1(5)				x	x	
Thysanocarpus conchuliferus	Annual	(8)			x			

NOTE.—Growth form, estimated number of populations within the past five or ten (in parentheses) years, and distribution (x) of the thirteen plant taxa; mA=middle Anacapa, wA=west Anacapa, CR=Santa Cruz, RO=Santa Rosa, MI=San Miguel, CA=Santa Catalina, h=historic distribution.

Since Brandegee's collection was made in 1888, few collections of *Arabis hoffmannii* have been made. On Santa Cruz Island, Moran made a collection from the ''Central Valley'' in 1950, and McPherson collected the plant near Centinela Grade, possibly the same location, in 1967 (Steve Junak, pers. comm. 1993). It was not until 1985 that Steve Junak relocated a population at this location (Schuyler 1986). For many decades, Hoffmann's original collection site, near Platts Harbor on Santa Cruz Island, was in ''an area of intense feral animal (sheep) disturbance,'' and no plants could be found (Hochberg *et al.* 1980a). In fact, in 1983, the Service published in the **Federal Register** (48 FR 53640) a notice of review that considered this species to be extinct. However, surveys conducted by TNC in 1985 were successful in relocating the plant near Platts Harbor (Schuyler 1986).

According to Moran's field notes, he collected *Arabis hoffmannii* from Anacapa Island in 1941 ''on the slopes above Frenchy's Cove'' (S. Junak, pers. comm. 1993). However, no specimens from this collection have been found in herbaria with known collections of island species, and recent surveys have failed to relocate the plant on Anacapa Island (S. Junak, pers. comm. 1993). Hoffmann reported the plant from ''the bank above Water Canyon'' on Santa Rosa Island in 1930, but numerous recent surveys have failed to locate any plants from that location (S. Junak, pers. comm. 1993). In 1996, a new population of the plant was discovered near the mouth of Lobo Canyon on Santa Rosa Island (McEachern 1996, Wilken 1996). The population consists of eight plants, three of which were flowering and the remaining five were vegetative rosettes. The plants are located on a rocky shelf overhanging the canyon, and are associated with giant coreopsis (*Coreopsis gigantea*), Greene's dudleya (*Dudleya greenei*), Indian pink (*Silene laciniata*), and non-native grasses. The canyon bottom below the shelf is heavily grazed and trampled by deer, cattle, and elk.

In addition to the lone population on Santa Rosa Island, *Arabis hoffmannii* is also currently known from three small populations that collectively cover less than 0.4 hectare (1 acre) on Santa Cruz Island. One of these three populations, near Platts Harbor is located on rocky volcanic cliffs along a north-facing canyon on lands owned by TNC. Because of inaccessibility, and the loose structure of the volcanic rock, the cliff site has not been thoroughly surveyed. Only a few dozen plants have been directly observed, but the cliffs may support additional individuals. A second population, near Centinela Grade, is growing on Santa Cruz Island volcanics and is associated with giant coreopsis (*Coreopsis gigantea*), Santa Cruz Island buckwheat (*Eriogonum arborescens*), and coastal prickly pear (*Opuntia littoralis*), on lands owned and managed by TNC. When Junak relocated this population, approximately 30 individuals were seen. TNC has monitored this population since 1990, with fewer than 30 plants observed each year (Klinger 1994a). The third population on Santa Cruz Island was located in 1995 near Stanton Ranch, and consists of 16 plants as of 1996 (Wilken 1996).

Recent research by Wilken (1996) on reproductive strategies of *Arabis hoffmannii* shows that individual plants in cultivation may reproduce within 2 years following establishment, with some plants surviving for at least 5 years. Individual rosettes are monocarpic, but some plants have more than one rosette. *Arabis hoffmannii* does not appear to be dependent upon pollinators for seed set, and individual plants may produce as many as 3,000 to 4,000 seed. However, the small sizes of natural populations indicate that establishment success of new plants is low. Monitoring results at two sites on Santa Cruz Island (Centinela and Stanton) suggest poor establishment success because of a lack of favorable seed germination sites, a high rate of seedling mortality, or a combination of both factors (Wilken 1996). At these two sites, surviving plants tend to be found in the shade of shrubs where there is a low cover of annual species, suggesting that *Arabis hoffmannii* cannot tolerate competition with a high cover of annual species. Fewer than 100 plants in total were present in the three studied populations (Wilken 1996).

The major threats to *Arabis hoffmannii* are loss of soil, habitat degradation, trampling of potential seed germination sites by non-native ungulates, predation resulting from feral pig rooting, and competition with annual plants.

Arctostaphylos confertiflora (Santa Rosa Island manzanita) was described by Eastwood in 1934 from a collection made by Hoffmann 4 years earlier ''in a sheltered dell south of Black Mountain'' on Santa Rosa Island (Eastwood 1934). Munz (1958) published the new combination *Arctostaphylos subcordata* var. *confertiflora.* However, in subsequent treatments of the genus Wells (1968, 1993) has continued to use the original taxonomy.

Arctostaphylos confertiflora is a perennial shrub in the heath (Ericaceae) family that grows 0.1 to 2.0 m (4 in to 6.5 ft) high (Wells 1993). The plant has smooth, dark red-purple bark, densely hairy branchlets, bracts, and pedicels, and light green, round-ovate leaves. The flowers are borne in numerous dense

panicles that mature into flattened reddish-brown fruits (McMinn 1951). The only other manzanita that occurs on Santa Rosa Island, Arctostaphylos. tomentosa, forms a fire-resistant burl at the base of the stems. Arctostaphylos confertiflora is not burl-forming and is considered an obligate seeder, requiring fire for regeneration. It occurs in prostrate and upright forms, the former most likely due to climatic and herbivorous influences (McMinn 1951).

Arctostaphylos confertiflora is known only from two areas on Santa Rosa Island. All but a few plants occur in the northeast portion of the island near, and east of, Black Mountain. Individual plants have been observed at scattered sites from upper Lobo Canyon east to the Torrey pine groves along Beechen's Bay, a distance of about 5 km (3 mi). Junak estimated that total habitat for the plant comprises only a few acres (S. Junak, pers. comm. 1994); Clark *et al.* (1990) noted that it occurs in low numbers. During 1994 surveys, three small patches were mapped within the Torrey pine groves, two in canyons on the north side of Black Mountain, and one plant near South Point (Rindlaub 1995). Additional surveys of potential habitat were begun in 1996 by United States Geological Survey Biological Resources Division (BRD) staff, but to date, few shrubs have been found (McEachern 1996). Observed shrubs have had recent twig growth browsed off by deer, and no seedlings or young plants have been observed. Ungulates have access to more than 90 percent of the plants (McEachern 1996). Fewer than 400 plants are estimated to occur, all restricted to nearly vertical canyon walls in eight populations in the Black Mountain vicinity (McEachern and Wilken 1996). Despite the steepness of the slopes, deer and elk are capable of traveling along trails which provide access to various portions of the populations. A few individuals are also known from Johnson's Lee on the south side of the island (Rindlaub 1994).

The plant is found on sedimentary substrates of Monterey shales and soft volcanoclastic sediments derived from San Miguel volcanics (Weaver *et al.* 1969). Near the southern tip of the island, a few individuals are scattered on the slopes above South Point on sandstone outcrops. The taxon occurs as a component of mixed chaparral, mixed woodland, Torrey pine woodland, and island pine woodland communities. Researchers observed that elk and deer bed down in the shade of larger shrubs, including *Arctostaphylos confertiflora,* causing compaction and erosion of soils, and exposing the roots of the plants (McEachern and Wilken 1996).

Arctostaphylos confertiflora is threatened by soil loss, low reproductive success, and herbivory by elk and deer that has contributed to reproductive failure. The seed bank is either absent or so depleted as a result of soil loss that a catastrophic fire could eliminate the species because recruitment is dependent upon fire treated seed.

Berberis pinnata ssp. *insularis* (island barberry) was described by Munz (Munz and Roos 1950) based on a specimen collected by Wolf in 1932 ''west of summit of Buena Vista Grade (also known as Centinela Grade), interior of Santa Cruz Island.'' In 1981, Roof included this taxon in the genus *Mahonia* because the leaves are compound, in contrast with the simple leaves of *Berberis* (Roof 1981). However, Moran (1982) made the case that this one character was insufficient to defend *Mahonia* as a distinct natural group, and many subsequent treatments have included all North American taxa previously referred to *Mahonia* as *Berberis.* This taxon has been treated as *Berberis pinnata* ssp. *insularis* by Munz (1974), Smith (1976), and Williams (1993).

Berberis pinnata ssp. *insularis* is a perennial shrub in the barberry family (Berberidaceae). The plant has spreading stems that reach 2 to 8 m (5 to 25 ft) high, with large leaves divided into five to nine glossy green leaflets. Clusters of yellow flowers at the branch tips develop into blue berries covered with a white bloom (waxy coating). Because new shoots can sprout from underground rhizomes, many stems may actually represent one genetic clone (Hochberg *et al.* 1980b, California Native Plant Society (CNPS) 1984, Williams 1993). Recent research indicates that, although the plant is genetically self-compatible, it requires insect visitation for pollination. Each flower produces from 2 to 3 seeds, but in seed germination experiments only 8 out of 40 seedlings survived long enough to produce secondary leaves (Wilken 1996). Observations on the one plant in upper Cañada Christy indicated that, of over 100 flowers that were in bud in January 1996, only 7 immature fruit had developed by May, 1996 (Wilken 1996).

In a letter to Hoffmann in 1932 concerning *Berberis pinnata* ssp. *insularis,* Munz remarked that, ''Brandegee says of *B. pinnata,* that it is ''common'' on S.C. [Santa Cruz]'' (S. Junak, *in litt.* 1994). *Berberis pinnata* ssp. *insularis* is currently known from three small populations in moist, shaded canyons on Santa Cruz Island. Hoffmann found several individuals ''in Elder canyon that runs from west into Cañada de la Casa'' on Santa Rosa Island in 1930 (California Natural Diversity Data Base (CNDDB) 1993). No plants have been found on Santa Rosa Island since that time despite surveys by staff from the Service, NPS, BRD, and Santa Barbara Botanic Garden between 1993 and 1996. Dunkle collected *Berberis pinnata* ssp. *insularis* on West Anacapa Island in 1940, but the plant was not found there again until 1980, when one clone was found in Summit Canyon associated with chaparral species, including poison oak (*Toxicodendron diversilobum*), monkeyflower (*Mimulus aurantiacus*), coyote bush (*Baccharis* sp.), goldenbush (*Hazardia detonsus*), island alum-root (*Heuchera maxima*) and wild cucumber (*Marah macrocarpus*). In 1994, Junak, Halvorson, and Chaney visited this site and found that the clone had died (Chaney 1994), and the plant is therefore believed to be extirpated from Anacapa Island.

The three known populations of *Berberis pinnata* ssp. *insularis* occur on Santa Cruz Island. One population on the north slope of Diablo Peak comprises 24 large stems and 75 small stems (Klinger 1994c); this number of stems may represent one or several clonal individuals. In 1979, a second population near Campo Raton (Cañada Cristy) was estimated to be fewer than 10 individuals, but in 1985, only one plant was seen (CNDDB 1994). Habitat for the plant was systematically searched recently in the Campo Raton area and two individuals were located. Both plants were in danger of uprooting from erosion and only one plant flowered but it did not set fruit (Wilken *in litt.* 1997). The size of the third known population, at Hazard's Canyon, has not been determined due to inaccessibility, but Schuyler estimated that there were between one and seven plants at this location (Wilken 1996).

Berberis pinnata ssp. *insularis* is threatened by soil loss and habitat alteration caused by feral pig rooting. Although ex-situ clones have been established from vegetative cuttings, populations in the field show no signs of successful sexual reproduction.

Castilleja mollis (soft-leaved paintbrush) was described by Pennell as *Castilleja mollis* in 1947, based on material collected on Santa Rosa Island in 1939 (Ingram 1990, Heckard *et al.* 1991). Hoover (1970) and Munz and Keck (1973) included plants of coastal sand dunes of San Luis Obispo County in the description of this taxon. However, the taxon is now considered to be endemic to Santa Rosa Island (Ingram 1990, Heckard *et al.* 1991).

Castilleja mollis is a partially parasitic perennial herb in the figwort (Scrophulariaceae) family. The most likely host in this case is goldenbush (*Isocoma menziesii* var. *sedoides*) (Painter 1995, Wetherwax 1995). The plant has semi-prostrate branches that reach 40 cm (16 in) in length, with bracts and upper leaves that are grayish, fleshy, broad and rounded and crowded at the apex, and the bract and calyx are yellow to yellowish green above (Heckard *et al.* 1991). Ingram (1990) identified several morphological differences between *Castilleja mollis* and the similar *Castilleja affinis*, including the indument (covering) of distinctive branched hairs and rounded stem leaves in the former taxon. Observations by Rindlaub (1994) and NPS staff (NPS 1996) indicate that individuals at higher elevations at one site (Carrington Point) may represent hybrids between *Castilleja affinis* and *Castilleja mollis*.

Two specimens collected from Point Bennett on San Miguel Island by Elmore in 1938 are possibly *Castilleja mollis* (Wallace 1985; Heckard *et al.* 1991). Despite recent searches, the taxon has not been seen on the San Miguel Island since then (S. Junak, pers. comm. 1994). *Castilleja mollis* is currently known only from two areas on Santa Rosa Island, Carrington Point in the northeast corner of the island, and west of Jaw Gulch and Orr's Camp along the north shore of the island. At Carrington Point, the plant occurs in stabilized dune scrub vegetation dominated by goldenbush (*Isocoma menziesii* var. *sedoides*), lupine (*Lupinus albifrons*), and Pacific ryegrass (*Leymus pacificus*). At Jaw Gulch, the paintbrush occurs with alien iceplants (*Carpobrotus* spp. and *Mesembryanthemum* spp.), native milk-vetch (*Astragalus miguelensis*), and alien grasses.

In 1993, the Jaw Gulch population was estimated to have up to 1,000 individuals covering an area of less than 2 ha (5 ac) (C. Rutherford and T. Thomas, USFWS, pers. obs. 1993), an estimate confirmed in recent field studies (McEachern and Wilken 1996). During Ingram's field studies in 1990, the Carrington Point population consisted of only 20 individuals (Ingram 1990). The current estimate for the Carrington population is several hundred plants (McEachern and Wilken 1996).

In 1994, Rindlaub gathered abundance and density data for the two populations: on Carrington Point, population density averaged 0.9 plants/sq m, and at Jaw Gulch, population density averaged 2.0 plants/sq m. Demographic plots were established in 1995 in both populations. Although analysis of 1995 and 1996 data is not complete, initial analysis indicates that approximately 50 percent of *Castilleja mollis* stems were broken, either through browsing or trampling. Trailing and deer droppings have been observed at the Carrington Point population, and cattle, deer, and elk droppings were observed at the Jaw Gulch population between 1994 and 1996 (McEachern 1996). The Jaw Gulch population was also used as a bedding area for deer during the fall of 1993 (Dan Richards, CINP, pers. comm. 1994).

The most severe threat to *Castilleja mollis* is deer and elk browsing and grazing. Other threats to *Castilleja mollis* are soil loss, habitat alteration and herbivory by cattle, deer bedding, and competition with alien plant taxa. *Castilleja mollis* is also known to be hemi-parasitic, or partially dependent on a host plant for water and dissolved substances (Chuang and Heckard 1993). Therefore, loss of the probable host plant, goldenbush, through these same mechanisms also reduces the ability of *Castilleja mollis* to reproduce (E. Painter, *in litt.* 1997, M. Weatherwax, *in litt.* 1995).

Dudleya nesiotica (Santa Cruz Island dudleya) was described by Moran (1950b) as *Hasseanthus nesioticus* based on a specimen collected from a ''flat area near edge of sea bluff, Fraser Point,'' on the west end of Santa Cruz Island in 1950. Three years later, Moran (1953) transferred the species to the genus *Dudleya*, as *Dudleya nesiotica*.

Dudleya nesiotica is a succulent perennial in the stonecrop family (Crassulaceae). The plant has a corm-like stem with 8 to 16 oblanceolate leaves in a basal rosette from which several flowering stems 3 to 10 cm (1.2 to 4.0 in) tall arise. The white five-petaled flowers and resulting fruits are erect to ascending. Recent research by Wilken (1996) indicates that the number of flowers per plant ranges from 6 to 12.

Dudleya nesiotica is known only from one population, the type locality at Fraser Point on the west end of Santa Cruz Island (Vivrett *in litt.* 1996). The population is situated on the lowest marine terrace in coastal scrub and grasslands (Junak *et al.* 1995). The west end of the population is associated with sagebrush (*Atriplex californica*), iceplant (*Mesembryanthemum nodiflorum*), alkali heath (*Frankenia salina*), goldfields (*Lasthenia californica*), and pickleweed (*Salicornia subterminalis*). The east end of the population is associated with Australian saltbush (*Atriplex semibaccata*), brome (*Bromus hordeaceus*), goldfields (*Lasthenia californica*), purple needlegrass (*Nasella pulchra*), and vulpia (*Vulpia myuros*).

Since the time the proposed rule was prepared, more accurate information on location, extent, and size of populations has been gathered by Wilken (1996). Within the general area near Fraser Point, where a total of 13 ha (32 ac) are occupied by the plant, four sites of high densities were sampled. From 1994 to 1996, estimates of absolute population size ranged from 30,000 to 60,000 plants (Wilken *in litt.* 1997) which is a substantial increase in the numbers believed to exist during the preparation of the proposed rule.

The Nature Conservancy has calculated density, cover, and height of plants within 30 randomly selected plots at this location since 1991. Annual variation in density has ranged from 16.9 to 29.1 plants/sq m (20.2 to 34.8/sq yard), annual variation in cover has ranged from 8.7 to 16.1 percent, and annual variation in height of rosettes has ranged from 1.27 to 1.68 cm (0.50 to 0.66 in) (Klinger 1995).

Dudleya nesiotica remains vulnerable to soil loss, herbivory by feral pigs, and disturbance by pig rooting. Like many dudleyas, *Dudleya nesiotica* is also vulnerable to collecting for botanical or horticultural use (Moran 1979).

Galium buxifolium (island bedstraw) was described by Greene in 1886 based on specimens collected on Santa Cruz Island (Ferris 1960). In 1958, Dempster included the taxon as a variety of *Galium catalinense*. Ferris (1960) suggested that the taxon was subspecifically distinct from *Galium catalinense*. In 1973, Dempster recognized the taxon as a separate species based on differences in the nutlet hairs between it and *Galium catalinense*.

Galium buxifolium is a small, stout woody shrub in the bedstraw (Rubiaceae) family. The plant grows to 12 decimeters (dm) (4 ft) in height, and has swollen nodes bearing numerous leafy branches. The leaves are larger than those of most other *Galium* taxa, and have conspicuous lateral veins with stout hairs on the lower surface (Dempster 1973). The relatively broad leaves and the tiny upward-curved hairs that cover the fruits are unique characteristics that distinguish it from the six other species of *Galium* that occur on the islands (Hochberg *et al.* 1980b).

A putative collection of *Galium buxifolium* was made from the ''Torrey Pine grove, Santa Rosa Island,'' in 1941 by Moran; apparently this was a misidentified collection of *Galium nuttallii* (York, *in litt.* 1987). Therefore no collections of this taxon are known

from Santa Rosa Island. *Galium buxifolium* is currently known from Santa Cruz and San Miguel Islands where it occurs on north-facing sea cliffs. Eight populations occur on TNC lands on Santa Cruz Island. In 1980, Hochberg *et al.* (1980b) noted that two of these populations had fewer than 50 individuals each, and the remaining populations had less than six individuals each. No recent status information is available for the Santa Cruz Island populations. Two populations were located on San Miguel Island in 1993, one with about 200 individuals, and the other having fewer than ten plants. Five other historical collections have been made from the island, but no plants have been seen at these other localities for almost 30 years. The plant occurs on ''bluffs and rocky slopes'' (Dempster 1973) in coastal sage scrub and island pine forest.

Galium buxifolium is threatened by soil loss, and habitat alteration and herbivory from feral pig rooting and sheep grazing.

Gilia tenuiflora ssp. *hoffmannii* (Hoffmann's slender-flowered Gilia) was described as *Gilia hoffmannii* by Eastwood in 1940 based on collections made by Hoffmann ''in sandy soil at East Point'' on Santa Rosa Island ten years earlier (Eastwood 1940). Eastwood remarked that, although the taxon is related to *Gilia tenuiflora,* no variation of the latter included the leafy stems and terminal congested inflorescence of *Gilia hoffmannii* (Eastwood 1940). Nevertheless, Jepson (1943) included the taxon in the description of *Gilia tenuiflora* var. *tenuiflora* in his flora of California, as did Abrams (1951) in his flora of the Pacific states. In 1959, Munz included the varieties of *tenuiflora* as subspecies, including ssp. *hoffmannii,* as per a 1956 treatment by the Grants (Munz and Keck 1973). This nomenclature was used in the latest treatment of the genus (Day 1993). Of the four subspecies of *Gilia tenuiflora,* the subspecies *hoffmannii* is the only one that occurs in southern California. Two other *Gilia* species occur on Santa Rosa Island, but *G. tenuiflora* ssp. *hoffmannii* is distinguished from them by the presence of arachnoid woolly pubescence at the base of the stem.

Gilia tenuiflora ssp. *hoffmannii* is a small, erect annual herb in the phlox (Polemoniaceae) family. The central stem grows 6 to 12 cm (2.4 to 4.7 in) tall, arising from a rosette of densely hairy, strap-shaped, short-lobed leaves. The flowers are purplish and funnel-shaped below, widening to five pinkish corolla lobes.

Gilia tenuiflora ssp. *hoffmannii* historically has only been collected from two locations on Santa Rosa Island. A collection was made by Reid Moran from the ''arroyo between Ranch and Carrington Point'' in 1941 (Rutherford and Thomas 1994). In 1994, Rindlaub located a population of 88 individuals covering 2 sq m that reasonably corresponds to Moran's site and is grazed by cattle (Rindlaub 1994). The other historical location is at the type locality near East Point on Santa Rosa Island, where it is still found. Here, it occurs as a component of dune scrub vegetation with sand verbena (*Abronia maritima*), silver beach-weed (*Ambrosia chamissonis*), saltgrass (*Distichlis spicata*), miniature lupine (*Lupinus bicolor*), plantain (*Plantago erecta*), and sand-dune bluegrass (*Poa douglasii*) (T. Thomas, in litt. 1993). In 1994, this population consisted of about 2,000 plants (Rindlaub 1994). During 1994 surveys, a third population comprised of three colonies was found at Skunk Point. This population comprised approximately 3,000 to 3,500 individuals that had been obviously grazed by cattle (Rindlaub 1994).

Gilia tenuiflora ssp. *hoffmannii* is threatened by soil damage, habitat alteration and herbivory by cattle, elk and deer. A sandy service road used by NPS and ranchers bisects the East Point population. NPS constructed a fence to exclude cattle from a portion of the largest population; however, a considerable portion of the population has had increased trampling by cattle and greater impacts from vehicles as a result of the fence construction and continued use of the road.

Helianthemum greenei (Island rush-rose) was described by Robinson as *Helianthemum greenei* in 1895 (Abrams 1951). The type locality was described as ''a dry summit near the central part of the island of Santa Cruz'' (Abrams 1951). This nomenclature was retained in the most recent treatment for the genus (McClintock 1993).

Helianthemum greenei is a small shrub in the rock-rose (Cistaceae) family. The plant grows to 0.5 m (18 in) tall and has alternate leaves covered with star-shaped hairs. The reddish, glandular stalks support yellow-petaled flowers to 2.5 cm (1 in) wide. The fruit is a pointed capsule 0.6 cm (0.25 in) long. A more abundant species found on the islands, *Helianthemum scoparium,* is similar in appearance, but is not glandular-hairy and has greenish stalks and smaller fruits (Hochberg 1980b).

McMinn (1951) and later Thorne (1967) reported seeing *Helianthemum greenei* on San Miguel Island, but no collections exist from that island in herbaria (Hochberg *et al.* 1980b, Wallace n.d.). Two collections of the plant were made from Santa Rosa Island by Epling and Erickson and Dunn in the 1930's (Wallace 1985), but no collections on Santa Rosa Island have been made since that time, despite recent surveys. *Helianthemum greenei* was reported from the northeast side of Black Jack Mountain on Santa Catalina Island by Thorne (1967) in 1966. No collections have been made at this locality but a population of three individuals was recently reported from there (Janet Takara, Catalina Island Conservancy, pers. comm. 1994). Habitat for the plant on Santa Catalina Island is being grazed by goats, mule deer, and bison, and is being rooted by pigs.

In addition to the one population on Santa Catalina Island, *Helianthemum greenei* is currently known from 14 populations on Santa Cruz Island. The taxon is found in open, exposed areas in chaparral, coastal sage scrub, and island pine forest. In 1980, prior to sheep removal from TNC lands on Santa Cruz Island, Hochberg *et al.* (1980b) found that, of ten populations, two had several dozen individuals, and six others has fewer than six individuals. Hochberg *et al.* (1980b) indicated that the plant is eliminated by intense feral animal disturbance, and noted that the population recorded by Abrams and Wiggins in 1930 at Pelican Bay has not been relocated. The BRD sponsored surveys in 1995 and 1996 reported 14 populations, ten of which had nine as the mean number of plants and four had populations that ranged from 500 to 1,000 (McEachern and Wilken 1996). The number of individuals was clearly related to recent fire history with the ten sites having few individuals being unburned, and four populations with a mean number of 663 having burned in 1994 (McEachern and Wilken 1996).

Helianthemum greenei is vulnerable to soil damage, altered fire frequencies and intensities, and rooting by feral pigs.

Malacothamnus fasciculatus var. *nesioticus* (Santa Cruz Island bushmallow) was described by Robinson in 1897, as *Malvastrum nesioticum*, based on material collected by Greene in 1886 (Robinson 1897). This taxon has been placed in several different genera, as *Malacothamnus nesioticus* (Abrams 1910), *Sphaeralcea nesiotica* (Jepson 1925), *Sphaeralcea fasciculata* var. *nesiotica* (Jepson 1936), and *Malvastrum fasciculatum* var. *nesioticum* by McMinn (Kearney 1951). Kearney (1951) published the combination *Malacothamnus fasciculatus* var. *nesioticus*. Bates (1993) did not recognize var. *nesioticus* as

being distinct noting that *Malacothamnus fasciculatus* is a highly variable species ''with many indistinct and intergrading local forms.'' Of var. *nesioticus,* Bates (1993) notes that the taxon is essentially indistinguishable from the mainland var. *nuttallii.* However, recent studies on the genetics of *Malacothamnus* have determined that var. *nesioticus* is a distinct variety (Swenson *et al.* 1995), and it is recognized as such in the Flora of Santa Cruz Island (Junak *et al.* 1995).

Malacothamnus fasciculatus var. *nesioticus* is a small soft-woody shrub in the mallow (Malvaceae) family. The plant reaches up to 2 m (6 ft) tall, and has slender branches covered with star-shaped hairs. The palmately shaped leaves are dark green on the upper surface and gray on the lower surface. The rose-colored flowers are up to 3.75 cm (1.5 in) broad and scattered along the ends of the branches (Hochberg *et al.* 1980b). It is differentiated from the mainland var. *nuttallii* by its bicolored leaves and genetic distinction (Swenson *et al.* 1995).

Malacothamnus fasciculatus var. *nesioticus* was already rare by the turn of the century when Greene wrote that the plant was ''rare; only two bushes seen, and these under the protection of large opuntias; perhaps thus kept from the sheep'' (Hochberg *et al.* 1980a). *Malacothanmus fasciculatus* var. *nesioticus* is currently known from two small populations on Santa Cruz Island where it occurs within a coastal sage scrub community (Wilken 1996). One population of less than 50 individuals (10 clones) is located on the west shore of the island near the historic Christy Ranch. The second population was discovered in 1993 in the Central Valley near the University of California Field Station. Recent genetic analyses of the Central Valley population indicated that, although there are 19 individual shrubs, they consist of only 3 genotypes or 3 clones (Swensen *et al.* 1995). *Malacothamnus fasciculatus* var. *nesioticus* is threatened by soil loss, habitat alteration, and feral pig rooting.

Malacothrix indecora (Santa Cruz Island malacothrix) was described by Greene (1886) as *Malacothrix indecora* based on specimens collected from ''islets close to the northern shore'' of Santa Cruz Island (Greene 1886). In 1957, Williams published the combination *Malacothrix foliosa* var. *indecora* (Ferris 1960). Munz (1974) subsequently synonymized the taxon with *Malacothrix foliosa.* However, Ferris (1960) and others (Smith 1976, Davis 1980) continued to recognize the taxon as a separate species with the name *Malacothrix indecora*. The latter nomenclature was retained in the most recent treatment of the genus (Davis 1993).

Malacothrix indecora is an annual herb in the aster (Asteraceae) family. The 20 to 40 cm (8 to 16 in) tall stems support numerous broadly lobed fleshy leaves with blunt tips. The greenish yellow flowers are in hemispheric heads surrounded by linear bracts (Hochberg 1980b; Scott in Junak *et al.* 1995). Two other annual species of *Malacothrix* occur on the same islands as *Malacothrix indecora;* however, the achenes (seeds) of *Malacothrix similis* are topped with 18 teeth and 1 bristle and *Malacothrix squalida* is topped with irregular teeth and no bristle, whereas *Malacothrix indecora* has neither of these features (Scott in Junak *et al.* 1995).

Historical collections of *Malacothrix indecora* were made from several locations on the northeast shore of San Miguel Island, and on Prince Island off of the north shore of San Miguel Island by Greene, and, later, by Hoffmann (Hochberg *et al.* 1979; Davis 1987). In 1978, Hochberg *et al.* (1979) observed three populations. Halvorson et al. *(1992) reported finding this species at one location during surveys in 1988 and 1989, but no collections were made to confirm identification of the taxon. On Santa Cruz Island, Malacothrix indecora* was collected near Twin Harbor by Williams in 1939 (Davis 1987), but this population has not been relocated.

Malacothrix indecora is currently known from two populations. Junak discovered one population in 1980 at Black Point on the west end of Santa Cruz Island. Several hundred individuals were observed at this site by Junak in 1985 in exposed coastal flats, where it was associated with Santa Cruz Island buckwheat (*Eriogonum grande* var. *rubescens*) and iceplant (*Mesembryanthemum nodiflorum*) (CNDDB 1991). On a subsequent trip in 1989, only 50 plants were observed in the same location (S. Junak, pers. comm. 1994), and fewer than 100 plants in 1996 (Wilken *in litt.* 1997). The second population of *Malacothrix indecora,* also comprised of fewer than 100 plants, was discovered on Santa Rosa Island in 1996 at the mouth of Lobo Canyon (Wilken *in litt.* 1997).

Malacothrix indecora is threatened by soil loss, habitat alteration and herbivory resulting from feral pig rooting, cattle grazing and trampling, and seabird activity. Historical habitat for *Malacothrix indecora* on San Miguel Island and Prince Island has been altered by seabird nesting activity.

Malacothrix squalida (island malacothrix) was described by Greene in 1886 from specimens collected from an islet off the northern shore of Santa Cruz Island (Greene 1886). In 1957, Williams published the combination *Malacothrix foliosa* var. *squalida*; a year later, Ferris (1960) published the combination *Malacothrix insularis* var. *squalida*. In 1959, Munz recognized the taxon as *Malacothrix squalida*; however, 14 years later, he synonymized it with *Malacothrix foliosa* (Munz 1974). In a review of insular species of *Malacothrix*, Davis (1980) recognized the taxon as *Malacothrix squalida*, a treatment he recently retained (Davis 1993).

Malacothrix squalida is an annual herb in the aster family. Unlike *Malacothrix indecora*, the plant only reaches 9 cm (3.5 in) tall, and has linear to widely lanceolate leaves that are irregularly toothed or lobed. The light yellow flowers are clustered in hemispheric heads 12 to 15 millimeters (mm) (0.5 to 0.6 in) long. *Malacothrix indecora* is the only other annual *Malacothrix* that occurs on the same island as *Malacothrix squalida*; however, the latter is a much larger species, and also differs in the achene characteristics previously mentioned (Junak *et al.* 1995).

Malacothrix squalida has been collected from two locations along the north shore of Santa Cruz Island; Greene collected it near Prisoner's Harbor in 1886, but the species was not seen on the island again until Philbrick and Benedict collected it in 1968 near Potato Harbor where sheep overgrazing is a major problem (Rutherford and Thomas 1994). On Middle Anacapa Island, the plant was first collected by Martin Piehl in 1963, and more recently in 1978 and 1986. The plant was known from several small colonies atop coastal bluffs on the east end of the island. Surveys by Junak and Davis in 1989 failed to find any individuals, however, this may have been due to the drought that year (S. Junak, pers. comm. 1994). Although *Malacothrix squalida* has not been seen in recent years, all historical localities and potential habitat for the species have not been inventoried.

All of the historical localities for *Malacothrix squalida* are impacted by soil loss, habitat alteration, sheep grazing, and feral pig rooting. Any extant populations are also likely to be threatened by these factors. Seabird nesting may have localized impacts to some populations on Middle Anacapa Island.

Phacelia insularis ssp. *insularis* (island phacelia) was described by Munz in 1932 based on plants growing ''on sand dunes at northeastern part of Santa

Rosa Island'' (Munz 1932). Jepson published the new combination *Phacelia curvipes* var. *insularis* in 1943. After examining specimens from coastal northern California and determining their affinity to the island plants, Howell (1945) re-elevated the taxon to specific level, separating out the northern California plants as *Phacelia insularis* var. *continentis*, leaving *Phacelia insularis* var. *insularis* to refer to the island plants. In 1951, Abrams, who did not have access to collections of *Phacelia* from northern California, included the taxon in the description of *Phacelia divaricata*, a taxon common in southern California. In 1959, Munz published the new combination *Phacelia divaricata* var. *insularis*. Constance agreed with Howell's interpretation and has referred to the taxon as *Phacelia insularis* var. *insularis* (Constance 1979). This nomenclature was retained in the latest treatment of the genus (Wilken et al. 1993).

Phacelia insularis ssp. *insularis* is a decumbent (reclining), branched annual of the waterleaf (Hydrophyllaceae) family. The short-hairy and glandular stems grow to 1.5 dm (6 in) high from a basal rosette of leaves. The small lavender to violet, bell-shaped flowers are borne in loose cymes. *Phacelia insularis* var. *insularis* can be distinguished from the other species of *Phacelia* on the islands based on the hastate leaf shape with basal lobes. The other *Phacelia* have pinnately divided or undivided but ovate leaves.

Phacelia insularis ssp. *insularis* occurs on Santa Rosa Island and San Miguel Island. Clifton Smith collected the species at Carrington Point on Santa Rosa Island in 1973, where Sarah Chaney also found the species in 1994. In subsequent surveys 31 plants were reported from this site (Rindlaub 1994). On San Miguel Island, *Phacelia insularis* ssp. *insularis* was collected by Hoffmann in 1930 and by Munz in 1932. It was not collected again until 1978, when four populations were found (Hochberg et al. 1979). Drost relocated one of these sites on a bluff above Cuyler Harbor in 1984 (Halvorson et al. 1992). NPS staff has been watching for the taxon on San Miguel Island, but it has not been seen. The population on Santa Rosa Island is currently the only known occurrence. *Phacelia insularis* ssp. *insularis* is found within the island grassland community which is dominated by alien grasses, including slender wild oat (*Avena barbata*), wild oat (*Avena fatua*), ripgut (*Bromus diandrus*), and soft chess (*Bromus hordeaceus*), with scattered native bunchgrasses, shrubs, and herbs (Hochberg *et al.* 1979).

Phacelia insularis ssp. *insularis* is threatened by soil damage, competition with non-native grasses, and habitat alteration caused by cattle grazing, and elk and deer browsing.

Thysanocarpus conchuliferus (Santa Cruz Island fringepod) was described by Greene in 1886 based on material he and Brandegee collected where they found it ''common on mossy shelves and crevices of high rocky summits and northward slopes'' on Santa Cruz Island (Greene 1886b). Four decades later, Jepson published the new combination *Thysanocarpus laciniatus* var. *conchuliferus* as one of three varieties of *Thysanocarpus laciniatus* (Jepson 1925). Later, Abrams (1944) treated the plant as a species. Munz, however, considered it to be one of six varieties of *Thysanocarpus laciniatus* (Munz and Keck 1973). In the most recent treatment of the genus, Rollins treated the plant as a species (Rollins 1993).

Thysanocarpus conchuliferus is a small delicate annual herb in the mustard (Brassicaceae) family. The one to several branches grow 5 to 12.7 cm (2 to 5 in) high. The narrow, linearly lobed leaves alternate along the stems, which terminate in a raceme of minute pink to lavender flowers. While all members of this genus have round, flattened fruits with wings, *Thysanocarpus conchuliferus* is the only species in the genus with a bowl-shaped fruit; this taxon is also smaller in stature than *Thysanocarpus laciniatus*, which occurs in the same habitat (Wilken *in litt.* 1997).

In 1932, Ralph Hoffmann reported that *Thysanocarpus conchuliferus* was ''frequent * * * from the north shore to the southwest portion of the island'' (Hochberg *et al.* 1980a). Fourteen historical locations are known from herbarium records. In 1980, eight of these populations were relocated (Hochberg *et al.* 1980b). In 1991, plants were found at six of these locations, but no plants were found at five other sites (Klinger 1994b). In 1993, no individuals were found at any of the 14 reported locations. Survey reports indicate that, in addition to abundant rainfall that may have increased competition from alien grasses, rooting by feral pigs was observed at all 14 locations (Klinger 1994b). No verifiable observations of this species have been made in over 2 years, but all historic locations have not been revisited (Wilken *in litt.* 1997).

Thysanocarpus conchuliferus occurs on rocky outcrops on ridges and canyon slopes, and is associated with a variety of herbs, ferns, grasses, dudleya, and *Selaginella* (Santa Barbara Botanic Garden 1994). All of the historical localities for *Thysanocarpus conchuliferus* are impacted by soil loss, habitat alteration and predation resulting from feral pig rooting. Any extant populations are also likely to be threatened by these factors.

Because all 13 taxa occur only as small, isolated populations with few individuals, these plant species are also more vulnerable to extinction by such random events as storms, drought, or landslide. The small populations and few individuals may also make these taxa vulnerable to reduced reproductive vigor.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those 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, *Arabis hoffmannii, Castilleja mollis, Galium buxifolium, Gilia tenuiflora* ssp. *hoffmannii*, and *Berberis pinnata* ssp. *insularis* were considered to be threatened, and *Dudleya nesiotica* and *Malacothamnus fasciculatus* var. *nesiotica* (as *Malacothamnus fasciculatus*) were considered to be endangered. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposal in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Dudleya nesiotica* was included in the June 16, 1976, **Federal Register** document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the portion of the June 6, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Arabis hoffmannii, Berberis pinnata* ssp. *insularis, Castilleja mollis, Dudleya nesiotica,* and *Malacothamnus fasciculatus* var. *nesiotica* as category 1 taxa. Category 1 taxa were those for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. *Arctostaphylos confertiflora, Galium buxifolium,* and *Gilia tenuiflora* ssp. *hoffmannii* were included as category 2 taxa. Category 2 taxa were those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules. On February 28, 1996, the Service published a notice of review in the **Federal Register** (61 FR 7596) that discontinued the designation of category 2 species as candidates.

On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 53640), in which *Arabis hoffmannii* was listed as a category 1* taxon, the asterisk indicating that the species was believed to be extinct. In the same notice, *Castilleja mollis, Dudleya nesiotica, Gilia tenuiflora* ssp. *hoffmannii, Helianthemum greenei, Berberis pinnata* ssp. *insularis* (as *Mahonia*), *Malacothamnus fasciculatus, Phacelia insularis* var. *insularis,* and *Thysanocarpus conchuliferus* were included as Category 2 candidates.

The plant notice was revised again on September 27, 1985 (50 FR 39526). In that notice, all taxa maintained their previous status. On February 21, 1990 (55 FR 6184), the plant notice was again revised. In this notice, *Arabis hoffmannii* was included as a category 1 candidate, as individuals of this taxon had been rediscovered since the previous Notice of Review. *Arctostaphylos confertiflora, Castilleja mollis, Dudleya nesiotica, Galium buxifolium, Gilia tenuiflora* ssp. *hoffmannii, Helianthemum greenei, Berberis pinnata* ssp. *insularis, Malacothamnus fasciculatus, Phacelia insularis* var. *insularis,* and *Thysanocarpus conchuliferus* were included as category 2 candidates. *Malacothrix indecora* was included in the February 21, 1990, notice for the first time as a category 2 candidate.

The plant notice was revised on September 30, 1993 (58 FR 51144). In this notice, *Arabis hoffmannii, Arctostaphylos confertiflora, Castilleja mollis, Galium buxifolium, Gilia tenuiflora* ssp. *hoffmannii, Berberis pinnata* ssp. *insularis, Malacothamnus fasciculatus* var. *nesioticus, Malacothrix indecora, Phacelia insularis* var. *insularis,* and *Thysanocarpus conchuliferus* were included as category 1 candidates. *Dudleya nesiotica* and *Helianthemum greenei* were included as category 2 candidates; *Malacothrix squalida* was included for the first time as a category 2 candidate.

On July 25, 1995, the Service published a proposed rule in the **Federal Register** (60 FR 37993) to list *Arabis hoffmannii, Arctostaphylos confertiflora, Berberis pinnata* ssp. *insularis, Castilleja mollis, Dudleya nesiotica, Galium buxifolium, Gilia tenuiflora* ssp. *hoffmannii, Helianthemum greenei, Malacothamnus fasciculatus* var. *nesioticus, Malacothrix indecora, Malacothrix squalida, Phacelia insularis* var. *insularis,* and *Thysanocarpus conchuliferus* as endangered. Also included in this proposed rule were *Dudleya blochmaniae* ssp. *insularis, Dudleya* sp. nov. ''East Point,'' and *Heuchera maxima* as endangered. Based upon new information received since publishing the proposed rule, the proposed listing of the latter three taxa has been withdrawn by the Service as announced in a separate **Federal Register** notice published concurrently with this final rule.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Arabis hoffmannii, Castilleja mollis, Dudleya nesiotica, Galium buxifolium, Gilia tenuiflora* ssp. *hoffmannii, Berberis pinnata* ssp. *insularis,* and *Malacothamnus fasciculatus* var. *nesioticus* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of these species 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 petition to be recycled, pursuant to section 4(b)(3)(C)(I) of the Act. The finding was reviewed in October of 1984 through 1993. Publication of the proposed rule constituted the warranted finding for these species.

The processing of this final rule follows the Service's fiscal year 1997 listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). 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 the Omnibus Budget Reconciliation Act passed on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of outstanding proposed listings. This final rule falls under Tier 2.

Summary of Comments and Recommendations

In the July 25, 1995 proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal agencies, State agencies, local governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published on August 5, 1995 in the *Santa Barbara News-Press* and on August 11, 1995 in the *Los Angeles Times.* The comment period closed on October 9, 1995. A second comment period was opened from January 22, 1997 to February 21, 1997 (62 FR 3263) because of substantive changes in the status and conservation efforts for the benefit of several of the taxa in the rule.

In compliance with Service policy on information standards under the Act (59 FR 34270: July 1, 1994), the Service solicited the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and supportive biological and ecological information for the 16 proposed plants. Comments from these reviewers included corrections to the range of the species, the acceptance of the taxonomic determination for one of the species, and additional information on populations and status for several of the species in the rule. These revisions have been incorporated into this final rule.

The Service received 15 letters concerning the proposed rule during the comment periods, including those of one State agency and 14 individuals or groups. Eleven commenters supported

the listing proposal, one opposed it, and three were neutral.

The Service has reviewed all of the written comments received during both comment periods. Some specific comments were received pertaining to the three taxa (*Dudleya blochmaniae* ssp. *insularis, Dudleya* sp. nov. ''East Point,'' and *Heuchera maxima*) being withdrawn in a separate **Federal Register** notice published concurrently with this rule. These comments were incorporated into the notice of withdrawal. General comments received on all 16 taxa included in the proposed rule are addressed here. Several comments dealt with matters of opinion or legal history that were not relevant to the listing decision. Several commenters provided additional information that, along with other clarifications, has been incorporated into the ''Background'' or ''Summary of Factors'' sections of this final rule. Opposing and technical comments on the rule have been organized into specific issues. These issues and the Service's response to each issue are summarized as follows:

Issue 1: One commenter asserted that the proposed action would result in a taking of private property, that the Vail and Vickers' rights to graze on Santa Rosa Island would be compromised, and that the Service must consider the economic impact, including the cost of purchasing the remaining portion of the 25 year lease, if the plants are listed.

Service Response: Santa Rosa Island has been the property of the United States Government since its acquisition in 1986. The National Park and Recreation Act of 1978, as amended (16 U.S.C. 410ff–1(d)(1)) states that the owner of a property acquired for a National Park may retain the right of use and occupancy of all or a portion of such property as the owner may elect. The warranty deed of sale between the Federal government and Vail and Vickers specifies a right reserving to the grantors (Vail) the right of the residential use and occupancy for a period of 25 years under the terms and conditions set forth in Exhibit ''A.'' The reserved premises were defined in Exhibit ''A'' as three rectangular areas, including the ranch house, totaling 3 ha (7.6 ac) that shall be used only for non-commercial residential purposes (NPS 1987). The conditions of 16 U.S.C. 410–1(d)(2) state that any property to which a right of use and occupancy was not reserved by the former owner may be leased by the Secretary at the request of the former owner so long as the use of the property is compatible with the administration of the park and with the preservation of the resources therein. No lease agreement exists between Vail and Vickers and the NPS, and no grazing rights were retained by the grantors in the deed of sale or in any documents or communications provided to the Service by the NPS. Grazing has been allowed through the issuance of discretionary renewable 5-year Special Use Permits that are separate and distinct from the conditions of sale. Uner 16 U.S.C. 410–1(d)(1), the Secretary was allowed to tender to the prior owner the amount equal to the fair market value of that portion which remains unexpired for only the lands in the area specified in the conditions of use and occupancy. The specified conditions of use and occupancy will not be affected by this listing action.

In addition, under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available about whether a species meets the Act's definition of a threatened or endangered species. The legislative history of this provision clearly states the intent of Congress to ''ensure'' that listing decisions are ''based solely on biological criteria and to prevent non-biological considerations from affecting such decisions,'' H. R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982). As further stated in the legislative history, ''Applying economic criteria * * * to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and is specifically rejected by the inclusion of the word ''solely'' in this legislation,'' H. R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982). Because the Service is precluded from considering economic impacts in a final decision on a proposed listing, the Service has not examined such impacts.

Issue 2: One commenter stated that the proposed listing action during the listing moratorium was illegal.

Service Response: The listing moratorium prohibited the Service from funding any actions for final listing determinations. It did not affect the preparation and publication of proposed rules. The Service adhered strictly to the conditions of the moratorium and ceased related listing activity once the proposed rule process was finished.

Issue 3: Two commenters stated that the Service did not give proper credence to data presented by ranchers, other land managers, and experts and that the Service gave more weight to information provided by California Native Plant Society volunteers.

Service Response: Starting in 1992, the Service requested from the public, in writing and in meetings, information on the status of the plants and any data that would assist the Service in making a determination in this action. All data provided prior to and during the public comment periods or in the public meetings were included in the analysis to prepare the proposed rule and this final rule. The Service is not aware of any field data collected by the California Native Plant Society.

Issue 4: Two commenters stated that abrupt termination of livestock grazing would be extremely harmful to the ecosystems and plant communities of Santa Rosa Island, specifically by increasing the potential for weed invasion.

Service Response: The Service has never advocated and is not proposing the abrupt termination of livestock grazing on Santa Rosa Island. A Conservation Strategy Team (Team) composed of Service, NPS, and BRD biologists have prepared a Conservation Strategy for Santa Rosa Island that recommends a gradual reduction of cattle and horses, with total removal by 2011, the expiration date of the reserved right of use and occupancy (Coonan *et al.* 1996). Santa Rosa Island has the smallest proportion of weed species to native species ratio of any of the Channel Islands and the NPS has been actively managing the aggressive invasive aliens. Santa Rosa Island has 98 non-native plants and Santa Cruz Island has 170 non-native plants (Junak 1996). The life history and reproductive characteristics of the weedy species on Santa Rosa Island are adaptations that allow them to take advantage of freshly disturbed sites, such as those that are created by the current domestic livestock management on the island. Surveys conducted by the NPS show that the weed distribution corresponds with the areas that have the highest cattle use. It was the conclusion of the Team that the removal of the non-native grazers and browsers (including deer and elk) from the island would decrease the amount of open habitat available for weed invasion and would therefore result in a decline in weed numbers (Coonan *et al.* 1996). An additional benefit to the island ecosystem from the reduction and eventual elimination of grazing and browsing is that shrub would reoccupy the introduced grasslands that are artificially maintained by current grazing practices (Coonan *et al.* 1996).

Issue 5: One commenter claimed that the proposed rule seemed to imply that all grazing is overgrazing. The commenter objected to the statement that ''the ultimate control on population sizes for livestock on islands has been starvation'' and asserted that the rule characterized cattle grazing as a disease or predation rather than utilization.

Service Response: The Service did not refer to all grazing as overgrazing. Grazing during drought conditions has resulted in severe damage to the native vegetation and could be considered overgrazing, especially when livestock starvation has occurred. Such events are described and documented in the ''Background'' section of this rule.

The listing provisions of the Act provide that a species may be determined to be endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. One of the factors is ''Disease or Predation'' and the Service normally addresses the effects of herbivory by any animal, including livestock, in the discussion of this factor.

Issue 6: One commenter stated that there was a lack of evidence of the relationship between grazing and the plants in question.

Service Response: The Service has used over 100 references in preparing the final rule. Three levels of information are available: (i) An extensive body of literature on the impacts of non-native mammals to insular vegetation and plant species, (ii) the results of long-term vegetation monitoring by the NPS, and, (iii) specific observations on specific plants, e.g., deer and elk impacts to Castilleja mollis and others cited in the ''Factors Affecting the Species'' section of this rule. This rule also cites information concerning how the condition of the habitat upon which these species depend has been degraded by grazing and browsing.

In addition, international conservation biologists familiar with island biology recognized the damage that non-native mammals cause to insular biota when the Society for Conservation Biology unanimously passed a resolution to promote the elimination of non-native mammals from all of the islands off the coast of western North America (Tershy *et al.* 1994).

Issue 7: One commenter was concerned that the rule stated that increased sedimentation resulted from livestock grazing but that current sedimentation rates were not presented.

Service Response: Data on current sedimentation rates has been added to the rule. A sediment and pollen analysis has documented both the increase in sedimentation and the type conversion of habitat from brush to grass since grazing was introduced to the island. The current sedimentation level is an order of magnitude greater than that prior to the introduction of grazing. Please see the Factor A discussion under the ''Factors Affecting the Species'' section for further details.

Issue 8: One commenter stated that an existing range management plan was designed to protect resources and that the Service claimed that the range management plan currently in use for Santa Rosa Island ''does not address protection of the proposed taxa.''

Service Response: The Service maintains that the range management plan does not address protection of the proposed taxa. Although the plan suggests that monitoring and studies should occur, the Service does not consider potential or actual studies as a management action that would provide protection for the taxa under consideration.

Issue 9: Two commenters expressed concern that the Service is not proposing critical habitat for the taxa that occur on Santa Rosa Island.

Service Response: The Service has considered the designation of critical habitat for these species and determined that it is not prudent to establish critical habitat. Because of the few, small populations of each of the species on Federal land, any determination of adverse modification would also result in jeopardy. Thus, the establishment of critical habitat would provide no additional benefit over that of the jeopardy standard contained in section 7 (a)(2) of the Act. Please see the ''Critical Habitat'' section of this rule for further information.

Issue 10: One commenter suggested that the listing of these species will severely limit management options.

Service Response: The Service believes that an array of management options are available to the NPS that are consistent with NPS regulations, policy, and guidelines.

Issue 11: One commenter raised the concern that the Service was required to comply with the National Environmental Policy Act (NEPA) and must also prepare a Takings Implication Assessment, as directed by Presidential Executive Order 12630, before issuing a final rule.

Service Response: NEPA is addressed under the section entitled ''National Environmental Policy Act'' in this rule, as it was in the proposed rule. The Attorney General has issued guidelines to the Department of the Interior (Interior) on implementing Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights). Under these guidelines, a special rule applies when an agency within Interior is required by law to act without exercising its usual discretion, that is, to act solely upon specified criteria that leave the agency no choice. In the present context, the Service's action cannot consider economic information in reaching a listing decision.

In such cases, the Attorney General's guidelines state that Taking Implications Assessments (TIAs) shall be prepared after, rather than before, the agency makes the decision in which its discretion is restricted. The urpose of the TIAs in these special circumstances is to inform policy makers of areas where unavoidable taking exposures exist. Such TIAs must not be considered in the making of administrative decisions that must, by law, be made without regard to their economic impact. In enacting the Endangered Species Act, Congress required that listings be based solely on scientific and commercial data showing whether or not the species are in danger of extinction. Thus, by law and by U.S. Attorney General guidelines, the Service is forbidden to conduct TIAs prior to listing.

Issue 12: One commenter indicated that the Service must undertake a more comprehensive study of the proposed taxa on Santa Rosa Island.

Service Response: Section 4(b)(1)(A) of the Act requires that a listing determination on whether a species meets the Act's definition of a threatened or endangered species be based on the best scientific and commercial data available. The Service has considered all available information regarding the past, present, and future threats faced by the taxa in this rule, including that submitted during the public comment periods, in making this listing determination.

Issue 13: Two commenters inquired about the justification for a second public comment period. One commenter stated that the Service did not have the statutory authority to consider comments and information after the statutory deadline for issuing a final determination on the proposed plants. One commenter suggested that the *Service should have published a more detailed account of the new information.*

Service Response: The processing of this final rule follows the Service's listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The processing of a final listing is a Tier 2 action under this guidance (61 FR 64479). The Service explained in the **Federal Register** notification for reopening of the comment period that there was significant new information regarding the status of several of the taxa under consideration for listing that may affect the determination of their listing. The

Congressional moratorium on funding for final rule determinations prevented the Service from conforming to statutory deadlines. The **Federal Register** notice provided an opportunity for the public to request any information that would assist them in preparing a response. The Service is obligated to consider the best available scientific and commercial evidence in deciding whether to list a species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Arabis hoffmannii* (Munz) Rollins, *Arctostaphylos confertiflora* Eastw., *Berberis pinnata* Lag. ssp. *insularis* Munz, *Castilleja mollis* Pennell, *Galium buxifolium* Greene, *Gilia tenuiflora* Benth. ssp. *hoffmannii* (Eastw.) A.D. Grant & V.E. Grant, *Malacothamnus fasciculatus* (Torr. & A.Gray) Greene ssp. *nesioticus* (B.L. Rob. in A. Gray) Kearney, *Malacothrix indecora* Greene, *Malacothrix squalida* Greene, *Phacelia insularis* Munz var. *insularis*, and *Thysanocarpus conchuliferus* Greene should be classified as endangered species, and that *Dudleya nesiotica* Moran and *Helianthemum greenei* B.L. Rob. in A. Gray should be classified as threatened species. Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. 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 the 13 plant taxa in this rule are as follows:

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

The primary threat to the species included in this rule is the ongoing loss of soils, because the soils are the foundation for the unique island ecosystems and their endemic species. A significant increase in the rate of soil loss resulting in substantial alterations of the natural habitats of these species began with the introduction of non-native sheep, goat, cattle, deer, elk, bison, and pigs on the various islands in the early 1800's. Soil erosion continues to this day at a rate that remains an order of magnitude greater than that prior to the introduction of alien mammals (Cole and Liu 1994). Soil loss is a significant threat to most existing populations of, and precludes seedling establishment for, *Arabis hoffmannii, Arctostaphylos confertiflora, Berberis pinnata* ssp. *insularis, Castilleja mollis, Dudleya nesiotica, Galium buxifolium, Gilia tenuiflora* ssp. *hoffmannii, Helianthemum greenei, Malacothamnus fasciculatus* ssp. *nesioticus, Malacothrix indecora, Malacothrix squalida, Phacelia insularis* var. *insularis,* and *Thysanocarpus conchuliferus.*

The deep incision of many canyons on Santa Rosa Island illustrates the dramatic loss of sediment and, by inference, entire riparian systems that are virtually absent from the island. These incised arroyos cut into fine-grained alluvium built up by thousands of years of deposition, and those incisions and the sedimentation have left a quantitative record of the shift in geomorphic regimes resulting from large herbivores denuding the landscape that continues today (Cole and Liu 1994).

The increased loss of soils and the consequent changes in vegetation due to the introduction of alien mammals have been documented from sediment and pollen records in a soil core dating back 5,200 years from the Old Ranch Canyon marsh on eastern Santa Rosa Island (Cole and Liu 1994). Rates of sedimentation prior to the introduction of livestock averaged 0.7 mm/year (yr) (0.035 in/yr), increased to 23 mm/yr (0.9 in/yr) during the peak sheep grazing era, and now average 13.4 mm/yr (0.13 in/yr), 19 times greater than that prior to grazing (Cole and Liu 1994).

Pollen records demonstrate that the conversion of brushland to grassland occurred with the onset of ranching in the early 1800's. This change in vegetation is reflected by an increased abundance of grass pollen and a decrease in pollen from the mint and pea families in the soil core (Cole and Liu 1994). Coastal sage scrub is dominated by sage species (mint family), lupines and deervetch (pea family). Shallow rooted non-native grasses now dominate the island and are much less efficient as slope stabilizers than the deep-rooted native shrubs they have replaced.

Continued grazing has prevented the ability of the shrub species to recover and reestablish their function as an important source of erosion control. Large sediment loads remain a significant problem as illustrated by the recent attempts to stabilize soils at Johnson's Lee on the south side of Santa Rosa Island, where rice straw wattles placed along hillside contours trapped large volumes of sediment after only one season of rain (Sellgren 1994).

A comparison of historical descriptions of island vegetation with current conditions also indicates that large-scale habitat alterations caused by large numbers of non-native mammals on the islands resulted in significant loss of soils as well as changes in the structure, composition, and richness of plant communities. In 1883, Thompson and West described the effects of sheep grazing on Santa Cruz Island—''The island becomes at some times overstocked, and may be said to be in that condition much of the time. The result is that the grasses, being cropped so close, die out, and allow the loosened soil to be removed by wind and rain'' (Hochberg *et al.* 1980a). At that time, however, vegetation elsewhere on the island was still relatively intact; Greene described mixed forests of large-leaved maple (*Acer macrophyllum*), live oak (*Quercus agrifolia*), black cottonwood (*Populus trichocarpa*), and willow (*Salix laevigata*) thriving in the canyons (Hochberg *et al.* 1980a). Another account was given by Delphine Adelaide Caire in 1933, who reflected on the conditions of Santa Cruz Island—''Its present natural beauty does not come up to that of the past. The bed of the stream that skirts the Main Ranch on its way from Picacho Diablo was much narrower than it is today; mountain slopes were heavily wooded and centuries-old oaks were numerous. In the course of years, rains have accomplished their ruinous work, carrying off a great amount of topsoil, the innumerable trails cut by sharp sheep trotters having been a contributing factor in such devastation'' (Hochberg *et al.* 1980a). The historic and current presence of non-native herbivores and pigs has reduced leaf litter and compacted and degraded the soil structure, resulting in accelerated rates of erosion (Klinger *et al.* 1994, Nishida 1994).

The importance of soils in maintaining habitat for the taxa is found not only in their physical properties, but in their biotic properties as well. Healthy soils provide habitat for a complex assemblage of soil organisms, including fragile microbial components, that assist in such processes as water-holding capacity, soil fertility, and nutrient cycling. These processes have been adversely affected by the activities of alien mammals. For instance, the loss of leaf litter from trampling and rooting changes soil temperatures, increases the loss of moisture, reduces the humus layers, and results in a reduced soil fauna (Bennett 1993). Breakdown of organic material, transport of fungal spores, and nutrient recycling by soil mites have all been documented on Santa Catalina Island (Bennett 1993).

Soil mite diversity decreased with increased disturbance, and resulted in impoverished nutrient levels in the soil (Bennett 1993). A feature of arid land soils, such as those in the islands, is the presence of a cyanobacterial-lichen crust that facilitates stabilization of steep slopes and nutrient cycling (Belnap 1994). These crusts are extremely brittle during the dry summer months and can be eliminated by the shattering influences of trampling by non-native herbivores (Belnap 1994). Mycorrhizal associations are likely to occur with most of the species in this rule, and may have been damaged and therefore function at reduced efficiencies (Painter *in litt.* 1997). Such associations function as extensions of the root system and are of particular importance to arid land plant species such as those in this rule. Damaged mycorrhizal associations reduce the health and vigor of their host species.

The large herds of grazing animals that shatter the crustal integrity of the soil surface also result in dust coating the foliage of all the native vegetation. Dust negatively affects plants by reducing photosynthesis, respiration, transpiration, and complicating pollination efficiency (Painter *in litt.* 1997). Intense winds blow from the northwest that can be highly erosive. When the integrity of the natural habitat is disturbed there is an accelerated rate of erosion above that which would result from just rain alone. No opportunity for leaf litter or soil to accumulate exists on the exposed ridge tops with continual non-native animal disturbance (Clark *et al.* 1990).

Even after the agents that initiated erosion have been removed, loss of soils continues (Clark *et al.* 1990, Halvorson 1993). Because both the biotic and physical properties of the soils have been degraded or lost altogether, the soils that remain behind provide poor conditions for seedlings to germinate and establish. On Santa Rosa Island, a grove of island oaks (*Quercus tomentella*), a species of special concern, has shown few signs of regeneration on soils severely affected by erosion even after an exclosure was built to eliminate cattle, elk, and deer (Danielsen 1989a, 1989b). The zone below an *Arabis hoffmannii* population on Santa Rosa Island is inhospitable to seed germination because of cattle trampling and soil churning (McEachern and Wilken 1996). Seed rain from that population falls onto areas that are highly trampled and churned eliminating any chance for population expansion from its precarious cliff location. *Arabis hoffmannii* is monocarpic and damage from trampling may delay flowering, or even preclude reproduction of trampled individuals. Flowers produced later in the season out of synchrony with pollinator activity results in lower seed productivity (Painter *in litt.* 1997).

Wherever shrubs of *Arctostaphylos confertiflora* have been browsed to form a canopy, the understory is heavily trampled by deer and elk and the bedrock is eroding away around the roots (McEachern 1996, McEachern and Wilken 1996). The soil from around the roots of *Berberis pinnata* ssp. *insularis* on Santa Rosa Island, *Dudleya nesiotica* on Santa Cruz Island, and *Malacothamnus fasciculatus* ssp. *nesioticus* on Santa Cruz Island, is actively eroding (Wilken *in litt.* 1997). *Dudleya nesiotica* plants at Fraser Point on Santa Cruz Island were observed to have been preferentially rooted by pigs in 1995 and 1996 (Painter *in litt.* 1997, McEachern 1996, Wilken 1996). In 1993, when perhaps as much as 20 percent of the Carrington Point populations of *Castilleja mollis* was consumed by deer, individual plants were excavated, leaving depressions in the sandy soils where plants had been observed 5 months earlier (Sarah Chaney, NPS, pers. comm. 1993). More recently researchers have documented that both deer and elk are damaging both populations of *Castilleja mollis* (McEachern 1996). *Galium buxifolium* is threatened on Santa Cruz Island where trampling and pig rooting along the seacliffs increases the likelihood of slope failure (Hochberg *et al.* 1980). Unfenced portions of *Gilia tenuiflora* ssp. *hoffmannii* on Santa Rosa Island are areas where cattle concentrate and churn the soil (Painter *in litt.* 1997). All *Helianthemum greenei* habitat is damaged from rooting by pigs on Santa Cruz Island (Wilken *in litt.* 1997). The recent discovery of *Malacothrix indecora* on Santa Rosa Island included the observation that the prehistoric midden that the plants were growing on was being eroded from damage by livestock (Painter *in litt.* 1997).

Seabirds occur in historic habitat for *Malacothrix indecora* on San Miguel Island and its offshore islet Prince Island, and known sites for *Malacothrix squalida* on Anacapa Island. Many of these bird species experienced severe population declines in the late 1960's and early 1970's as a result of DDT-related reproductive failures (Ingram 1992). However, monitoring results indicate that populations of most of these birds have increased over the past decade. Seabirds use local vegetation to construct nests on cliff and blufftop sites, create localized soil disturbances that facilitate establishment of alien plant species, and promote erosion of coastal bluffs. Seabird activity has been noted on Middle Anacapa Island within habitat for *Malacothrix squalida* (S. Junak, pers. comm. 1994). The extent to which such localized disturbance has affected this plant species is unknown.

Compaction of soils and crushing of plants by vehicle traffic is an ongoing threat to *Gilia tenuiflora* ssp. *hoffmannii*. The largest population of *Gilia tenuiflora* ssp. *hoffmannii* is bisected by a road. Another road continues to damage habitat and plants along the fence line established to protect the western snowy plover; however, the proposed closure of Old Ranch Pasture to cattle and horses will remove the necessity to maintain a fence at that location (NPS 1997).

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

Unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants constitutes a potential threat to certain of the taxa in this rule. In particular, the collection of whole plants or reproductive parts of those annual or herbaceous perennial taxa with fewer than 100 individuals, including *Arabis hoffmannii*, *Berberis pinnata* ssp. *insularis*, *Malacothamnus fasciculatus* var. *nesioticus*, *Malacothrix indecora*, *Malacothrix squalida*, and *Thysanocarpus conchuliferus*, could adversely affect the genetic viability and survival of those taxa. In the horticultural trade, *Dudleya* species have, in particular, been favorite collection items. *Dudleya nesiotica*, though not in the trade, has been cultivated by *Dudleya* enthusiasts. The limited distribution of this taxon, combined with the additional threats from non-native annuals and pig rooting, makes it vulnerable to such enthusiasts who want the rare species from the wild.

C. Disease or predation

Diseases are not specifically known to threaten any of the taxa included in this rule. All of the taxa included in this proposal, with the exception of *Berberis pinnata* ssp. *insularis*, have populations that are subject to predation by one or more non-native mammals. Apparently, the roots of *Berberis* species are often toxic (Williams 1993), making consumption by feral pigs unlikely. Island endemic plant species lack defensive attributes as protection from grazing and browsing. The impact of this predation to the overall status varies by species, with predation posing the most signficance to those with the

fewest and most accessible populations. Current research on Santa Cruz Island has compared similar species from the mainland and from the island in livestock feeding preferences. Livestock consistently preferred the island plants and the study showed that all mainland plants possessed at least one protective characteristic in higher quantity than the similar island taxa, the quantity of spines being the most notable quality. The researcher stated that ''[i]sland plants possessed reduced levels of chemical defenses, morphological defenses, or both, and were more vulnerable to herbivory'' (Bowen *in litt.* 1997).

Historical records document that overgrazing by sheep in the late 1800's and early 1900's highly degraded the vegetation of Santa Rosa Island. The records also point out that sheep died of starvation due to drought on the island during this time. During a later drought in 1948, the island was so overgrazed that it made the local news, stating that ''[h]ardly a sprig of green is to be seen. The tiny tufts of grass that have escaped the hungry mouths of the herd are stunted and dead. Shrubs have perished. [There were] * * * starved looking valley elk * * * [and] * * * prickly pears were gnawed down to the earth.'' (Ainsworth 1948). Drought in the late 1980's decimated the elk population (Vail and Vickers *in litt.* 1996). Herbivory by non-native herbivores continues to threaten and effectively arrest recovery of the native vegetation and perpetuate the dominance of non-native grasses and herbs. Native island plants evolved in the absence of grazing and browsing and suffer from reduced productivity and lower reproductive success due to the presence of alien herbivores.

In 1875, when sheep stocking on Santa Cruz Island was around 50,000 head, botanist J.T. Rothrock reported that the island was so overgrazed that ''it was with difficulty that I could get even a decent botanical specimen'' (Hobbs 1983). Although sheep grazing has been removed as a current threat on all but eastern Santa Cruz Island, the decades of overgrazing by sheep have reduced the reproductive capabilities and distribution of many of the taxa included in this rule. A review of literature pertinent to effects of sheep on island vegetation is included in Hochberg *et al.* (1980a). In addition, feral pigs, feral goats, feral sheep, deer, elk, horses, and bison currently occur in habitats that support some populations of all of the taxa included in this rule. The effects of defoliation on plants include decreased above ground biomass, fewer stems, lowered seed production, reduced height of leaves and stems, decreased root biomass, reduced root length, decreased carbohydrate reserves, and reduced vigor (Heady in Willoughby 1986).

Clark *et al.* (1990) noted that most individuals of *Arctostaphylos confertiflora* are browsed severely by elk and deer. During a recent population survey it was observed that more than 90 percent of all individuals of *Arctostaphylos confertiflora* were accessible to ungulates and were browsed at the growing tips (McEachern and Wilken 1996). The shape of individual shrubs has been modified as a result of browsing. Short-statured shrubs have been hedged to the point that they do not grow above a certain height. On shrubs that attained a taller stature before browsing pressure became severe, all lower limbs and leaves have been stripped, resulting in a ''lollipop'' or tree-shaped shrub. Browsing pressure on this species appears to have affected its ability to reproduce, since not a single seedling was observed during a 1988 survey (Ronilee Clark, California Park Service, pers. comm., 1988). This species does not have a root crown burl that allows some mainland species to tolerate low levels of defoliation, and, without protection from non-native mammals, continued recruitment failure and reduced vigor may prove catastrophic for this species. This condition was noted in a 1989 letter to Dr. Peter Raven from the leading authority on the genus *Arctostaphylos*, Dr. Phillip Wells, who expressed his concern that the time remaining for the grazing operation would precipitate the extinction of *Arctostaphylos confertiflora* if some protection from non-native mammals was not implemented (Painter *in litt.*, 1997).

Specific examples of browsing or grazing by alien mammals on other taxa in this rule have been observed, including *Arabis hoffmannii*, *Castilleja mollis*, *Dudleya nesiotica*, *Gilia tenuiflora* ssp. *hoffmannii*, *Helianthemum greenei*, and *Thysanocarpus conchuliferus* (Hochberg *et al.* 1980b, McEachern and Wilken 1996, Wilken 1996, Painter *in litt.* 1997).

Grazing can completely eliminate plants and prevent the supplement of seed to the seed bank. Of the six collections of *Gilia* in the herbarium at the Santa Barbara Botanic Garden, only the two collections made during April 1941 show no signs of browsing. The remaining four collections were made between the months of May and June between 1963 and 1978, and all show signs of having been browsed (Rutherford and Thomas, *in litt.* 1994). In 1993, Thomas visited one *Gilia* population twice. During the first visit in April, the *Gilia* had not been browsed, but by the second visit in May, the Gilia had been browsed (Thomas, *in litt.* 1993). In response to such browsing, the annual *Gilia* forms multiple side branches, and although a branched plant may produce a greater number of flowers, this does not necessarily increase the fecundity of the plant (Painter and Belsky 1993). Flowers produced later in the season out of synchrony with pollinator activity results in lower seed productivity (Painter *in litt.* 1977).

The Nature Conservancy has been monitoring population sizes for *Arabis hoffmannii* on Santa Cruz Island since 1990. In 1993, only 19 individuals were observed in the Centinela population; this represented a net loss of 13 individuals from the previous year, with mortality of nine of those plants ''directly attributed to pig rooting'' (Klinger 1994a).

D. The Inadequacy of Existing Regulatory Mechanisms

Under the Native Plant Protection Act (sec. 1900 *et seq.* of the Fish and Game Code) and the California Endangered Species Act (sec. 2050 *et seq.*), the California Fish and Game Commission has listed *Dudleya nesiotica* and *Galium buxifolium* as rare and *Berberis pinnata* ssp. *insularis* and *Malacothamnus fasciculatus* ssp. *nesiotica* as endangered. The remaining taxa included in this listing proposal are on List 1B of the California Native Plant Society's Inventory (Smith and Berg 1988), indicating that, in accordance with sec. 1901, chapter 10 of the California Department of Fish and Game Code, they are eligible for State listing. Both the Native Plant Protection Act and the California Endangered Species Act prohibit the ''take'' of State-listed plants on private and State lands, except under permit (sec. 1908 and sec. 2080 of the Fish and Game Code). Privately owned lands that support populations of the taxa in this rule include most of Santa Cruz Island, 90 percent of which is owned by TNC; the remaining 10 percent is owned jointly by NPS. On Santa Catalina Island, habitat for *Helianthemum greenei* occurs on land managed by the Catalina Conservancy, a private conservancy owned by the Catalina Island Company. In general, these State regulatory mechanisms would not likely be invoked, because major changes in land use, such as development projects, are not likely to be proposed on these properties.

The California Fish and Game Commission (Commission) also regulates hunting on private and public

lands by issuing permits for the take of a specified number of animals and taking measures to manage herd sizes. The Commission issues permits for deer hunting on Santa Catalina Island. In 1993, the Commission issued 300 tags for deer hunting on the island. Pigs are considered livestock if they are fenced or marked, but considered wild game if they are unfenced and unmarked. The Catalina Island Company has entered into a memorandum of understanding (MOU) with CDFG to allow eradication of feral pigs on Catalina Island (Mayer, pers. comm. 1994). A similar MOU between CDFG and TNC exists for the removal of pigs from Santa Cruz Island. Bison, which occur on Santa Catalina Island, are considered livestock and therefore not regulated by any agency. Apparently, the Commission has no regulatory authority over hunting or herd size of deer and elk on Santa Rosa Island, because these ungulates were originally transported there under a game breeder's permit in the early 1900's.

Several Federal laws, Interior policies, and NPS policies and guidelines apply to the management of NPS lands. These laws and guidelines include the NEPA, the Endangered Species Act, NPS guidelines for natural resources management (NPS 1991), and the NPS Statement for Management (NPS 1985). The 1980 Congressional legislation enabling purchase of Santa Rosa Island as a national park from the Vail and Vickers Company stated that the owner ''may retain for himself a right of use and occupancy of all or such portion of the property as the owner may elect for a definite term of not more than twenty-five years, or ending at the death of the owner, or his spouse, whichever is later. The owner shall elect the term to be reserved. Any such right retained pursuant to this subsection with respect to any property shall be subject to termination by the Secretary upon his determination that such property is being used for any purpose which is incompatible with the administration of the park, or with the preservation of the resources therein, and it shall terminate by operation of law upon notification by the Secretary to the holder of the right of such determination and tendering to him the amount equal to the fair market value of that portion which remains unexpired.'' (Pub. L. 96–199, 94 Stat. 67, March 5, 1980). The legislation also directed the Secretary to complete a natural resources study within 2 years that would supply an inventory of all terrestrial and marine species, indicating their population dynamics, and probable trends as to future numbers and welfare, and to recommend action that should be adopted to better protect the natural resources of the park.

Under the conditions of the deed of sale, the former owners, the Vail and Vickers Company, chose only to retain the rights to occupy 3.0 ha (7.6 ac) (NPS 1986). The NPS issues Special Use Permits for 5-year terms for grazing and hunting. The first Special Use Permit issued to Vail and Vickers Company included a condition that a range management plan be developed within 5 years. A range management plan was adopted when the NPS issued the second special use permit. The plan, however, does not address protection of the taxa in this rule (USFWS 1991, 1992, 1993).

In a recent review of the range management plan, the Service found that measuring residual dry matter, the identified means of determining appropriate stocking rates, is inadequate to monitor other important indicators of ecosystem health, including composition and diversity of species, and the condition of plant species of special concern (USFWS 1993). The monitoring of sensitive resources within grazed areas is commonly recommended (NPS 1991, Ruyle 1987, Willoughby 1986), but in this case has not been included in the range management plan. Currently, the condition of the vegetation on Santa Rosa Island is monitored by assessing the residual dry matter of grassland vegetation, which is composed primarily of non-native species (NPS 1993, NPS 1996).

The NPS has prepared a Resource Management Plan (Plan) for Santa Rosa Island to address water quality and rare plants (NPS 1997). The successful implementation of the Plan will be evaluated on a yearly basis to determine the effects on the species in this rule that occur on Santa Rosa Island. While reducing grazing and browsing, the preferred action will allow impacts to continue to *Arctostaphylos confertiflora, Castilleja mollis, Gilia tenuiflora* ssp. *hoffmannii, Malacothrix indecora,* and *Phacelia insularis* ssp. *insularis* and in historic habitat for *Arabis hoffmannii, Berberis pinnata* ssp. *insularis* and *Helianthemum greenei.*

San Miguel Island and adjacent Prince Island (a small islet) are under the jurisdiction of the Department of the Navy (Navy), but NPS assists in the management of natural, historic, and scientific values of San Miguel Island through a memorandum of agreement (MOA) originally signed in 1963, an amendment to this MOA signed in 1976, and a supplemental Interagency Agreement (IA) signed in 1985. The MOA states that the ''paramount use of the islands and their environs shall be for the purpose of a missile test range, and all activities conducted by or in behalf of the Department of the Interior on such islands, shall recognize the priority of such use'' (Department of the Navy 1963). In addition to San Miguel Island, four other islands including Anacapa, Santa Barbara, Santa Cruz, and Santa Rosa lie wholly within the Navy's Pacific Missile Test Center (PMTC) Sea Test Range. The 1985 IA provides for the PMTC to have access and use of portions of those islands, for expeditious processing of any necessary permits by NPS, and for mitigation of damage of park resources from any such activity (Department of the Navy 1985). Should the Navy no longer require use of the islands, NPS would seek authorization for the islands to be preserved and protected as units within the NPS system (Department of the Navy 1976). To date, conflicts concerning protection of sensitive resources on San Miguel Island have not occurred. Protection and management for the three taxa in this rule that occur on the island, *Galium buxifolium, Malacothrix squalida,* and *Phacelia insularis* ssp. *insularis,* have not been addressed, leaving in question which agency has ultimate responsibility to do so.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Over 180 non-native plant species have been documented from the northern island group, and the disruption of native habitats and displacement of native species by alien plants is a major concern for natural resource managers on the islands (Hochberg *et al.* 1979, Halvorson *et al.* 1987). Numerous aggressive non-native plants, including Australian fireweed (*Erechtites glomerata*), iceplants (*Carpobrotus* spp., *Mesembryanthemum* spp.), thistles (*Centaurea* spp., *Cirsium* spp., *Silybum* sp.), German-ivy (*Senecio mikanoides*), hoary cress (*Cardaria draba*), and Russian thistle (*Salsola tragus*) pose threats to most of the taxa addressed in this rule.

Fennel (*Foeniculum vulgare*) has become widespread since the removal of cattle and sheep from Santa Cruz Island. Fennel was noticed as a pest species prior to the removal of sheep as reported in Hobbs (1983). Sheep kept the plant from growing to its full height of 2 m (6 ft), and since their removal the plant has ''appeared'' over large areas of the island. When it is not grazed and cropped close to the ground, its bright green foliage and bright yellow flowers are very conspicuous. Several papers

were presented at a recent symposium on techniques to control fennel (Brenton and Klinger 1994, Dash and Gliessman 1994, Gliessman 1994). If left unchecked, fennel completely dominates the habitats it occupies to the exclusion of all other species. This dominance may be facilitated by a chemical that prevents other species from competing for occupied sites (Gliessman 1994).

Incidental introductions of seed to the Channel Islands occur continually from wind-blown seed from the mainland, introductions from restocking of non-native animals, and seed carried on vehicles and in construction materials. Deliberate introductions of seed have also occurred as during the 1960's, when one pilot reported scattering bags of commercial wildflower and grass seed on most of the northern Channel Islands (Rutherford, *in litt.* 1994). When new introductions and established seed sources occur in areas with disturbance resulting from grazing, browsing, and rooting by non-native mammals, the invasive species can dominate the site. Over the past decade there has been an increasing trend in the numbers of non-native plants invading the Channel Islands. Santa Rosa Island has experienced the least increase in percentage of weed species to native flora ratio of any of the Channel Islands with a 2 percent increase to 20 percent (Junak *et al.* 1995). Santa Cruz Island has at least 170 non-native plants recorded and Santa Rosa Island has 98 non-natives (Junak *et al.* 1995). These invasive species have a high probability of preventing recruitment and causing habitat displacement of *Arabis hoffmannii, Castilleja mollis, Dudleya nesiotica, Galium buxifolium, Helianthemum greenei, Malacothamnus fasciculatus* var. *nesioticus, Malacothrix indecora, Malacothrix squalida, Phacelia insularis ssp. insularis,* and *Thysanocarpus conchuliferus.*

Many of the known pollinators on the islands are ground-nesting insects (Miller 1985, Miller and Davis 1985). *Gilia tenuiflora* has been reported to be pollinated by a ground nesting beefly (*Oligodranes* sp.) (Grant and Grant 1965). The habitat of these ground-nesting insects has been and is being degraded by trampling and serious loss of soils to active erosion on all of the islands.

The few, small and isolated populations with few individuals of most of these taxa increase the potential for their extinction from random events. One of the species in this rule, *Dudleya nesiotica,* is known from single a population. Seven other taxa in this rule, *Arabis hoffmannii, Berberis pinnata* ssp. *insularis, Castilleja mollis, Gilia tenuiflora* ssp. *hoffmannii, Malacothamnus fasciculatus* ssp. *nesioticus, Malacothrix indecora,* and *Phacelia insularis* ssp. *insularis,* are known from only two to five populations. Although recent surveys were conducted for *Malacothrix squalida* and *Thysanocarpus conchuliferus* (S. Junak, pers. comm. 1994,Wilken *in litt.* 1997), and they have not been seen in over five years, the Service believes these species are still likely to be extant because all historic locations have not been recently visited.

Species with few populations and individuals are subject to the threat of random events causing extinction in several ways. First, the loss of genetic diversity may decrease a species' ability to maintain fitness within the environment, often manifested in depressed reproductive vigor. From genetic analyses conducted for the two populations of *Malacothamnus fasciculatus* var. *nesioticus,* (Swenson *et al.* 1995), it was concluded that the three genotypes represented in each of the two populations ''probably represent only a portion of the diversity once present in var. *nesioticus*.'' Elisens (1994) documented reduced levels of genetic diversity in *Galvesia speciosa,* a Channel Islands endemic species of special concern, and noted that the levels were ''likely the result of decreased population sizes initiated by human activities and herbivore introductions.''

Secondly, species with few populations or individuals may be subject to forces that affect their ability to complete their life cycle successfully. *Arctostaphylos confertiflora,* provides an excellent example of this type of threat. The only remaining individuals of this species are of moderate to old age, and establishment of new individuals is completely lacking (McEachern 1996, McEachern and Wilken 1996, Wilken *in litt.* 1997). The effects of browsing animals on critical portions of its life cycle has resulted in the inability of *Arctostaphylos confertiflora* to establish new individuals to replenish its population. The degree of pollination success for manzanita flowers is unknown, but the abundance of alien grazing and browsing animals has likely depressed the number of native pollinators available to the native plants. Even if pollination occurs and results in successful fruiting, the fruits are eaten by browsing animals. Seed banks are absent due to severe soil loss (McEachern and Wilken 1996). If the fruits escape predation and seeds do germinate, the seedlings are either trampled or eaten by those same animals. Most of the species in this rule that occur on Santa Rosa, Santa Cruz, and Santa Catalina Islands are likely to be similarly affected. For *Berberis pinnata* ssp. *insularis* the conspicuous lack of recruitment from seeds likely represents a threat to its long-term survival (Wilken 1996). During the 1995–1996 life history study for *Arabis hoffmannii* there were only 11 plants that produced seed in three populations (Wilken *in litt.* 1997).

Thirdly, random natural events, such as storms, drought, fire, or landslides, could destroy a significant percentage of a species' individuals, or the only known extant population. *Arabis hoffmannii, Galium buxifolium,* and *Thysanocarpus conchuliferus* are examples of species that could sustain losses of individuals and populations through landslides and soil sloughing as a result of storm events. If a fire were to burn through the *Arctostaphylos confertiflora* populations in its current condition with a highly reduced seed bank, the species would likely go extinct.

In summary, random events can affect species on three different levels: through loss of genetic diversity, through chance events in survival and reproduction, and through catastrophic events. When numbers of populations and individuals reach critically low levels, more than one of these three types of processes may combine to cause extinction. For instance, a species with low reproductive success due to grazing or browsing pressure during a critical portion of its life cycle may subsequently be subject to a severe drought or storm that eliminates the remaining individuals or populations. Such random events increase the vulnerability of all of the taxa in this rule.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to make this rule final. Based on this evaluation, the Service finds that *Arabis hoffmannii, Arctostaphylos confertiflora, Berberis pinnata* ssp. *insularis, Castilleja mollis, Galium buxifolium, Gilia tenuiflora* ssp. *hoffmannii, Malacothamnus fasciculatus* ssp. *nesioticus, Malacothrix indecora, Malacothrix squalida, Phacelia insularis* ssp. *insularis,* and *Thysanocarpus conchuliferus* meet the definition of endangered species under the Act. Threats to these 11 taxa include soil loss, habitat alteration by mammals alien to the Channel Islands (pigs, goats, sheep, donkeys, cattle, deer, elk, horses,

bison) and herbivory by these same alien mammals, habitat alteration by native seabirds, habitat alteration due to vehicular traffic, and competition with alien plant taxa. The 11 taxa also have an increased vulnerability to extinction due to reduced genetic viability, depressed reproductive vigor, and random events resulting from few, small and isolated populations with few individuals. Because these 11 taxa 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.

For the reasons discussed below, the Service finds that *Dudleya nesiotica* and *Helianthemum greenei* are likely to become endangered in the foreseeable future throughout all or a significant portion of their range. Since the time the proposed rule was published, more accurate information on the population status of *Dudleya nesiotica* has become available indicating that there are considerably more individuals than previously understood and that the species occupies a larger area than previously known. An estimated 30,000 to 60,000 individuals are now known to occur within an area of 13 ha (32 ac) (Wilken *in litt.* 1997). While the species remains vulnerable to soil loss, rooting from pig activity, and the possibility of random events, the Service now believes that the species is not in immediate danger of extinction. *Helianthemum greenei* has been found to have substantially larger population sizes than were previously known in areas that burned in 1994, with a minimum estimate of between 500 and 1,000 individuals at each of four locations (Wilken *in litt.* 1997). There are now 14 known locations for this taxon with an estimated total of over 3,000 individuals. While the species remains vulnerable to loss of soil, pig rooting, altered fire frequencies and intensities, and the possibility of random events, the species is not in immediate danger of extinction. The Service finds that *Dudleya nesiotica* and *Helianthemum greenei* meet the definition of threatened species under the Act. Critical habitat is not being proposed for these taxa for reasons discussed in the ''Critical Habitat'' section of this proposal.

Critical Habitat

Critical habitat is defined by section 3 of the Act as: (i) 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; (ii) 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 any protected species to the point at which the measures provided pursuant to the Act are no longer necessary (50 CFR 424.02(c)).

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 specify critical habitat at the time a species is proposed for listing. The Service finds that designation of critical habitat is not prudent for *Arabis hoffmannii, Arctostaphylos confertiflora, Berberis pinnata* ssp. *insularis, Castilleja mollis, Dudleya nesiotica, Galium buxifolium, Gilia tenuiflora* ssp. *hoffmannii, Helianthemum greenei, Malacothamnus fasciculatus* ssp. *nesioticus, Malacothrix indecora, Malacothrix squalida, Phacelia insularis* ssp. *insularis,* and *Thysanocarpus conchuliferus* 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 such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat designation for *Arabis hoffmannii, Arctostaphylos confertiflora, Berberis pinnata* ssp. *insularis, Castilleja mollis, Dudleya nesiotica, Galium buxifolium, Gilia tenuiflora* ssp. *hoffmannii, Helianthemum greenei, Malacothamnus fasciculatus* ssp. *nesioticus, Malacothrix indecora, Malacothrix squalida, Phacelia insularis* ssp. *insularis,* and *Thysanocarpus conchuliferus* is not prudent due to lack of benefit. *Dudleya nesiotica, Helianthemum greenei, Malacothamnus fasciculatus* ssp. *nesioticus,* and *Thysanocarpus conchuliferus* all occur on private lands where there is unlikely to be any need for Federal involvement under section 7 of the Act. *Arabis hoffmannii, Arctostaphylos confertiflora, Berberis pinnata* ssp. *insularis, Castilleja mollis, Galium buxifolium, Gilia tenuiflora* ssp. *hoffmannii, Malacothrix indecora, Malacothrix squalida,* and *Phacelia insularis* ssp. *insularis* all either have fewer than 100 individuals or fewer than four populations and any action that would adversely modify occupied or suitable habitat that might be considered critical habitat would also jeopardize the species. Therefore, the designation of critical habitat would not provide any benefit to the conservation of the species beyond that afforded by listing.

The NPS, the Department of Defense (DOD), TNC, and other pertinent parties have been notified of the location and importance of protecting these species' habitats. Protection of these species' habitats will be addressed through the development of a conservation agreement with the Park, the recovery process, and through the section 7 consultation process as a result of listing these species. The Service believes that effects of Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. The Service finds that designation of critical habitat for these plants is not prudent at this time, because such designation would not increase the degree of protection to the species beyond the protection afforded by listing.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States 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, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. 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 such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The NPS has developed a Resources Management Plan and Environmental

Impact Statement (EIS) for improvement of water quality and conservation of rare species and their habitats on Santa Rosa Island in response to a Cleanup and Abatement Order, issued by the Central Coast Regional Water Quality Control Board and the proposed listing of the 16 plants from the Northern Channel Islands. The implementation of the Plan is intended to improve the status of the plants in this rule; due to natural variability in population sizes of the annual plants in this rule, however, any evaluation of the success of implementation will require at least three years to evaluate. For more long-lived species, even an accurate assessment of survivorship to reproductive maturity may take considerably longer.

The Service and NPS have been cooperating to develop a conservation agreement (CA) in accordance with an MOU among several Federal land-managing agencies to cooperate in the conservation of species for which listing may be appropriate (U.S. Department of the Interior 1994). The Service has been working with and advising NPS since at least 1991 including the review of their range management plans effects on the species in this rule. The intent of the CA is to focus on the conservation needs of the plant and animal species of special concern from the northern Channel Islands such that listing for some of those taxa may be avoided. The CA would also serve as a template for the future development of a recovery strategy for the 13 taxa included in this rule.

The Service and NPS signed an MOU in 1995, for the purpose of developing a conservation strategy (CS) that would be included as the basis for a portion of the preferred alternative for the NPS EIS. A team of biologists from three agencies (NPS, Service, and BRD) was assembled to prepare the CS. As a first step in developing a CS for the northern Channel Islands, the conservation team compiled and reviewed available literature and data relevant to these species and their plant communities. Two public meetings were held on September 8, 1994, and January 9, 1995, to gather additional scientific data on the species and their habitats, distributions, and threats. It was agreed that the best strategy for recovery of the species would be a restoration of the ecosystem processes and habitat structures that support them. The NPS selected the CS alternative in the final EIS (NPS 1997).

Of the 13 taxa in this rule, all except *Dudleya nesiotica, Malacothamnus fasciculatus* ssp. *nesioticus,* and *Thysanocarpus conchuliferus* have populations or historical habitat located on Federal lands. Three of the taxa (*Galium buxifolium, Malacothrix indecora,* and *Phacelia insularis* ssp. *insularis*) have populations or historical habitat on San Miguel Island, which is owned by the Navy and managed by NPS through a MOA and IA. Navy activities that could potentially affect these taxa and their habitats include military exercises and equipment testing and retrieval carried out under the Executive Order that established the PMTC Sea Test Range, which includes Anacapa, San Miguel, Santa Barbara, Santa Cruz, and Santa Rosa Islands and their environs.

Two of the taxa (*Berberis pinnata* ssp. *insularis* and *Malacothrix squalida*) have populations or historical habitat on Anacapa Island, which is owned and managed by the NPS. Eight of the 13 taxa have populations or historical habitat on Santa Rosa Island, which is owned and managed by the NPS. Three of those eight taxa are single island endemics (*Arctostaphylos confertiflora, Castilleja mollis, Gilia tenuiflora* ssp. *hoffmannii*). NPS activities that could potentially affect these taxa and their habitats include specific management plans, including those that address expansion of NPS facilities; expansion of visitor services; range management plans, including those that address cattle ranching and deer and elk hunting; alien plant removal programs; and other ecosystem restoration programs, including prescribed fire management. Other activities include the issuing of permits, including Special Use Permits, that authorize continued ranching and hunting operations on Santa Rosa Island. Also included are permits that authorize activities by other agencies or organizations, including rights-of-way to the Department of Commerce to access lighthouse and communication facilities.

As mentioned above, there are three taxa that occur wholly on lands owned and managed by TNC. Future management of Santa Cruz Island may involve NPS as a cooperator, since the island is within National Park boundaries. NPS has already developed a keen interest in the conservation of the taxa in this rule on Santa Cruz Island, and the Service would anticipate coordination with NPS on issues affecting those taxa.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants or threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, and 50 CFR 17.71 for threatened plants, apply. These prohibitions, in part, make it illegal 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 in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

It is the policy of the Service, published in the **Federal Register** (59 FR 34272) on 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. The intent of this policy is to clarify the potential impacts of a species listing on proposed and ongoing activities within its range. Eight of the 13 taxa in this final rule are known to occur on lands under the jurisdiction of the NPS or DOD; an additional 4 taxa historically occurred on these same Federal lands, and potential habitat may still exist. Collection, damage, or destruction of listed species on these lands is prohibited. However, authorization to incidentally remove or destroy such species on Federal lands may be granted by the Fish and Wildlife Service for any otherwise legal action funded, authorized, or implemented by a Federal agency through section 7 of the Act. The removal and reduction to possession of listed species on Federal lands for research activities may be authorized by the Service under section 10(a)(1)(A) of the Act.

Section 9 of the Act prohibits removal, cutting, digging up, damaging, or destroying endangered plants on Federal or non-Federal lands in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law. As an example, if individuals of an endangered plant species were grazed or trampled by cattle while the livestock were trespassing on either Federal or non-Federal land, a violation of section 9 may exist. However, if the livestock grazing occurred under the authority of a local permit on non-Federal land or under a section 7 consultation on Federal land, section 9 would not be violated. Questions regarding whether

specific activities would constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Ventura Field Office (see **ADDRESSES** section).

The Act and 50 CFR 17.62 and 17.63 for endangered plants and 50 CFR 17.72 for threatened plants also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063, facsimile 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, 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).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein is available upon request from the Ventura Field Office (see **ADDRESSES** section).

Authors: The primary authors of this final rule are Tim Thomas and Connie Rutherford, botanists, Ventura Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulations Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
Flowering Plants							
*	*	*	*	*	*	*	
Arabis hoffmannii	Hoffman's rockcress	U.S.A. (CA)	Brassicaceae—Mustard.	E	623	NA	NA
*	*	*	*	*	*	*	
Arctostaphylos confertiflora.	Santa Rosa Island manzanita.	U.S.A. (CA)	Ericaceae—Manzanita.	E	623	NA	NA
*	*	*	*	*	*	*	
Berberis pinnata ssp. insularis.	Island barberry	U.S.A. (CA)	Berberidaceae—Barberry.	E	623	NA	NA
*	*	*	*	*	*	*	
Castilleja mollis	Soft-leaved Indian paintbrush.	U.S.A. (CA)	Scrophulariaceae—Figwort	E	623	NA	NA
*	*	*	*	*	*	*	
Dudleya nesiotica	Santa Cruz Island dudleya.	U.S.A. (CA)	Crassulaceae—Stonecrop.	T	623	NA	NA
*	*	*	*	*	*	*	
Galium buxifolium	Island bedstraw	U.S.A. (CA)	Rubiaceae—Bedstraw.	E	623	NA	NA
*	*	*	*	*	*	*	
Gilia tenuiflora ssp. *hoffmannii.*	Hoffmann's gilia	U.S.A. (CA)	Polemoniaceae—Phlox.	E	623	NA	NA
*	*	*	*	*	*	*	
Helianthemum greenei.	Island rush rose	U.S.A. (CA)	Asteraceae—Aster	T	623	NA	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Malacothamnus fasciculatus ssp. *nesioticus.*	Santa Cruz Island bush-mallow.	U.S.A. (CA)	Malvaceae—Mallow	E	623	NA	NA
*	*	*	*	*	*		*
Malacothrix indecora	Santa Cruz Island malacothrix.	U.S.A. (CA)	Asteraceae—Aster ..	E	623	NA	NA
*	*	*	*	*	*		*
Malacothrix squalida	Island malacothrix ...	U.S.A. (CA)	Asteraceae—Aster ..	E	623	NA	NA
*	*	*	*	*	*		*
Phacelia insularis ssp. *insularis.*	Island phacelia	U.S.A. (CA)	Hydrophyllaceae—Waterleaf	E	623	NA	NA
*	*	*	*	*	*		*
Thysanocarpus conchuliferus.	Santa Cruz Island lacepod.	U.S.A. (CA)	Brassicaceae—Mustard.	E	623	NA	NA
*	*	*	*	*	*		*

Dated: July 24, 1997

John G. Rogers,

Director, Fish and Wildlife Service.

[FR Doc. 97–20133 Filed 7–30–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7012–02; I.D. 072597A]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock Sole/Flathead Sole/''Other Flatfish'' Fishery Category by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1997 Pacific halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 25, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1997 halibut bycatch allowance specified for the BSAI trawl rock sole/flathead sole/''other flatfish'' fishery category, which is defined at § 679.21(e)(3)(iv)(B)(*2*), was established by the Final 1997 Harvest Specifications for Groundfish of the BSAI (62 FR 7168, February 18, 1997) as 795 metric tons.

In accordance with § 679.21(e)(7)(iv), the Administrator, Alaska Region, NMFS, has determined that the 1997 Pacific halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery in the BSAI has been caught. Consequently, NMFS is closing directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1997 Pacific halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery in the BSAI. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to public interest. The fleet will soon take the Pacific halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery in the BSAI. Further delay would only result in overharvest and disrupt the FMP's objective of allowing incidental catch to be retained throughout the year. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

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

Dated: July 25, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–20097 Filed 7-25-97; 4:44 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 147
Thursday, July 31, 1997

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

RIN AF77

License Term for Medical Use Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission is proposing to amend 10 CFR part 35 to eliminate the five-year term limit for medical use licenses in 10 CFR 35.18. License terms for licenses issued pursuant to part 35 would be set, by policy up to ten years, as are the license terms for other materials licenses. The NRC would issue some licenses for shorter terms, if warranted by the individual circumstances of license applicants. The amendment would reduce the administrative burden of license renewals for both NRC and licensees, and would support NRC's goal of streamlining the licensing process.

DATES: Submit comments by October 14, 1997. Comments received after this date will be considered, if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m., Federal workdays.

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: William B. McCarthy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7894; e-mail WBM@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 1995, the NRC Office of Nuclear Material Safety and Safeguards (NMSS) initiated a review to determine whether the license term for material licenses could be increased so that NRC's licensing resources could be redirected to other areas of the materials program. The resources devoted to renewals constituted over 50 percent of the total resources expended for licensing. NMSS undertook this review as a part of NRC's business process redesign efforts.

The license renewal process has been used as an opportunity for the Commission to review: (1) The history of the licensee's operating performance (e.g., the record on compliance with regulatory requirements); and (2) the licensee's program. This review is performed to ascertain if the licensee employs up-to-date technology and practices in the protection of health, safety, and the environment, and complies with any new or amended regulations. As part of a license renewal, the licensee is asked to provide information on the current status of its program as well as any proposed changes in operations (types and quantities of authorized materials), personnel (authorized users and radiation safety officers), facility, equipment, or applicable procedures. The renewal process has been perceived to benefit both the licensee and NRC because it requires both to take a comprehensive look at the licensed operation. However, in practice, most of the proposed changes are identified and requested by licensees as amendments rather than during the license renewal process.

License terms have been reviewed on numerous occasions since 1967. On May 12, 1967 (32 FR 7172), the Commission amended 10 CFR part 40 to eliminate a three-year limit on the term of source material licenses. At that time, there was no restriction on the term of byproduct licenses under 10 CFR part 30 or special nuclear material licenses, under 10 CFR part 70. In the notice of proposed rulemaking associated with this rule, dated December 22, 1966, NRC indicated that if the proposed amendment to eliminate the three-year restriction were adopted, licenses would be issued for five-year terms, except when the nature of the applicant's proposed activities indicated a need for a shorter license period. At that time, the Commission believed there was little justification for granting licenses under 10 CFR parts 30, 40, and 70 for terms of less than five years, in view of the cumulative experience up to that time and the means available to NRC to suspend, revoke, or modify such licenses if public health and safety or environment so required. Licenses have been issued for five-year terms since 1967.

In March 1978, NMSS conducted a study (SECY–78–284, ''The License Renewal Study for parts 30, 40 and 70 Licenses'') to consider changing the five-year renewal period for parts 30, 40, and 70 licenses. The study concluded, in part, that the NRC should continue its practice of issuing specific licenses for five-year terms and should retain an option to write licenses for shorter terms, if deemed necessary for new types of operations, or if circumstances warranted.

On July 26, 1985 (50 FR 30616), NRC proposed revising 10 CFR part 35, ''Medical Use of Byproduct Material.'' The proposed rulemaking indicated that the Commission had selected a term of five years for a license. It was believed that a term shorter than five years would not benefit health and safety because past experience indicated that medical programs did not generally change significantly over that period of time. The notice also indicated that a longer term may occasionally result in unintentional abandonment of the license. On October 16, 1986 (51 FR 36932), NRC issued the final rule that consolidated and clarified radiation safety requirements related to the medical use of byproduct materials, and included a license term of five years.

On June 19, 1990 (55 FR 24948), the Commission announced that the license term for major operating fuel cycle licensees (i.e., licenses issued pursuant to 10 CFR parts 40 or 70) would be increased from a five-year term to a ten-year term at the next renewal of the affected licenses. This change enabled NRC resources to be used to improve the licensing and inspection programs. The bases for this change were that major operating fuel cycle facilities had become stable in terms of significant changes to their licenses and operations,

and that licensees would be required to update the safety demonstration sections of their licenses every two years.

On July 2, 1996, the Commission approved the NRC staff's proposal to extend the license term for uranium recovery facilities from five years to ten years. Extending the license terms reduces the administrative burden associated with the license renewal process for both the NRC staff and the uranium recovery licensees. Also, the extension reduces the licensee fees, brings the license term for these facilities more commensurate with the level of risk, and supports NRC's goal of streamlining the licensing process. Licensees were informed of the extensions in July 1996.

On February 6, 1997 (62 FR 5656), the Commission gave notice of the policy that the license term for material licenses issued pursuant to 10 CFR parts 30, 40, or 70 would be increased from a five-year term to up to a ten-year term at the next renewal of the affected licenses. The term for licenses issued pursuant to 10 CFR part 35 is established by regulation at five years. The ten-year term for other licenses has been set by policy. Part 35 license terms would be set by this policy after the final rule is effective that removes the reference to a five-year license term from 10 CFR 35.18. The NRC may issue a license for a shorter term, depending on the individual circumstances of the license applicant.

II. Discussion

The change in policy under which the license term for materials licenses is up to ten years, has created an inconsistency between the license terms for medical use and non-medical use materials licenses. NRC believes that the license duration period may also be extended without adverse impacts on public health and safety, such as increases in the unintentional abandonment of licensed material, or decreases in the licensees' attention to licensed activities, for the following reasons:

(1) Licensees would continue to be required to adhere to the regulations and their license conditions, and to apply for license amendments for certain proposed changes to their programs;

(2) No changes in either the frequency or elements of the medical inspection program are being proposed;

(3) NRC would continue to be in the position to identify, by inspection or other means, violations that affect public health and safety, and to take appropriate enforcement actions;

(4) Cases of abandonment of NRC licenses would be identified through nonpayment of the annual licensing fees and regional follow-up;

(5) The staff would continue to make licensees aware of health and safety issues through the issuance of generic communications (such as information notices, generic letters, bulletins, and the *NMSS Licensee Newsletter*); and

(6) NRC efforts are moving to a more performance-based regulatory approach, where emphasis is placed on the licensee's execution of commitments rather than on re-review of the details of the licensee's program.

III. Proposed Regulatory Action

The NRC is proposing to revise Part 35 to eliminate the five-year term limit in 10 CFR 35.18 for medical use licenses, so that the term for medical licenses can be set by policy for up to ten years.

IV. Compatibility for Agreement States

No problems have been identified regarding Agreement State implementation of this rule change. Section 35.18 is a Division 3 requirement. For purposes of NRC and Agreement State compatibility requirements, Division 3 rules apply to a number of the provisions in NRC regulations that would be appropriate for Agreement States to adopt, but they do not require any degree of uniformity between NRC and State rules. Such rules are strictly matters for the regulatory agency and the regulatory community within its jurisdiction. NRC encourages states to adopt the regulatory approach taken by NRC in such rules, but states are not required to do so. Under the new Commission Policy Statement on Agreement State Compatibility, Division 3 rules will be classified as compatibility category D with the same description as Division 3.

V. Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format, by calling the NRC Electronic Bulletin Board 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 the rulemaking are also available, as practical, 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 can be accessed by a direct dial phone 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 ''US Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online main menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld systems.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with description, 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 NRC Rules menu.

You may also access the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the same access as the FedWorld bulletin board, including the facility to upload comments as files (any format), if your web browser supports that function.

For more information on the NRC bulletin boards call Mr. Arthur Davis.

Systems Integration and Development Branch, NRC, Washington DC 20555–0001, telephone (301) 415–5780; e-mail AXD@nrc.gov. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–6215; e-mail CAG@nrc.gov.

VI. Finding of No Significant Environmental Impact: Availability

No Environmental Assessment will be needed because the rulemaking is covered by the categorical exclusion in 10 CFR 51.22(c)(3)(i) for amendments to Part 35 that relate to renewals of licenses.

VII. Paperwork Reduction Act Statement

This proposed rule will reduce the burden for both medical licensees and NRC, because terms could be established by policy, for up to ten years, as is the case for other material licensees. However, the reduced burden from less frequent license renewal will not be realized in the near future because the affected licenses are operating under a five-year extension of their current licenses which were granted in 1995. The impact of that one-time extension is addressed in the current supporting statement for NRC Form 313, ''Application for Material License'' which was approved by the Office of Management and Budget (OMB) under OMB clearance No. 3150–0120, and expires on July 31, 1999. The data on the reduced burden from extension of the license term for all material licenses, as well as from other actions taken to streamline the licensing process, will be included in the request for renewal of the information collection requirements on NRC Form 313, in 1999. This is appropriate because the next OMB clearance extension will cover 1999–2002, during which time the medical licenses currently under the five year extension will expire and be affected by this rulemaking.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

VIII. Regulatory Analysis

Problem

The current rule requirement, regarding the term of medical licenses, is codified in Section 35.18 and states that, ''The Commission shall issue a license for the medical use of byproduct material for a term of five years.'' The License term of other materials licenses, as established by Commission policy, is up to ten years. There is thus an inconsistency as to duration and manner of determination of the license term of medical use licenses and all other materials licenses. Based on the above, the following options were considered.

Alternative Approaches

1. *Take no action:* Maintain the requirement that licenses issued pursuant to Part 35 would be issued for five years.

This option would continue the inconsistency between how license terms for medical licenses, and all other materials licenses, are established. Terms for medical use licenses are established in codified regulations, whereas the term for other materials licenses are set by policy. Also, this option would result in disparities in the duration of the term for material licenses, because medical use licenses would continue to be issued for five-year terms whereas the duration of the term for other materials licenses would be up to ten years.

2. *Revise 10 CFR 35.18:* Revise the regulations to delete any reference to the license term for licenses issued pursuant to Part 35.

This option would result in consistency between how license terms for medical licenses and all other material licenses are established and in the duration of such licenses. Commission decisions regarding the duration of a materials license could therefore apply uniformly to all types of material licenses. After final rulemaking action to revise 10 CFR 35.18, the license term for licenses issued pursuant to Part 35 would be set by already established policy for up to ten years.

Value and Impact

The license renewal process is resource-intensive for both the licensee and NRC. At the time of license renewal, licensees submit to NRC any changes in operations, personnel, facility, equipment, or applicable procedures. Because NRC is in contact with the licensees on an ongoing basis, many of these changes are identified during the inspection and license amendment process. Therefore, the rulemaking to remove the five-year license term for medical use of byproduct material would not change the health and safety requirements imposed on licensees.

If the reference to the five-year term in 10 CFR 35.18 is removed, and with the Commission's approval (February 1997) given to extend the license term up to ten years for all material licenses issued pursuant to Parts 30, 40, and 70, there would be a reduction in the regulatory burden for approximately 2,000 NRC licensees that use byproduct material for medical procedures. Estimated savings are based on the assumption that these licensees would only be required to submit a renewal application every ten years as opposed to every five years, resulting, on average, in a savings of 200 applications per year. However, countervailing these savings, medical licensees may need to submit an average of one additional amendment during the ten year period to account for changes in operations that would have routinely been addressed when the license was renewed on a five year cycle. Assuming that a typical license renewal application and typical amendment involves ten hours and two hours of licensee professional effort, respectively, there would be a net savings per licensee of eight hours. Based on an industry professional labor rate of $70 per hour, the annual industry-wide savings would approximate $112,000. Over a 30-year time frame, based on a 7 percent real discount rate, the present worth savings to industry would approximate $1.4 million.

Similarly, this rulemaking would also be cost effective for the NRC because fewer resources would be required to review and process renewal applications. On average, it takes approximately 14 hours of NRC professional time to renew a medical license and four hours to review an amendment. This translates to a net savings to the NRC of 10 hours per license. Assuming an NRC labor rate of $70 per hour, and on average, 200 application per year, the annual NRC savings would equal $140,000. The 30 year present worth savings to the NRC would approximate $1.7 million.

Conclusion

This rulemaking, to remove the five-year license term for medical use of byproduct material, is proposed so the term for medical licenses will be consistent with that of other materials licenses (set by policy to be up to 10 years). The extension will reduce the administrative burden of license renewals for both NRC and the licensee and will support NRC's goal of streamlining the licensing process without any reduction in health and safety. NRC may issue some licenses for shorter terms, if warranted by the individual circumstances of license applicants.

Decisional Rationale

Based on the consistency which is created between license terms for medical licenses and all other material licenses by the rulemaking, and the cost effectiveness of a license term of up to ten years, the NRC is proposing to amend 10 CFR part 35 to eliminate the five-year term limit for medical use licenses and allow the license term to be set by the established policy for up to ten years.

IX. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant impact on a substantial number of small entities. If any small entity subject to this regulation determines that, because of its size, it is likely to bear a disproportionate adverse economic impact, the entity should notify the Commission of this in a comment that indicates the following:

(a) The licensee's size and how the proposed regulation would result in a significant economic burden upon the license compared to the economic burden on a larger licensee;

(b) How the proposed regulation could be modified to take into account the licensee's differing needs and capabilities;

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed rule were modified as suggested by the licensee;

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

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

X. Backfit Analysis

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

List of Subjects in 10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and record requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 35.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

1. The authority citation for part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. The introductory text of § 35.18 is revised to read as follows:

§ 35.18 License issuance

The Commission shall issue a license for the medical use of byproduct material if:

* * * * *

Dated at Rockville, Maryland, this 10th day of July, 1997.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Acting Executive Director for Operations.

[FR Doc. 97–20189 Filed 7–30–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 73

[PRM 50–59 and PRM 50–60]

RIN 3150–AF63

Frequency of Reviews and Audits for Emergency Preparedness Programs, Safeguards Contingency Plans, and Security Programs For Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to change the frequency of licensees' independent reviews and audits of their emergency preparedness programs, safeguards contingency plans, and security programs. This amendment is being proposed in response to petitions for rulemaking submitted by Virginia Power Company. Specifically, instead of conducting reviews every 12 months, as is currently required, the proposed amendment would require nuclear power reactor licensees to conduct program reviews and audits in response to program performance indicators, or after a significant change in personnel, procedures, equipment, or facilities, but in no case less frequently than every 24 months.

DATES: Submit comments October 14, 1997. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking as discussed under Electronic Access in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra D. Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6261, e-mail sdf@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 1994, the Commission docketed a petition for rulemaking from Virginia Power, dated December 30, 1993, (PRM–50–59) to change the required audit frequency for safeguards contingency plans and security programs at nuclear power reactors. On January 19, 1994, the Commission docketed, as a separate petition for rulemaking (PRM–50–60), Virginia Power's request that the NRC change the required audit frequency for emergency preparedness programs at nuclear power reactor facilities. NRC published these two petitions for public comment in the **Federal Register**. PRM–50–59 was published on May 6, 1994 (59 FR 23641). PRM 50–60 was published on April 13, 1994 (59 FR 17449).

The Commission's regulations currently require power reactor licensees to conduct independent reviews and audits of each of these programs at least every 12 months. Virginia Power requested that the frequency be changed to nominally every 24 months. This rulemaking addresses the issues raised in these petitions.

The Commission notes that although the petitioner uses the term ''audit,'' the emergency planning regulations use the term ''program reviews.'' Further, the security program and safeguards contingency plan regulations also use ''reviews.'' When describing what is required by a ''review'' of the physical security plan, the regulations use the term ''audits'' for some of the requirements. This rule change will continue to use the term ''program reviews'' for the emergency preparedness regulations and the safeguards contingency and security regulations. The use of the term ''audit'' in the requirements for the ''reviews'' of the safeguards contingency and security plans remains unchanged. The NRC understands that licensees have assumed that the term ''audit'' in Appendix C to Part 73 means a quality assurance (QA) audit that conforms to their normal audit program requirements and American National Standards Institute (ANSI) standards such as ANSI N45.2, ''Quality Assurance Programs for Nuclear Facilities;'' ANSI N45.2.12, ''Requirements for Auditing of Quality Assurance Programs for Nuclear Power Plants;'' ANSI N45.2.33, ''Qualifications of Quality Assurance Program Audit Personnel for Nuclear Power Plants;'' and ANSI N18.7, ''Administrative Controls and Quality Assurance for the Operation Phase of Nuclear Power Plants.'' The NRC does not require that these audits be performed by the QA organization in accordance with the QA program commitments for the conduct of the audits. As stated in the current rule, the NRC expects that these audits must be conducted by individuals who are qualified (technically competent) in the subject(s) being audited and are independent of the program (to assure objectivity and no conflict of interest). At the licensee's option, the QA organization may perform, lead, or assist in these audits.

Along with the petitions for rulemaking related to security and emergency preparedness, Virginia Power submitted a third petition (PRM–26–1) to relax the existing audit (i.e. program review) frequency required for fitness-for-duty (FFD). Issues related to the FFD petition are being addressed in a separate NRC rulemaking.

Discussion

Requirements pertaining to the review frequency of safeguards contingency plans by power reactor licensees are contained in § 50.54(p)(3) and in Appendix C to Part 73.[1] Section 50.54(p)(3) requires that licensees provide for a review of the safeguards contingency plan at least every 12 months by individuals who are independent of both security program management and personnel who have direct responsibility for implementation of the security program. This review must include a review and audit of safeguards contingency procedures and practices, an audit of the security system testing and maintenance program, and a test of the safeguards systems along with commitments established for response by local law enforcement authorities. The current records retention period for the results of this review and audit in this section is 2 years. It is being changed to 3 years to correspond to the retention period for the same records in Appendix C.

In Appendix C to Part 73, the section entitled ''AUDIT AND REVIEW'' requires a review of the safeguards contingency plan at intervals not to exceed 12 months. The review must include an audit of safeguards contingency procedures and practices, and an audit of commitments established for response by local law enforcement authorities. The results of this review and audit must be maintained for a period of 3 years.

Requirements for security program reviews are contained in § 73.55(g)(4). This section requires that the security program be reviewed at least every 12 months by individuals independent of both security program management and personnel who have direct responsibility for the implementation of the security program. The review must include an audit of the security procedures and practices, an evaluation of the effectiveness of the physical protection system, an audit of that system's testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results of this review and audit must be maintained for a period of 3 years.

Requirements pertaining to the frequency of program reviews of the emergency preparedness program by nuclear power reactor licensees are contained in § 50.54(t). This section requires that licensees provide for a review of their emergency preparedness program at least every 12 months by persons who have no direct responsibility for implementation of the emergency preparedness program. The review must include an evaluation for adequacy of interfaces with State and local governments, as well as the adequacy of licensee drills, exercises, capabilities, and procedures. The results of the review, along with recommendations for improvement, must be documented, reported to the licensee's corporate and plant management, and must be retained for a period of 5 years.

The Virginia Power petitions requested that the regulations be amended to change the frequency of the required audit (i.e. program review) from at least every 12 months to nominally every 24 months with additional audits if performance warranted. NRC has carefully reviewed the arguments presented by the petitioner and the public comments that were submitted on the petitions. The NRC is proposing to resolve the petitions with regard to 10 CFR Part 50 licensees by initiating this rulemaking. The proposed rule incorporates the petitions in part, and modifies some petition requests in response to the public comments as indicated in the following discussion.

Twenty-eight public comments resulted from the publication of the petitions in the **Federal Register**. Of these, 9 comments concerned the safeguards contingency plan and the security program, and 19 concerned the emergency preparedness program.

All the comments on the security program were from the nuclear industry and supported the petition. Of the 19 public comments on emergency preparedness, 17 were from the nuclear power industry and supported the petition. Two were from States, who expressed some concern with lengthening the period between reviews. The States' concern has been addressed in this proposed revision by clarifying that more frequent, focused program reviews and audits may be required based on an assessment of security or emergency preparedness by the licensee against performance indicators, or after a significant change in personnel, procedures, equipment, or facilities.

The NRC staff is proposing changing the regulations, which will reduce the burden on the licensees without affecting public health and safety, for the following reasons.

First, after these rules were first implemented, industry performance improved to the point that annual program reviews and audits are not necessary to ensure that the emergency preparedness programs, safeguards contingency plans, or security programs are adequate. Inspection findings and enforcement actions, licensee

[1] Note that this appendix is currently cited by both § 73.46, which applies to nuclear fuel licensees, and § 73.55, which applies to nuclear power reactor licensees. This rulemaking applies only to nuclear power reactors.

performance during exercises and operational safeguards response evaluation, and the systematic assessment of licensee performance (SALP) evaluations indicate sufficient improvement to justify the recommended reduction in audit burden. Furthermore, if a licensee's program is in fact not performing properly, the proposed changes could result in audits more frequently than every 24 months.

Second, the current requirements for annual reviews and audits result in a lack of licensee flexibility, which can compromise the completion of effective audits. Licensees are currently limited in their ability to allocate audit resources according to safety needs and priorities, because available resources and personnel must be committed according to a set review and audit schedule, rather than used to monitor or assess other areas of concern. In addition, licensees are not always able to conduct reviews and audits at the same time as other activities. Concurrent scheduling with activities such as separately scheduled drills, inspections, or operational activities would permit a better review and evaluation of plant systems. This can lead to reviews and audits of little or marginal benefit, or the need to perform extra reviews and audits to reconfirm that a program is still adequate after there has been a change. It can also lead to auditing before corrective actions are completed, when waiting a short time could allow the review and audit to be done when the effectiveness of a corrective action can be evaluated.

Third, the current requirements concerning review and audit frequency are inconsistent with recent regulatory trends, which have moved toward performance-based requirements that focus attention on action to correct demonstrated weaknesses rather than schedule-driven needs. By establishing performance-based criteria for triggering reviews and audits, the NRC staff's resolution to PRM–50–59 and PRM–50–60 would be consistent with recent recommendations of the NRC Regulatory Review Group, the National Performance Review, and the proposed amendments that were published in the **Federal Register** on May 9, 1996 (61 FR 21105), to resolve the FFD audit frequency petition for rulemaking, PRM–26–1. This approach is intended to promote flexibility and efficiency in nuclear facility operations while maintaining the highest standards of public health and safety. Both NRC policy directives and Congressional action emphasize the need for the Commission to move toward performance-based regulations.

As a result, the NRC staff proposes to revise the regulations to require that licensees conduct focused program reviews and audits as needed, based on an assessment by the licensee against performance indicators or in response to a significant change in personnel, procedures, equipment, or facilities, and that all program elements are reviewed and audited at least every 24 months. These changes are consistent with the requested changes in the two petitions for rulemaking (PRM 50–59 and PRM 50–60) and will promote performance-based rather than compliance-based review and audit activities.

The proposed changes will further clarify that programs must be reviewed and audited following a significant change in personnel, procedures, or equipment as soon as reasonably practicable, but no later than 12 months after the changes. The purpose of these focused audits would be to ensure that changes have not adversely affected the operation of the particular program element or function in question. Accordingly, this proposed rule would better ensure that programmatic problems will be detected and corrected on a timely basis and that program reviews and audits are based on specific performance indicators rather than on rigidly specified time limits.

It is anticipated that a regulatory guide may be necessary. The NRC specifically requests public comments on suggested performance indicators appropriate for the emergency preparedness and security programs that would amplify the regulation.

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 or connecting to the NRC interactive rulemaking web site, ''Rulemaking Forum.'' 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 the rulemaking are also available, as practical, 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 indicators 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 can also be accessed by a direct dial phone 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 you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

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

Although FedWorld 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.

You may also access the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the same access as the FedWorld bulletin board, including the facility to upload comments as files (any format), if your web browser supports that function.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555–0001,

telephone (301) 415–5780; e-mail AXD3@nrc.gov. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Environmental Impact: Categorical Exclusion

The Commission has determined that this proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22 (c)(3)(i). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Because the rule will reduce existing information collection requirements, the public burden for this collection of information is expected to be decreased by approximately 275 hours per licensee per year. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. The NRC is seeking public comments on the potential impact of the collection of information contained in the proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of the burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the collection of information be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed collection of information, including suggestions for further reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0002), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the collections of information or on the above issues should be submitted by September 2, 1997. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

A discussion of each of the changes proposed in this rule is provided above in the supplementary information section. The proposed changes represent a potential cost savings for licensees because it is anticipated that fewer reviews and audits will be necessary. Most licensees include the safeguards contingency plan as part of the physical security program and one audit and review covers both. Information provided by licensees on the cost for conducting reviews and audits of the licensee emergency preparedness and physical security programs varies, but is estimated to cost approximately $15,000 per annual review and audit, for a total for both audits of $30,000 annually. Each element of the program would be audited at least once every 2 years. This would represent a potential maximum savings of 50 percent to licensees in the emergency preparedness and physical security program audit costs, or an estimated $30,000 per licensee every 2 years. The total cost savings to the industry would be approximately $1.1M per year. Even if some elements of the programs were audited more frequently, the cost to the licensee will likely be less than auditing the entire program every year. Limited focused audits that address significant problems or changes will cost about $5,000 per year if they are needed. There is no additional cost anticipated for collecting and analyzing program performance indicators since most licensees already do so in some fashion.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act OF 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect only licensees authorized to operate nuclear power reactors. These licensees do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act, or the Small Business Size Standards set out in regulations issued by the Small Business Administration Act, 13 CFR Part 121.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed amendment because this amendment would not impose new requirements on existing 10 CFR part 50 licensees. The proposed changes would reduce the frequency with which licensees conduct independent reviews and audits of their emergency preparedness programs, safeguards contingency plans, and security programs. This action does not seek to impose any new or increased requirements in this area. It will be a decrease of burden on the licensee. No backfitting is intended or approved in connection with this proposed rule change. Therefore, a backfit analysis has not been prepared for this amendment.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Export, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 50 and 73.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. Section 50.54 is amended by revising paragraphs (p)(3) and (t) to read as follows:

§ 50.54 Conditions of license.

* * * * *

(p) * * *

(3) The licensee shall provide for the development, revision, implementation, and maintenance of its safeguards contingency plan by a review, as necessary, based on an assessment by the licensee against performance indicators, or as soon as reasonably practicable after a significant change occurs in personnel, procedures, equipment, or facilities, but no longer than 12 months after the change. The licensee shall ensure that all program elements are reviewed at least every 24 months by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The review must include a review and audit of safeguards contingency procedures and practices, an audit of the security system testing and maintenance program, and a test of the safeguards systems along with commitments established for response by local law enforcement authorities. The results of the review and audit, along with recommendations for improvements, must be documented, reported to the licensee's corporate and plant management, and kept available at the plant for inspection for a period of 3 years.

* * * * *

(t) The licensee shall provide for the development, revision, implementation, and maintenance of its emergency preparedness program by a review, as necessary, based on an assessment by the licensee against performance indicators, or as soon as reasonably practicable after a significant change occurs in personnel, procedures, equipment, or facilities, but no longer than 12 months after the change. The licensee shall ensure that all program elements are reviewed at least every 24 months by persons who have no direct responsibility for the implementation of the emergency preparedness program. The review shall include an evaluation for adequacy of interfaces with State and local governments and of licensee drills, exercises, capabilities, and procedures. The results of the review, along with recommendations for improvements, shall be documented, reported to the licensee's corporate and plant management, and retained for a period of five years. The part of the review involving the evaluation for adequacy of interface with State and local governments shall be available to the appropriate State and local governments.

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297(f)).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

4. Section 73.55 is amended by revising paragraph (g)(4) to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(g) * * *

(4) The licensee shall review the security program, as necessary, based on an assessment by the licensee against performance indicators, or as soon as reasonably practicable after a significant change occurs in personnel, procedures, equipment, or facilities, but no longer than 12 months after the change. The licensee shall ensure that all program elements are reviewed at least every 24 months by individuals who have no direct responsibility for the implementation of the security program. The security program review must include an audit of security procedures and practices, an evaluation of the effectiveness of the physical protection system, an audit of the physical protection system testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results and recommendations of the security program review, management's findings on whether the security program is currently effective, and any actions taken as a result of recommendations from prior program reviews must be documented in a report to the licensee's plant manager and to corporate management at least one level higher than that having responsibility for the day-to-day plant operation. These reports must be maintained in an auditable form, available for inspection, for a period of 3 years.

* * * * *

5. Appendix C to Part 73, Licensee Safeguards Contingency Plans, is amended by revising the section titled ''Audit and Review'' to read as follows:

Appendix C to Part 73—Licensee Safeguards Contingency Plans.

* * * * *

Audit and Review

For nuclear facilities subject to the requirements of § 73.46, the licensee shall provide for a review of the safeguards contingency plan at intervals not to exceed 12 months. For nuclear power reactor licensees subject to the requirements of § 73.55, the licensee shall provide for a review of the safeguards contingency plan, as necessary, based on an assessment by the licensee against performance indicators, or as soon as reasonably practicable after a significant change occurs in personnel, procedures, equipment, or facilities, but no longer than 12 months after the change and shall ensure that all program elements are reviewed at least every 24 months. A licensee subject to either requirement shall ensure that the review of the safeguards contingency plan is by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The review must include an audit of safeguards contingency procedures and practices, and an audit of commitments established for response by local law enforcement authorities.

The licensee shall document the results and the recommendations of the safeguards contingency plan review, management findings on whether the safeguards contingency plan is currently effective, and any actions taken as a result of recommendations from prior reviews in a report to the licensee's plant manager and to corporate management at least one level higher than that having responsibility for the day-to-day plant operation. The report must be maintained in an auditable form, available for inspection for a period of 3 years.

* * * * *

Dated at Rockville, Maryland, this 8th day of July 1997.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Acting Executive Director for Operations.

[FR Doc. 97–20191 Filed 7–30–97; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 114

[Notice 1997—12]

Definition of ''Member'' of a Membership Association

AGENCY: Federal Election Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is seeking comments on how to revise its rules governing who is a ''member'' of a

membership association following the decision of the United States Court of Appeals for the District of Columbia Circuit in Chamber of Commerce of the United States v. Federal Election Commission. The Commission is not proposing specific amendments to the rules at this time but is rather attempting to obtain general guidance on the factors to be considered in determining this relationship.

DATES: Comments are due on September 2, 1997.

ADDRESSES: All comments should be addressed to Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up. Electronic mail comments should be sent to members@fec.gov and should include the full name, electronic mail address and postal service address of the commenter. Additional information on electronic submission is provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act of 1971 as amended (''FECA'' or ''Act'') permits membership associations to solicit contributions from their members for a separate segregated fund (''SSF''), which contributions can be used for federal political purposes. The Act also allows membership associations to communicate with their members on any subject, including communications that include express electoral advocacy. 2 U.S.C. 441b(b)(2)(A), 441b(b)(4)(C). The implementing regulations defining who is a ''member'' of a membership association are found at 11 CFR 100.8(b)(4)(iv) and 11 CFR 114.1(e).

On August 30, 1993, the Commission published the text of revisions to these regulations. 58 FR 45770. The revised rules became effective on November 10, 1993. 58 FR 59640. The rules provide that either a significant financial attachment to the membership association (not merely the payment of dues) or the right to vote directly for all members of the association's highest governing body is sufficient in and of itself to confer membership rights. However, in most instances a combination of regularly-assessed dues and the right to vote directly or indirectly for at least one member of the association's highest governing body is required. The term ''membership association'' includes membership organizations, trade associations, cooperatives, corporations without capital stock, and local, national and international labor organizations that meet the requirements set forth in these rules.

These rules were adopted in response to the Supreme Court's ruling in *Federal Election Commission* v. *National Right to Work Committee* (''*NRWC*''), 459 U.S. 196 (1982), and a series of Advisory Opinions (''AO'') adopted by the Commission following that decision. *NRWC* rejected an argument by a nonprofit, noncapital stock corporation, whose articles of incorporation stated that it had no members, that it should be able to treat as members, and thus solicit funds to its SSF from, individuals who had at one time responded, not necessarily financially, to an NRWC advertisement, mailing, or personal contact. The Supreme Court rejected this definition of ''member,'' saying that to accept it ''would virtually excise from the statute the restriction of solicitation to 'members.'" Id. at 203. The Court determined that ''members'' of nonstock corporations should be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions. Viewing the question from this perspective meant that ''some relatively enduring and independently significant financial or organizational attachment is required to be a 'member'" for these purposes. Id. at 204. The recent revisions to the Commission's rules were intended to incorporate this standard.

The United States District Court for the District of Columbia held that the revised ''member'' rules were not arbitrary, capricious or manifestly contrary to the statutory language, and therefore deferred to what the court found to be a valid exercise of the Commission's regulatory authority. *Chamber of Commerce of the United States (''Chamber'')* v. *Federal Election Commission*, Civil Action No. 94–2184 (D.D.C. Oct. 28, 1994)(1994 WL 615786). However, the United States Court of Appeals for the District of Columbia Circuit reversed. 69 F.3d 600 (D.C.Cir. 1995), *amended on denial of rehearing*, 76 F.3d 1234 (D.C.Cir. 1996).

The case was jointly brought by the Chamber of Commerce and the American Medical Association (''AMA''), two associations that do not provide their asserted ''members'' with the voting rights necessary to confer this status under the current rules. The court held that the ties between these members and the Chamber and the AMA are sufficient to comply with the Supreme Court's *NWRC* criteria, and therefore concluded that the Commission's rules are invalid because they define the term ''member'' in an unduly restrictive fashion. 69 F.2d at 604.

The Chamber is a nonprofit corporation whose members include 3,000 state and local chambers of commerce, 1,250 trade and professional groups, and 215,000 ''direct business members.'' The members pay annual dues ranging from $65 to $100,000 and may participate any of 59 policy committees that determine the Chamber's position on various issues. However, the Chamber's Board of Directors is self-perpetuating (that is, Board members elect their successors); so no member entities have either direct or indirect voting rights for members of the Board.

The AMA challenged the exclusion from the definition of member 44,500 ''direct'' members, those who do not belong to a state medical association. Direct members pay annual dues ranging from $20 to $420; receive various AMA publications; and participate in professional programs put on by the AMA. They are also bound by and subject to discipline under the AMA's Principles of Medical Ethics. However, since state medical associations elect members of the AMA's House of Delegates, that organization's highest governing body, direct members do not satisfy the voting criteria set forth in the current rules.

The *Chamber of Commerce* court, in an Addendum to the original decision, noted that the Commission ''still has a good deal of latitude in interpreting'' the term ''member.'' 76 F.3d at 1235. However, in its original decision, the court held the rules to be arbitrary and capricious (as applied to the Chamber), since under the current rules even those paying $100,000 in annual dues cannot qualify as members. As for the AMA, the rule excludes members who pay up to $420 in annual dues and, among other organizational attachments, are subject to sanctions under the Principles of Medical Ethics. The court explained that this latter attachment ''might be thought, [] for a professional, [to be] the *most* significant organizational attachment.'' 69 F.3d at 605 (emphasis in original).

On February 24, 1997, the Commission received a Petition for Rulemaking from James Bopp, Jr., on behalf of the National Right to Life Committee, Inc. The Petition urged the Commission to revise its rules defining who is a member of a membership

association to reflect the *Chamber of Commerce* decision.

The Commission published a Notice of Availability (''NOA'') in the **Federal Register** on March 29, 1997. 62 FR 13355. The Commission received two comments in response to the NOA.

Other than its comments on the Chamber's and the AMA's member attachments that it found sufficient to comply with the Supreme Court's *NRWC* criteria, the *Chamber of Commerce* court provided little guidance on how the current rules should be revised to comply with this ruling. Both of these associations present specific and somewhat unique circumstances that do not necessarily lend themselves to generalizations applicable to the broader membership association community. Nor did the Petition for Rulemaking suggest alternative language for this purpose.

The Commission has therefore decided to issue an Advance Notice of Proposed Rulemaking (''ANPRM''), seeking general comments on how best to effectuate this decision. After analyzing the comments received in response to the ANPRM, the Commission may issue a Notice of Proposed Rulemaking (''NPRM'') seeking comments on specific regulatory language.

The current rules provide a ''safe harbor'' for membership associations, since those who meet the requirements set forth in these rules clearly enjoy ''member'' status. Associations can also seek advisory opinions pursuant to 2 U.S.C. 437f and 11 CFR part 112 to determine how the rules, as interpreted in the *Chamber of Commerce* decision, apply to their particular situations. This has already been done by certain entities, including the Chicago Mercantile Exchange (''CME'' or the ''Exchange''). *See* discussion of AO 1997–5, *infra*.

The Commission notes that there are three preliminary requirements an entity must meet before it qualifies as a ''membership association'' for purposes of these rules: It must expressly provide for ''members'' in its articles and by-laws; expressly solicit members; and expressly acknowledge the acceptance of membership, such as by sending a membership card or including the member on a membership newsletter list. 11 CFR 100.8(b)(4)(iv)(A), 114.1(e)(1). These requirements were not challenged in the litigation and the Commission does not anticipate that it will propose any changes to this language.

The Chamber of Commerce, in commenting on the NOA, argued that these three requirements should in and of themselves be sufficient to confer membership status. However, it may be that these attachments, standing alone, are insufficient to meet the ''relatively enduring and independently significant financial or organizational attachment'' standard articulated by the *NRWC* Court. (The other comment, from the Internal Revenue Service (''IRS''), stated that a potential rulemaking on this topic would not conflict with the Internal Revenue Code or any IRS regulation.)

In addition to retaining these three preliminary requirements, the Commission believes that the current rules recognizing as members those who have a stronger financial interest in an association than paying dues (for example, the ownership of a stock exchange seat) and those who have the right to vote directly for all members of the association's highest governing body, should likewise be retained for those associations that meet either of these requirements. 11 CFR 100.8(b)(4)(iv)(B) (*1*), (*3*); 114.1(e)(2) (i), (iii). Thus, the Commission is seeking comments on what other attachments, or combination of attachments, should also be sufficient to confer membership status in lieu of current 100.8(b)(4)(iv)(B)(*2*) and 114.1(e)(2)(ii).

One approach would be to establish a certain level of annual dues as in and of itself sufficient for this purpose. Those who paid this amount would be considered members regardless of whether they had organizational attachments to the association. One possibility is that any amount of annual dues set by an association would be a sufficient financial attachment, regardless of amount. Another possibility is a $200 per year cut-off point, since $200 is the amount that Congress has decided is such a significant attachment to a political committee that itemized disclosure is required for what could be considered ''membership'' in a political committee. The Commission welcomes comments on this approach as well as suggestions for what level of annual dues would be appropriate to confer membership status, if this were to be included in the rules.

For a lesser dues obligation, the rules might list other factors the Commission would consider *per se* sufficient to provide the required organizational attachment, provided that some level of dues was also required. These could include such attachments as the voting rights contained in the current rule; the right to serve on policy-making boards and/or vote on policy issues; eligibility to be elected to governing positions in the organization; and whether the member may be subject to disciplinary action by the association. If this approach is adopted, the Commission would like to make this list as comprehensive as possible, so that the large majority of covered entities will be able to quickly determine who qualifies as a member.

On May 16, 1997, the Commission determined in AO 1997–5 that, based on the facts presented, both owners and lessees of seats on the Chicago Mercantile Exchange could be considered ''members'' of the CME for purposes of these rules. The member-owners, by virtue of their ownership stake, qualify as members under 11 CFR 100.8(b)(4)(iv)(B)(*1*) and 114.1(e)(2)(i). In addition, the Commission found, member-lessees have sufficient rights and obligations to also qualify as members. These attachments include substantial financial obligations to the CME, the right to serve on policy-formulating committees, and the possibility of sanctions by the CME that would impact on their professional status. AO 1997–5 overruled AO 1988–39 and 1987–31 (in part), which had concluded that only one membership in the Exchange existed with respect to each leased membership. The Commission is seeking comments on whether to incorporate this result into the regulatory text.

The Commission's rules at 11 CFR 100.8(b)(4)(iv)(B) and 114.1(e)(2) that require both a financial and an organizational attachment for members of most membership associations clearly include two-tiered associations, such as those in which members vote for delegates to a convention, and those delegates elect those who serve on the association's highest governing body. At the time of the 1993 amendment, the Commission explained that multi-tiered associations could solicit across all tiers, as long as the various tiers met the same criteria that govern solicitations by two-tiered associations. *Explanation and Justification for Regulations on the Definition of ''Member'' of a Membership Association,* 58 FR 45770 (1993). In addition, the Commission authorized farm cooperatives as defined in the Agricultural Marketing Act of 1929 (12 U.S.C. 1141j) and those entities eligible for assistance under the Rural Electrical Act of 1936 as amended (7 U.S.C. 901–950aa–1) to solicit across all tiers even though the precise attachments set forth at 11 CFR 100.8(b)(4)(iv)(B) and 114.1(e)(2) might not always be present. 11 CFR 114.7(k)(1). Federations of trade associations had earlier been given this same right, 11 CFR 114.8(g), as had labor organizations, 11 CFR 114.1(e)(4). The *Chamber of Commerce* court, in

discussing the AMA's organizational attachments, cited these exceptions as another basis for its ruling that the AMA should be able to cross-solicit across multiple tiers even where no voting rights were present. 69 F.3d at 606.

If the Commission expands the membership definition, many multi-tiered associations that may not presently qualify for cross-tier solicitation would likely be able to do so. The Commission welcomes comments on whether this should be stated explicitly in the rules, as well as whether the particular circumstances of certain multi-tiered associations might justify different standards.

All comments on this ANPRM should be addressed to Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Commission's postal service address: Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923. Commenters submitting faxed comments should also submit a printed copy to the Commission's postal service address to ensure legibility. Comments may also be sent by electronic mail to members@fec.gov. Commenters sending comments by electronic mail should include their full name, electronic mail address and postal service address within the text of their comments. All comments, regardless of form, must be submitted by September 2, 1997.

The Commission also welcomes comments on any related topic.

Dated: July 25, 1997.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 97–20094 Filed 7–30–97; 8:45 am]

BILLING CODE 6713–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–13]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. TPE331 Series Turboprop and TSE331 Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to AlliedSignal Inc., (formerly Garrett Engine Division, Garrett Turbine Engine Company and AiResearch Manufacturing Company of Arizona) TPE331 series turboprop and TSE331 turboshaft engines. This proposal would require replacement or radiographic inspection, and replacement , if necessary, of certain third stage turbine stators with serviceable parts. This proposal is prompted by a report of an outer band weld that cracked subsequent to a radiographic inspection required by a previous AD. The actions specified by the proposed AD are intended to prevent third stage turbine wheel separation due to thermal fatigue cracking and shifting of the third stage turbine stator, which could contact the third stage turbine wheel and result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by September 29, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–13, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information on AlliedSignal Service Bulletin No. TPE331–A72–0861, Revision 2, dated April 23, 1997, referenced in the proposed rule may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. The service information on National Flight Services Service Bulletin No. NF–TPE331–A72–10961, dated April 28, 1997, referenced in the proposed rule may be obtained from either National Flight Services, Inc. 10971 E. Airport Services Road, Toledo Express Airport, Swanton, OH 43558; telephone (419) 865–2311, fax (419) 867–4224, or http://www.natfs.com, or National Flight Services of Arizona, Inc., 5170 W. Bethany Home Road, Glendale, AZ 85301; telephone (602) 931–1143, fax (602) 931–7264. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5246; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–13.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–aNE–13, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received a report of a third stage turbine stator outer band weld that cracked on an AlliedSignal Inc. Model TPE331–5 turboprop engine. This weld, removed from service in January 1996 after the crack was discovered during turbine maintenance, had passed a one-time radiographic inspection for unacceptable weld penetration and thermal fatigue cracking required by AD 87–19–02. While AD 87–19–02 was

superseded by AD 93–05–09, the requirement for a one-time radiographic inspection of the outer band weld for cracks was carried forward in to AD 93–05–09. The FAA determined that cracking initiated due to inadequate outer band butt weld penetration between the outer sheet metal ring and the nozzle casting. The FAA also determined that some radiographic films of unacceptable outer band welds may possibly have been misread by AlliedSignal Inc. In addition, numerous radiographic films are no longer on file at AlliedSignal Inc., and therefore reexamination of radiographic films of other welds is impossible. AlliedSignal Inc. no longer reads radiographic films; operators may use radiographic inspection in accordance with this AD as an alternate method of compliance with the radiographic inspection requirement of paragraph (h) of AD 93–05–09. Inadequate weld penetration could lead to fatigue cracking, shifting aft, and third stage turbine stator contact with the third stage turbine rotor. This condition, if not corrected, could result in third stage turbine wheel separation, which could result in an uncontained engine failure and damage to the aircraft.

The FAA has reviewed and approved the technical contents of National Flight Services Service Bulletin (SB) No. NF-TPE331-A72–10961, dated April 28, 1997, that provides a list by serial number of third stage turbine stators not affected by this AD and describes procedures for the reinspection for unacceptable weld penetration and thermal fatigue cracking in third stage turbine stators initially inspected by AlliedSignal Inc.; and AlliedSignal Inc. SB No. TPE331-A72–0861, Revision 2, dated April 23, 1997, that describes procedures for replacing affected third stage turbine stators with redesigned serviceable stators.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacement of certain third stage turbine stators or radiographic inspection, and replacement, if necessary, with serviceable parts. The actions would be required to be accomplished in accordance with the SBs described previously.

There are approximately 1,000 engines of the affected design in the worldwide fleet. The FAA estimates that 700 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA estimates that 210 engines would require unscheduled replacement, that it would take approximately 40 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $6,500 per engine. Approximately 350 engines would require replacement during hot section inspection, which would take approximately 2 work hours per engine, with a parts cost of $6,500. Approximately 14 engines would require unscheduled inspection, which would take approximately 50 work hours to accomplish, with a parts cost of $1,500. Approximately 21 engines would require inspection during hot section inspection, which would take approximately 10 work hours to accomplish, with zero parts cost. Approximately 35 engines would require unscheduled inspection and replacement, which would take approximately 50 work hours to accomplish, with a $6,500 parts cost. Approximately 70 engines would require inspection and replacement during hot section inspection, which would take approximately 10 work hours to accomplish, with a $5,000 parts cost. The FAA has been informed by AlliedSignal Inc. that they will provide a redesigned third stage turbine stator assembly at a special program price and will pay for the labor to install this assembly. Based on these figures, without the special price program from the manufacturer, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,986,100.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

AlliedSignal Inc.: Docket No. 97-ANE–13.

Applicability: AlliedSignal Inc., (formerly Garrett Engine Division, Garrett Turbine Engine Company and AiResearch Manufacturing Company of Arizona) Model TPE331-1, -2, -2UA, -3U, -3UW, -5, -5A, -5AB, -5B, -6, and—6A turboprop and TSE331–3U turboshaft engines with third stage turbine stators, Part Number (P/N) 868379–3, except those engines with turbine stators listed by Serial Number (S/N) in Table 1 of the National Flight Services Service Bulletin (SB) No. NF-TPE331-A72–10961, dated April 28, 1997. These engines are installed on but not limited to: Mitsubishi MU-2B series (MU–2 series); Construcciones Aeronauticas, S.A. (CASA) C–212 series; Fairchild SA226 series (Swearingen Merlin and Metro series); Prop-Jets, Inc. Model 400; Twin Commander 680 and 690 (Jetprop Commander); Rockwell Commander S–2R; Shorts Brothers and Harland, Ltd. SC7 (Skyvan); Dornier 228 series; Beech 18 and 45 series and Models JRB–6, 3N, 3NM, 3TM, and B100; Pilatus PC–6 series (Fairchild Porter and Peacemaker); De Havilland DH 104 series 7AXC (Dove); Ayres S–2R series; Grumman American G-164 series; and Schweizer G–164 series airplanes; and Sikorsky S–55 series (Helitec Corp. S55T) helicopters.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent third stage turbine wheel separation due to fatigue cracking and

shifting of the third stage turbine stator, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) For engines with third stage turbine stators with S/Ns listed in Table 1 of National Flight Services SB No. NF-TPE331-A72–10961, dated April 28, 1997, no action is required.

(b) For engines with third stage turbine stators with S/Ns not listed in Table 1 of National Flight Services SB No. NF-TPE331-A72–10961, dated April 28, 1997, remove the unserviceable third stage turbine stator assembly in accordance with the applicable engine maintenance manual and the following schedule:

Third stage turbine stator cycles in service (cis) since radiographic inspection in accordance with AD 87–19–02 paragraph (b) or AD 93–05–09 paragraph (h)	Removal schedule
Unknown CIS since inspection.	Remove within 600 CIS after the effective date of this AD, at next access, or prior to March 31, 2002, whichever occurs first.
2200 or more CIS since inspection.	Remove within 600 CIS after the effective date of this AD, at next access, or prior to March 31, 2002, whichever occurs first.
Less than 2200 CIS since inspection.	Remove prior to accumulating 2,800 CIS, at next access, or prior to March 31, 2002, whichever occurs first.

(c) For the purpose of this AD, the next access to the third stage stator assembly is defined as disassembly of the turbine beyond the removal of the third stage rotor.

Note 2: This AD does not supersede AD 93–05–09. The removal schedule in paragraph (b) of this AD does not affect the requirements of AD 93–05–09.

(d) For the purpose of determining third stage turbine stator removal under paragraph (b) of this AD, third stage turbine stator hours time in service (TIS) may be converted to CIS since inspection by multiplying by 1.5 the number of hours since radiographic inspection in accordance with paragraph (b) of AD 87–19–02 or paragraph (h) of AD 93–05-09.

(e) For third stage turbine stator assemblies removed in accordance with paragraph (b) of this AD, accomplish either a radiographic inspection for inadequate weld penetration and fatigue cracking, and, if necessary, replace with a serviceable assembly in accordance with the Accomplishment Instructions of National Flight Services SB No. NF-TPE331-A72–10961, dated April 28, 1997; or replace with a serviceable assembly in accordance with the Accomplishment Instructions of AlliedSignal Inc. SB No. TPE331-A72–0861, Revision 2, dated April 23, 1997. Accomplishing the radiographic inspection required by this paragraph constitutes compliance with the radiographic inspection requirement of paragraph (h) of AD 93–05–09.

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

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

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

Issued in Burlington, Massachusetts, on July 8, 1997.

Ronald L. Vavruska,

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

[FR Doc. 97–20193 Filed 7–30–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 101, 116, 201, 216 and 352

[Docket No. RM97–6–000]

Units of Property Accounting Regulations

July 25, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend its units of property and oil pipeline regulations to require companies to maintain a written property units listing, to apply the listing consistently, and to furnish the Commission with a justification of any changes in the listing, if requested, and to clarify that companies may use estimates when it is impractical or unduly burdensome for companies to identify the cost of retired property. In addition, the Commission proposes to remove certain regulations which prescribe unit-of-property listings for jurisdictional companies. These changes will allow companies additional flexibility in maintaining their records of units of property. Finally, the Commission also proposes to remove the regulation which prescribes a minimum rule that requires Oil Pipelines to charge operating expenses for acquisitions, additions and improvements costing less than $500.

DATES: Comments are due on or before September 15, 1997.

ADDRESSES: File comments with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–0224

Mark Klose, Office of the Chief Accountant, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 219–2595

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

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS user assistance is available at 202–208–2474.

CIPS is also available on the Internet through the Fed World system. Telnet software is required. To access CIPS via the Internet, point your browser to the URL address: http://www.fedworld.gov and select the ''Go to the FedWorld Telnet Site'' button. When your Telnet software connects you, log on to the FedWorld system, scroll down and select FedWorld by typing: 1 and at the command line and type: /go FERC. FedWorld may also be accessed by Telnet at the address fedworld.gov.

Finally, the complete text on diskette in WordPerfect format may be

purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is also located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

Federal Energy Regulatory Commission

[Docket No. RM97–6–000]

Notice of Proposed Rulemaking

July 25, 1997

Recordkeeping for Units of Property Accounting Regulations for Public Utilities and Licensees, Natural Gas Companies and Oil Pipeline Companies.

The Federal Energy Regulatory Commission (Commission) proposes to modify its regulations governing units of property to simplify the fixed-asset recordkeeping requirements for Public Utilities and Licensees (Public Utilities), Natural Gas Companies, and Oil Pipeline Companies. These three groups are collectively called ''Companies'' in this Notice of Proposed Rulemaking (NOPR).

This NOPR proposes to remove the Commission's prescribed units of property listings contained in 18 CFR parts 116 and 216 and instruction 3–14 of part 352, thereby giving Companies the flexibility to maintain their own property listings and corresponding fixed-asset records. The NOPR also proposes to require Companies to maintain their own written property units listing for use in accounting for additions and retirements of plant, apply the listing consistently, and if requested, furnish the Commission with the justification for any changes to the listing.

The NOPR proposes to clarify existing requirements for Public Utilities and Natural Gas Companies, and add the requirement for Oil Pipelines regarding estimating property costs when it is unduly burdensome to determine the cost of retired property. This will permit Oil Pipelines, as well as Public Utilities and Natural Gas Companies, to use estimates, and requires that Companies furnish the basis of their estimate to the Commission, if requested.

Lastly, the NOPR proposes to remove the minimum rule for Oil Pipelines. This rule requires that Oil Pipelines must expense additions and improvements of less than $500 and must seek Commission approval to change this amount.

The proposed regulations will give Companies the opportunity to identify and maintain property unit listings that are up-to-date and more in harmony with the needs of their businesses. It will permit Companies to reduce the level and number of detailed property unit records that they currently maintain. Additionally, the Commission will not need to commit resources for maintaining and approving changes to the property listings.

The elimination of parts 116, 216, and 352 (instruction 3–14) will not affect the information currently reported in the FERC Forms 1, 1–F, 2, 2–A or 6.[1] These Forms do not report costs at the level of detail prescribed by parts 116, 216 and 352 (instruction 3–14). Therefore, the NOPR will not affect the information contained in these Forms. The elimination of parts 116, 216, and 352 (instruction 3–14) will not affect the manner in which costs are recognized for accounting or rate-making purposes. Companies will continue to treat all plant as consisting of retirement units and minor items of property. Under the proposed rule, Companies will account for the additions and retirements of such plant in accordance with instructions contained in the Commission's Uniform System of Accounts (USofA) for Public Utilities, Natural Gas Companies, and Oil Pipeline Companies.

I. Background

a. Public Utilities and Natural Gas Companies

In 1937, the Federal Power Commission (FPC) issued Order No. 45[2] that prescribed the USofA for Public Utilities subject to the Federal Power Act.[3] Order No. 45 also established the property unit listing for use in accounting for additions and retirements of electric plant.

These regulations do not permit Public Utilities to combine the items in the listing into fewer, higher level units without Commission approval. The Commission made only one significant revision to the electric plant property unit listing when, in 1987, it added nuclear plant equipment.[4]

Similarly, in 1939, the FPC issued Order No. 69, effective January 1, 1940, which established the property unit listing for use in accounting for additions and retirements of gas plant. These regulations also do not permit natural gas companies to combine the items in the listing into fewer, higher level units without Commission approval.[5] The Commission made only one significant revision to the gas plant property unit listing when, in 1978, it added liquefied natural gas plant equipment.[6]

b. Oil Pipelines

In 1977, the Commission began regulating Oil Pipelines, with the implementation of the Department of Energy Organization Act.[7] Prior to 1977, the Interstate Commerce Commission (ICC) regulated interstate oil pipelines and prescribed a property units listing. The Commission continues to use the ICC's prescribed listing as identified in 18 CFR part 352 (instruction 3–14). The regulations do not permit Oil Pipelines to combine, add or expand the property items contained in the listing without Commission approval. Oil Pipeline plant property listings have not been revised or updated since the Commission began regulating Oil Pipelines.

II. Proposed Changes to Regulations

The Commission performed a review of current practices by Public Utilities, Natural Gas Companies, and Oil Pipelines in applying Parts 116, 216 and 352. Between January and April 1997, Commission staff met with several representatives from Public Utilities, Natural Gas Companies, Oil Pipelines, and associated Industry Groups[8] to discuss the effects on Companies of identifying and tracking units of property at the prescribed detailed level. Based on this review, the Commission proposes to reduce detailed recordkeeping across all industry segments.

For Public Utilities and Natural Gas Companies, the Commission proposes to delete 18 CFR parts 116 and 216 which prescribe a units of property listing for the additions and retirements of electric plant and gas plant, respectively. The Commission proposes to modify 18 CFR part 101, Electric Plant Instruction 10, and 18 CFR part 201, Gas Plant Instruction 10, to require companies to

[1] FERC Form No. 1: Annual Report of Major Electric Utilities, Licensees and Others; FERC Form 1-F: Annual Report for Non-major Public Utilities and Licensees; FERC Form No. 2: Annual Report of Major Natural Gas Companies; FERC Form 2-A: Annual Report of Non-major Natural Gas Companies; FERC Form No. 6: Annual Report of Oil Pipeline Companies.

[2] 2 FR 135, January 26, 1937.

[3] The current version of the USofA for Public Utilities is found at 18 CFR, subchapter C, part 101, *et seq.*; for natural gas companies, 18 CFR, subchapter F, part 201 *et seq.*; and for Oil Pipelines, 18 CFR, subchapter Q, part 352.

[4] List of Property for Use in Accounting for the Addition and Retirement of Reactor Plant Equipment, FERC Stats. & Regs., Regulations Preamble 1986–1990 ¶ 30,779 (1987).

[5] 4 FR 4764, December 5, 1939.

[6] Order Amending the Uniform System of Accounts for Natural Gas Companies and Related Regulations to Provide for Base Load Liquefied Natural Gas Facilities, FERC Stats. & Regs., Regulations Preamble 1977–1981, ¶ 30,009A (1978).

[7] 42 U.S.C.A. § 7101 (1995).

[8] Edison Electric Institute, Interstate Natural Gas Association, American Gas Association, and Association of Oil Pipelines.

maintain a written property units listing, to apply the listing consistently, and to furnish the Commission with the justification for any changes to the listing, if requested. In addition, the Commission proposes to clarify 18 CFR parts 101 and 201, concerning the use of estimates when it is impractical or unduly burdensome for Companies to identify the cost of retired property.

For Oil Pipelines, the Commission proposes to delete 18 CFR part 352 (instruction 3–14), which prescribes a units-of-property listing. The Commission proposes to modify 18 CFR part 352 (instruction 3–4) to require Oil Pipelines to maintain a written property units listing, to apply the listing consistently, and to furnish the Commission with the justification for any changes to the listing, if requested. In addition, the Commission proposes to clarify 18 CFR part 352 (instruction 3–7), concerning the use of estimates when it is impractical or unduly burdensome for Oil Pipelines to identify the cost of property retired.

Finally, the Commission also proposes to delete 18 CFR part 352 (instruction 3–2), which prescribes a minimum rule that requires Oil Pipelines to charge operating expenses for acquisitions, additions and improvements costing less than $500, and to delete any references to the minimum rule in Part 352 (instructions 3–4, 3–5, and 3–6(a)).

III. Discussion

The USofA requires Companies to record the cost of additions and retirements of property and equipment in the appropriate plant account.[9] Additionally, Companies maintain a fixed asset recordkeeping system that tracks these plant account costs by property units. Parts 116, 216, and 352 of the Commission's regulations prescribe the detailed property unit listings that Companies must use to identify the items of property and equipment tracked by the fixed asset recordkeeping system.

These listings prescribe a level of detail that companies maintain to support the amounts in the plant accounts. However, the property unit listings do not reflect the technological changes that have taken place in the utility industry. The NOPR proposes to remove the prescribed property unit listings, and allow Companies to identify property units and maintain a level of support determined by their business needs. The NOPR will not eliminate the need for Companies to maintain a property recordkeeping system. Companies will continue to maintain support of the amounts shown in the plant accounts.

As discussed below, the level of detail prescribed by the property unit listings and regulations place an unnecessary burden on Companies, are not current, are too restrictive, and appear to provide minimal benefit to either the Companies or to the Commission.

A. Burdens for Companies

(1) Recordkeeping Burden

Companies are experiencing fixed asset recordkeeping burdens due to the level of detail currently prescribed by 18 CFR parts 116, 216, and 352 (instruction 3–14). These regulations require companies to keep detailed fixed asset records for each unit of property and its associated cost, and track the units' costs throughout the life of the asset.

For example, under the Commission's prescribed property unit listings, a Company may keep several fixed asset records for a building. These records detail the cost of the building's foundation, ventilating system, fire escape system, fire protection system, plumbing system, roof, and various other units of property, if the components or systems are relatively costly, and are identified in the List of General Retirement Units.[10]

In April 1997, Industry Groups initiated and conducted their own survey of their associated companies. The survey requested Companies to estimate the burden associated with tracking units of property in accordance with parts 116, 216 and 352 (instruction 3–14). Companies' responses included estimated annual number of hours, labor dollars, and the portion of software costs used for complying with the regulations. Table 1 shows the estimated cost of identifying units of property in accordance with the current regulations, based upon meetings with the Industry Groups and their survey results.

TABLE 1.—AVERAGE ANNUAL LABOR COSTS INCURRED PER SURVEYED COMPANY TO TRACK UNITS OF PROPERTY AT DETAILED LEVEL PRESCRIBED BY PARTS 116, 216 AND 352. INSTRUCTION 3–14

Source*	Average annual labor costs per surveyed company
Edison Electric Institute (EEI)	$592,000
Interstate Natural Gas Association of America (INGAA)	122,000
American Gas Association (AGA)	315,000
Association of Oil Pipelines (AOPL)	80,000

*13 Public Utilities responded to EEI's preliminary survey; 16 Natural Gas Companies responded to INGAA's preliminary survey, and 19 Oil Pipelines responded to AOPL's preliminary survey. AGA did not identify the number of respondents.

Eliminating the property unit listings and regulations would give Companies the flexibility to maintain their own property listings and track the costs of fixed assets at the level of detail tailored to their business. This would reduce the burden Companies experience when tracking fixed assets at a level more detailed than either their business or the Commission needs.

(2) Software Burden

Another burden placed on Companies is the cost of developing fixed asset software that is utility specific, or purchasing and modifying non-utility specific software. Companies often must modify the software in order to track units of property in the manner prescribed by the Commission. The preliminary surveys that were initiated and conducted by Industry Groups show their associated companies incur costs ranging from $20,000 to $2.7 million for fixed asset software.

Based on the preliminary surveys, Companies could realize substantial savings if the Commission deletes unnecessary detailed recordkeeping requirements. The proposed changes would also eliminate the burden placed on the Commission to update the items in the listings.

B. Revamping Fixed Asset Regulations

(1) Property Units Listings

The Commission's review of electric, gas and oil pipeline property listings found that the Commission's property listings do not contain all types of property currently used by Companies. The listings in Parts 116, 216, and 352 (instruction 3–14) do not include

[9] 18 CFR parts 101, 201 and 352. The USofA for Public Utilities and Natural Gas Companies specifies in the plant instructions of parts 101 and 201, respectively, the type of information companies must keep related to their fixed assets.

[10] The process of sub-dividing a fixed asset into its various major components or unit of propoerty units is also referred to as the ''unitization process.''

property resulting from technological advances, such as scrubbers, microwave towers, and smart pigging equipment. Additionally, the property unit listings contain items of property that are no longer used by Companies such as telegraph and teletype equipment and gas storage cleaning equipment. By allowing Companies the flexibility to identify and maintain their own property unit listings the proposed revisions to the regulations will eliminate the need for the Commission to devote resources necessary to update the listings.

(2) Minimum Rule for Oil Pipelines

Unlike Public Utilities and Natural Gas Companies, Oil Pipelines are subject to a Minimum Rule as prescribed in Part 352 (instruction 3–2). The minimum rule requires Oil Pipelines to charge operating expenses for acquisitions, additions and improvements costing less than $500. It also requires Oil Pipelines to obtain Commission approval if they wish to change the minimum level.

The Commission considers the $500 dollar threshold to be inadequate in today's environment. Consequently, the Commission proposes to delete the prescribed minimum rule, and permit Oil Pipelines to establish their own dollar threshold in order to avoid undue refinement in accounting for acquisitions, additions, and improvements.

C. Restrictions on Estimating Cost

Carrier regulations do not permit companies to estimate property costs at the time of retirement when the cost is not determinable. However, Public Utilities and Natural Gas Companies are permitted to use estimates in similar circumstances.[11] Unlike Oil Pipelines, they may use cost trending indices to determine an estimated cost of retired property when it is impractical or unduly burdensome to identify the cost.

Therefore, the Commission proposes to permit Oil Pipeline to use estimates in Oil Pipeline plant instructions when it is impractical or unduly burdensome to identify the cost of the property retired. The Commission will also require that Oil Pipelines be prepared to furnish the Commission with the basis of such estimates if requested.

[11] 18 CFR part 101 for Public Utilities states in electric plant instruction 10(D) that the ''book cost of electric plant retired shall be the amount at which such property is included in the electric plant accounts. . . The book cost shall be determined from the utility's records and if this cannot be done, it shall be estimated;'' 18 CFR part 201 for Natural Gas Companies states in gas plant instruction 10(D) that the ''book cost of gas plant retired shall be the amount at which such property is included in the gas plant accounts * * * The book cost shall be determined from the utility's records and if this cannot be done, it shall be estimated.''

IV. Information Collection Statement

The following collections of information contained in this proposed rule are being submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995. (*See* 44 U.S.C. 3507(d)) The information provided under 18 CFR parts 101 and 116 is approved under OMB Control Nos. 1902–0021, 1902–0029 and 1902–0092; for parts 201 and 216, OMB Control Nos. 1902–0028, 1902–0030 and 1902–0092 and for part 352 OMB Control Nos. 1902–0022. Applicants shall not be penalized for failure to respond to these collections of information unless the collection(s) of information display a valid OMB control number.

The Commission's regulations governing units of property in parts 116, 216 and 352 (instruction 3–14) require companies to keep detailed fixed asset records, including the costs for each unit of property, and then track the units' costs throughout the life of the asset. These regulations place recordkeeping burdens on Companies.

Information Collection Burden and Costs: In the preliminary survey conducted in April 1997, Companies provided an estimate of the annual number of hours they incur when identifying units of property in accordance with parts 116, 216 and 352 (instruction 3–14) regulations. Table 2 displays the average number of hours spent per respondent in each industry group:

TABLE 2.—AVERAGE ANNUAL LABOR HOURS INCURRED PER SURVEYED COMPANY TO TRACK UNITS OF PROPERTY AT THE PRESCRIBED DETAILED LEVEL

Source	Average Annual Labor Hours per Surveyed Company
Public Utilities (source: Edison Electric Institute)	16,430
Natural Gas Companies (source: Interstate Natural Gas Association of America)	5,863

Total Average Annual Labor Hours for Collection of Information for Public Utilities and Natural Gas Companies: 4,224,259.

The Commission anticipates substantial savings with the proposed reduction of these recordkeeping requirements and, as part of the proposed rule, solicits comments on potential cost savings. (*See* 5 CFR 1320.11)

Comments are solicited on the Commission's continuing need for this information, whether the information has practical use, ways to enhance the quality, use and clarity of the information collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

The Commission requires public utilities and licensees, natural gas companies and oil pipeline companies to identify units of property as listed in 18 CFR parts 116, 216 and 352 (instruction 3–14). The listing identifies major components of plant property each company must track throughout the property's life. The Commission also specifies in parts 101 and 201 (Electric and Gas Plant Instructions), the type of information and level of detail Companies must keep of their fixed assets.

The proposed rule seeks to modify these requirements to reduce the recordkeeping burden imposed on Companies and to make the regulations current with industry practices. Therefore, the Commission proposes to delete parts 116, 216 and 352 (instruction 3–14)—Property Unit Listings and requirements.

The Commission's internal review determined that there is specific, objective support for the burden estimates associated with the Commission's requirements.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (Attention: Michael Miller, Division of Information Services, Phone: (202) 208–1415, fax: (202) 273–0873, E-mail: mmiller@ferc.fed.us

For submitting comments concerning the collection of information(s) and the associated burden estimate(s) send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503. (Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285)

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human

environment.[12] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[13] The action proposed here is procedural in nature and therefore falls within the categorical exclusions provided in the Commission's regulations.[14] Therefore, neither an environmental impact statement nor an environmental assessment is necessary and will not be prepared in this proposed NOPR.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[15] generally requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. An analysis is not required if a proposed rule will not have such an impact.[16]

Pursuant to section 605(b), the Commission certifies that the proposed rule, if promulgated, will not have a significant adverse economic impact on a substantial number of small entities.

VII. Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. All comments must be filed with the Commission no later than September 15, 1997. An original and 14 copies of comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket No. RM97–6–000. Additionally, comments should be submitted electronically. Participants can submit comments on computer diskette in WordPerfect® 6.1 or lower format or in ASCII format, with the name of the filer and Docket No. RM97–6–000 on the outside of the diskette.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426, during regular business hours.

[12] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Statutes and Regulations, Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[13] 18 CFR 380.4.

[14] *See* 18 CFR 380.4(a)(2)(ii).

[15] 5 U.S.C. 601–612.

[16] 5 U.S.C. 605(b).

List of Subjects

18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts

18 CFR Part 116

Electric power plants, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts

18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts

18 CFR Part 216

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts

18 CFR Part 352

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission gives notice of its proposal to amend Parts 101, 116, 201, 216, and 352 Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

1. The authority citation for Part 101 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7102–7352, 7651–7651o.

2. In Part 101, Electric Plant Instruction 10, paragraphs A and D are revised to read as follows:

10. Additions and Retirements of Electric Plant.

A. For the purpose of avoiding undue refinement in accounting for additions to and retirements and replacements of electric plant, all property shall be considered as consisting of (1) retirement units and (2) minor items of property. Each utility shall maintain a written property units listing for use in accounting for additions and retirements of electric plant, apply the listing consistently, and if requested, furnish the Commission with justifications for any changes to the listing.

* * * * *

D. The book cost of electric plant retired shall be the amount at which such property is included in the electric plant accounts, including all components of construction costs. The book cost shall be determined from the utility's records and if this cannot be done it shall be estimated. Utilities must furnish the particulars of such estimates to the Commission, if requested. When it is impracticable to determine the book cost of each unit, due to the relatively large number or small cost thereof, an appropriate average book cost of the units, with due allowance for any differences in size and character, shall be used as the book cost of the units retired.

* * * * *

3. In Part 101, Electric Plant Instruction 11, paragraph C is revised to read as follows:

11. Work Order and Property Record System Required.

* * * * *

C. In the case of Major utilities, each utility shall maintain records in which, for each plant account, the amounts of the annual additions and retirements are classified so as to show the number and cost of the various record units or retirement units.

PART 116—UNITS OF PROPERTY FOR USE IN ACCOUNTING FOR ADDITIONS TO AND RETIREMENTS OF ELECTRIC PLANT

4. Part 116 is removed.

PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

5. The authority citation for Part 201 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352, 7651–7651o.

6. In Part 201, Gas Plant Instruction 10, paragraphs A and D are revised to read as follows:

10. *Additions and retirements of gas plant.* A. For the purpose of avoiding undue refinement in accounting for additions to and retirements and replacements of gas plant, all property shall be considered as consisting of (1) retirement units and (2) minor items of property. Each utility shall maintain a written property units listing for use in accounting for additions and retirements of gas plant, apply the listing consistently, and if requested, furnish the Commission with

justifications for any changes to the listing.

* * * * *

D. The book cost of gas plant retired shall be the amount at which such property is included in the gas plant accounts, including all components of construction costs. The book cost shall be determined from the utility's records and if this cannot be done it shall be estimated. Utilities must furnish the particulars of such estimates to the Commission, if requested. When it is impracticable to determine the book cost of each unit, due to the relatively large number or small cost thereof, an appropriate average book cost of the units, with due allowance for any differences in size and character, shall be used as the book cost of the units retired.

* * * * *

7. In Part 201, Gas Plant Instruction 11, paragraph C is revised to read as follows:

11. *Work order and property record system required.*

* * * * *

C. Each utility shall maintain records in which, for each plant account, the amounts of the annual additions and retirements are classified so as to show the number and cost of the various record units or retirement units.

PART 216—UNITS OF PROPERTY FOR USE IN ACCOUNTING FOR ADDITIONS TO AND RETIREMENTS OF GAS PLANT

8. Part 216 is removed.

PART 352—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

9. The authority citation for Part 352 is revised to read as follows:

Authority: 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

10. In Part 352, Instructions for Carrier Property Accounts, instruction 3–2, *Minimum Rule* is removed. In instructions 3–5, introductory text, and 3–6(a), the phrase ''subject to the minimum rule'' is removed.

11. In Part 352, Instructions for Carrier Property Accounts, instruction 3–4, *Additions* is revised to read as follows:

3–4 *Additions.* Each carrier shall maintain a written property units listing for use in accounting for additions and retirements of carrier plant, apply the listing consistently, and if requested, furnish the Commission with justifications for any changes to the listing. When property units are added to Carrier plant, the cost thereof shall be added to the appropriate carrier plant account as set forth in the policy.

12. In Part 352, Instructions for Carrier Property Accounts, instruction 3–7, *Retirements,* introductory text and paragraph (b)(1) are revised and new paragraph (c) is added to read as follows:

3–7 *Retirements.* When property units are retired from carrier plant, with or without replacement, the cost thereof and the cost of minor items of property retired and not replaced shall be credited to the carrier plant account in which it is included. The retirement of carrier property shall be accounted for as follows:

(a) * * *

(b) Property. (1) The book cost, as set forth in paragraph (c) of this instruction, of units of property retired and of minor items of property retired and not replaced shall be written out of the property account as of date of retirement, and the service value shall be charged to account 31, Accrued Depreciation—Carrier Property.

* * * * *

(c) The book cost of carrier property retired shall be determined from the carrier's records and if this cannot be done it shall be estimated. When it is impracticable to determine the book cost of each unit, due to the relatively large number or small cost thereof, an appropriate average book cost of the units, with due allowance for any differences in size and character, shall be used as the book cost of the units retired. Oil Pipelines must furnish the particulars of such estimates to the Commission, if requested.

13. In Part 352, Instructions for Carrier Property Accounts, instruction 3–14 *Accounting units of property* is removed.

[FR Doc. 97–20149 Filed 7–30–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 122, 123, 148 and 192

RIN 1515–AB99

Lay Order Period; General Order; Penalties

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to require that the importing carrier notify a bonded warehouse proprietor of the presence of merchandise that has remained at the place of arrival or unlading beyond the lay order period without entry having been completed, thereby initiating the obligation of the bonded warehouse proprietor to arrange for transportation and storage of the unentered merchandise at the risk and expense of the consignee. The document also proposes to amend the Customs Regulations to provide for penalties against importing carriers for failure to notify Customs of the presence of such merchandise. These proposed regulatory changes reflect amendments to the underlying statutory authority enacted as part of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. Finally, the document makes certain conforming changes to the Customs Regulations in order to reflect a number of other statutory amendments and repeals enacted by the Customs Modernization provisions and in order to reflect the recent recodification and reenactment of title 49, United States Code.

DATES: Comments must be received on or before September 29, 1997.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings (202) 482–6950.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, amendments to certain Customs and navigation laws became effective as the result of enactment of the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057. Title VI of that Act sets forth Customs Modernization provisions that are popularly referred to as the Mod Act.

Section 656 of the Mod Act amended section 448(a) of the Tariff Act of 1930 (19 U.S.C. 1448(a)) to provide, *inter alia*, that: (1) The owner or master of any vessel or vehicle, or the agent thereof, shall notify Customs of any merchandise or baggage unladen for which entry is not made within the time prescribed by law or regulation; (2) the

Secretary of the Treasury shall by regulation prescribe administrative penalties not to exceed $1,000 for each bill of lading for which notice is not given; (3) any such administrative penalty shall be subject to mitigation and remission under section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618); and (4) such unentered merchandise or baggage shall be the responsibility of the master or person in charge of the importing vessel or vehicle, or agent thereof, until it is removed from the carrier's control in accordance with section 490 of the Tariff Act of 1930, as amended (19 U.S.C. 1490). This document proposes to revise paragraph (a) of § 4.37 of the Customs Regulations (19 CFR 4.37) and add new § 122.50 and § 123.10 (19 CFR 122.50 and 19 CFR 123.10) to implement these Mod Act statutory changes for air, land and sea carriers. Under the proposed regulatory text, importing carriers would be afforded a five-working-day lay order period after the conclusion of an initial five-working-day period after unlading or arrival of merchandise to notify Customs, in writing or by any Customs-authorized electronic data interchange system, of the presence of the unentered merchandise or baggage. Penalties may result if, after the five-day lay order period, Customs has not been notified of the presence of the merchandise. Applications for lay order will no longer be required on Customs Form 3171; the form will continue to be maintained for other purposes.

Section 658 of the Mod Act amended section 490 of the Tariff Act of 1930 (19 U.S.C. 1490) to provide that: (1) Except in the case of U.S. government importations, the importing carrier shall notify the bonded warehouse of any imported merchandise for which entry is not made within the time prescribed by law or regulation, or for which entry is incomplete because of failure to pay estimated duties, fees or interest, or for which entry cannot be made for want of proper documents or other cause, or which Customs believes is not correctly and legally invoiced; and (2) after such notification from the importing carrier, the bonded warehouse shall arrange for the transportation and storage of the merchandise at the risk and expense of the consignee. This document proposes to revise paragraph (b) of § 4.37 of the Customs Regulations and add §§ 122.50 and 123.10 to the Customs Regulations to implement these Mod Act statutory changes. The proposed regulatory text requires the carrier to provide the appropriate notification, in writing or by any Customs-authorized electronic data interchange system, and also requires that the bonded warehouse operator take possession of the merchandise within five working days after receipt of such notification or else be liable for liquidated damages under the terms and conditions of his custodial bond (and with a cross-reference to 113.63(a)(1) of the Customs Regulations which Customs believes provides an appropriate basis for such liability). In addition, it is proposed to amend paragraph (d) of § 4.37 by replacing the word ''owner'' by ''consignee'' to align on the corresponding statutory language.

Section 611 of the Mod Act amended section 436 of the Tariff Act of 1930 (19 U.S.C. 1436), *inter alia*, by including therein a reference to 46 U.S.C. App. 91, with the result that penalties for violations of outbound vessel manifest filing requirements would be incurred under the provisions of 19 U.S.C. 1436 rather than under 46 U.S.C. App. 91. This document proposes to amend § 192.4 of the Customs Regulations (19 CFR 192.4) to reflect this change.

Section 690 of the Mod Act provided for the repeal of a number of statutory provisions, some of which are still referred to in parts 4 and 122 of the Customs Regulations (19 CFR parts 4 and 122). This document proposes to correct those outdated references by removing them or replacing them with references to their successor statutory provisions.

Finally, Pub. L. 103–272, 108 Stat. 745, dated July 5, 1994, reenacted and recodified the provisions of title 49, United States Code. Section 2(b) thereof reenacted as a new section (19 U.S.C. 1644a) certain title 49 provisions dealing with the application, to civil aircraft, of the laws and regulations regarding the entry and clearance of vessels. This document proposes to amend parts 122, 123 and 148 of the Customs Regulations (19 CFR parts 122, 123 and 148) by updating the ''49 U.S.C. App.'' statutory references therein to reflect the changes made by section 2(b) or other provisions of Pub. L. 103–272.

Comments

Before adopting this proposed regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th St. NW., 4th floor, Washington, DC.

Inapplicability of the Regulatory Flexibility Act and Executive Order 12866

For the reasons set forth above and because the proposed amendments conform the Customs Regulations to statutory requirements that are already in effect, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Further, this document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

List of Subjects

19 CFR Part 4

Cargo vessels, Common carriers, Customs duties and inspection, Entry, Exports, Fishing vessels, Imports, Maritime carriers, Passenger Vessels, Penalties, Reporting and recordkeeping requirements, Shipping, Vessels, Yachts.

19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Baggage, Bonds, Customs duties and inspection, Foreign commerce and trade statistics, Freight, Imports, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 123

Aircraft, Canada, Customs duties and inspection, Imports, International boundaries, International traffic, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Trade agreements, Vehicles, Vessels.

19 CFR Part 148

Aliens, Baggage, Crewmembers, Customs duties and inspection, Declarations, Foreign officials, Government employees,International organizations, Privileges and Immunities, Reporting and recordkeeping requirements.

19 CFR Part 192

Aircraft, Customs duties and inspection, Export Control, Penalties, Reporting and recordkeeping requirements, Seizures and forfeiture, Vehicles, Vessels.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend parts 4, 122, 123, 148 and 192 of the Customs Regulations (19 CFR parts 4, 122, 123, 148 and 192) as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the specific authority citations for §§ 4.7a, 4.36 and 4.37 continue to read, and the specific authority citations for §§ 4.9 and 4.68 are revised to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.7a also issued under 19 U.S.C. 1498, 1584;

* * * * *

Section 4.9 also issued under 42 U.S.C. 269;

* * * * *

Section 4.36 also issued under 19 U.S.C. 1431, 1457, 1458, 46 U.S.C. App. 100;

Section 4.37 also issued under 19 U.S.C. 1448, 1457, 1490;

* * * * *

Section 4.68 also issued under 46 U.S.C. App. 817d, 817e;

* * * * *

§§ 4.7a, 4.12, 4.36, and 4.37 [Amended]

2. Part 4 is amended by removing and reserving footnotes 17, 24, 71, and 74 in §§ 4.7a(a), 4.12(a)(3), and 4.36(c), and 4.37(d).

§ 4.6 [Amended]

3. In § 4.6, paragraph (c) is amended by removing the reference ''19 U.S.C. 1585'' and adding, in its place, the reference ''19 U.S.C. 1436''.

§ 4.7a [Amended]

4. In § 4.7a, the first sentence of paragraph (a) is amended by removing the words '', required by section 432, Tariff Act of 1930, to be separately specified''.

§ 4.36 [Amended]

5. In § 4.36, paragraph (c) is amended by removing the words ''within the purview of the proviso to the first subdivision of section 431 of the Tariff Act of 1930''.

6. In § 4.37, paragraph (d) is amended by removing the word ''owner'' and adding, in its place, the word ''consignee'' and paragraphs (a) and (b) are revised to read as follows:

§ 4.37 Lay order; general order.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain at the place of unlading until the close of business on the fifth working day after the day the vessel was entered. Within an additional five-working-day lay order period following the expiration of the original five-working day period after landing, 19 U.S.C. 1448(a) requires the master or owner of the vessel or the agent thereof to notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to $1,000 per bill of lading against the master or owner of the vessel or the agent thereof as provided in 19 U.S.C. 1448(a).

(b) In addition to the notification to Customs referred to in paragraph (a) of this section, within five working days following the expiration of the lay order period specified in paragraph (a) of this section, 19 U.S.C. 1490(a) requires the master or owner of the vessel or the agent thereof to provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification shall be provided in writing or by any Customs-authorized electronic data interchange system. It shall then be the responsibility of the bonded warehouse proprietor to arrange for the transportation and storage of the merchandise or baggage at the risk and expense of the consignee. Any unentered merchandise or baggage shall remain the responsibility of the master or person in charge of the importing vessel or the agent thereof until it is removed from his control in accordance with this paragraph. If the bonded warehouse operator fails to take possession of the merchandise or baggage within five working days after receipt of notification of the presence of the unentered and unreleased merchandise or baggage, he shall be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(a)(1) of this chapter).

* * * * *

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

§ 122.2 [Amended]

2. Section 122.2 is amended by removing the reference ''49 U.S.C. App. 1509(c)'' and adding, in its place, the reference ''19 U.S.C. 1644 and 1644a''.

§ 122.49 [Amended]

3. Section 122.49(f) is amended by removing the words ''sections 440 (concerning post entry) and 584 (concerning manifest violations), Tariff Act of 1930, as amended (19 U.S.C. 1440, 1584), apply'' and adding, in their place, the words ''section 584 (concerning manifest violations), Tariff Act of 1930, as amended (19 U.S.C. 1584), applies''.

4. In subpart E, § 122.50 is added to read as follows:

§ 122.50 Lay order; general order.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain at the place of unlading until the close of business on the fifth working day after the day the aircraft was entered. Within an additional five-working-day lay order period following the expiration of the original five-working day period after landing, 19 U.S.C. 1448(a) requires the pilot or owner of the aircraft or the agent thereof to notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to $1,000 per bill of lading against the pilot or owner of the aircraft or the agent thereof as provided in 19 U.S.C. 1448(a).

(b) In addition to the notification to Customs referred to in paragraph (a) of this section, within five working days following the expiration of the lay order period specified in paragraph (a) of this section, 19 U.S.C. 1490(a) requires the pilot or owner of the aircraft or the agent thereof to provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification shall be provided in writing or by any Customs-authorized electronic data interchange system. It shall then be the responsibility of the bonded warehouse proprietor to arrange for the transportation and storage of the merchandise or baggage at the risk and expense of the consignee. Any unentered merchandise or baggage shall

remain the responsibility of the pilot or person in charge of the importing aircraft or the agent thereof until it is removed from his control in accordance with this paragraph. If the bonded warehouse operator fails to take possession of the merchandise or baggage within five working days after receipt of notification of the presence of the unentered and unreleased merchandise or baggage, he shall be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(a)(1) of this chapter).

§ 122.161 [Amended]

5. In § 122.161, the first sentence is amended by removing the reference ''§ 122.14'' and adding, in its place, the words ''subpart S of this part'' and by removing the reference ''49 U.S.C. App. 1474'' and adding, in its place, the reference ''19 U.S.C. 1644 and 1644a''.

§ 122.165 [Amended]

6. In § 122.165, the first sentence of paragraph (a) is amended by removing the parenthetical reference ''(49 U.S.C. App. 1508(b))'' and adding, in its place, the parenthetical reference ''(49 U.S.C. 41703)'', and the second sentence of paragraph (b) is amended by removing the reference ''49 U.S.C. App. 1471'' and adding, in its place, the reference ''49 U.S.C. Chapter 463''.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 and the specific authority citation for § 123.8 are revised to read, and the specific authority citation for § 123.1 continues to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

Section 123.1 also issued under 19 U.S.C. 1459;

* * * * *

Section 123.8 also issued under 19 U.S.C. 1450–1454, 1459;

* * * * *

2. The specific authority citation for § 123.11 is removed.

§ 123.1 [Amended]

3. In § 123.1, paragraph (a)(2) is amended by removing the words ''sections 1433 or 1644 of title 19, United States Code (19 U.S.C. 1433, 1644), or section 1509 of title 49, United States Code App. (49 U.S.C. App. 1509),'' and adding, in their place, the words ''section 1433, 1644 or 1644a of title 19, United States Code (19 U.S.C. 1433, 1644, 1644a),''.

4. In subpart A, § 123.10 is added to read as follows:

§ 123.10 Lay order; general order.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain at the place of unlading until the close of business on the fifth working day after the day the vehicle was entered. Within an additional five-working-day lay order period following the expiration of the original five-working day period after unlading, 19 U.S.C. 1448(a) requires the operator or owner of the vehicle or the agent thereof to notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to $1,000 per bill of lading against the operator or owner of the vehicle or the agent thereof as provided in 19 U.S.C. 1448(a).

(b) In addition to the notification to Customs referred to in paragraph (a) of this section, within five working days following the expiration of the lay order period specified in paragraph (a) of this section, 19 U.S.C. 1490(a) requires the operator or owner of the vehicle or the agent thereof to provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification shall be provided in writing or by any Customs-authorized electronic data interchange system. It shall then be the responsibility of the bonded warehouse proprietor to arrange for the transportation and storage of the merchandise or baggage at the risk and expense of the consignee. Any unentered merchandise or baggage shall remain the responsibility of the operator or person in charge of the importing vehicle or the agent thereof until it is removed from his control in accordance with this paragraph. If the bonded warehouse operator fails to take possession of the merchandise or baggage within five working days after receipt of notification of the presence of the unentered and unreleased merchandise or baggage, he shall be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(a)(1) of this chapter).

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The authority citation for part 148 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 20, Harmonized Tariff Schedule of the United States).

* * * * *

§ 148.67 [Amended]

2. In § 148.67, paragraph (b) is amended by removing the words ''section 1474 of title 49, United States Code,'' and adding, in their place, the reference ''19 U.S.C. 1644 and 1644a''.

PART 192—EXPORT CONTROL

1. The authority citation for Part 192 continues to read as follows:

Authority: 19 U.S.C. 66, 1624, 1627a, 1646a.

§ 192.4 [Amended]

2. In § 192.4, the first sentence is amended by removing the reference ''46 U.S.C. App. 91'' and adding, in its place, the reference ''19 U.S.C. 1436'' and the second sentence is amended by removing the words ''a liability of not more than $1,000 nor less than $500 will be incurred'' and adding, in their place, the words ''a liability for penalties may be incurred''.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: May 21, 1997.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 97–20227 Filed 7–30–97; 8:45 am]

BILLING CODE 4820–02–P

RAILROAD RETIREMENT BOARD

20 CFR Part 295

RIN 3220–AB29

Payments Pursuant to Court Decree or Court-Approved Property Settlement

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board hereby proposes to amend its regulations under part 295 by eliminating the Medicare Part B premium as a deduction from the amount of benefits available for division in a divorce proceeding or property settlement related to a divorce or legal separation.

DATES: Comments must be received on or before September 29, 1997.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone (312) 751–4513, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Part 295 describes the Board's requirements for obtaining an enforceable order directing the Board to partition a railroad retirement annuity incident to a divorce, settlement, or annulment. Section 295.1(b) describes what benefits are subject to division under this part. Section 295.5(e)(1) further defines the net amount of benefits subject to division as excluding amounts deducted for an employee's elected Medicare Part B premium. When § 295.5(e)(1) was initially approved in 1986, the Board was concerned about the risk that Medicare premium deductions might not be satisfied from the nondivisible portion of an employee's annuity in the event that the portion would not be payable due to work deductions. In practice, however, the agency has determined that only in rare cases is the nondivisible portion insufficient to accommodate the Medicare Part B deduction. The Medicare Part B premium is a personal expense elected to be made by the employee. The Board believes that it is more consistent with the nature of the Part B premium that it be paid entirely by the employee rather than, in effect, partly by the employee and partly by the divorced spouse. Accordingly, the agency proposes that the Medicare Part B deduction need not be deducted from the divisible benefits prior to partition in an action for divorce, settlement, or annulment.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 295

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

PART 295—PAYMENTS PURSUANT TO COURT DECREE OR COURT-APPROVED PROPERTY SETTLEMENT

1. The authority for part 295 continues to read as follows:

Authority: 45 U.S.C. 231f; 45 U.S.C. 231m.

§ 295.5 [Amended]

2. Section 295.5(e)(1) is amended by removing the comma after ''Board'' and by removing ''and the amount of any Medicare Part B premium''.

Dated: July 24, 1997.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–20206 Filed 7–30–97; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 50

[Docket No. 90N–0302]

Accessibility to New Drugs for Use in Military and Civilian Exigencies When Traditional Human Efficacy Studies Are Not Feasible; Determination Under the Interim Rule That Informed Consent Is Not Feasible for Military Exigencies; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Request for comments.

SUMMARY: The Food and Drug Administration (FDA) is requesting written comments related to the advisability of revoking or amending the interim final rule that permitted the Commissioner of Food and Drugs (the Commissioner) to determine that obtaining informed consent from military personnel for the use of an investigational drug or biologic is not feasible in certain situations related to military combat. The agency is also soliciting written comments identifying the evidence needed to demonstrate safety and effectiveness for such investigational drugs that cannot ethically be tested on humans for purposes of determining their efficacy. FDA is seeking written comments from all interested parties, including, but not limited to: Consumers, patient groups, veterans and veteran groups, active-duty military personnel, organizations and departments, ethicists, scientists, researchers with particular expertise in this area, and health care professionals. The written comments are intended to provide FDA with information to help the agency in making policy decisions on the use of investigational products during military exigencies and the appropriate evidence needed to demonstrate safety and effectiveness for drug and biological products used in military or other exigencies when traditional human efficacy studies are not feasible.

DATES: Submit written comments by October 29, 1997.

ADDRESSES: Submit written comments on the questions identified in section II of this document (specifically referencing the number of the question(s) being addressed) to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Bonnie M. Lee, Office of the Executive Secretariat (HF–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4450.

SUPPLEMENTARY INFORMATION:

I. Background

There will continue to be military combat situations in which there will be a threat to U.S. military personnel from the possible use of chemical and biological weapons. The Department of Defense (DOD), therefore, has a legitimate interest in protecting military personnel by using products which may provide protection from such chemical and biological agents. In order to support this interest of DOD, FDA issued an interim rule during the Persian Gulf War that permitted DOD to use specified investigational products intended to provide potential protection against chemical and biological warfare agents without obtaining informed consent. A copy of the interim rule that published in the **Federal Register** of December 21, 1990 (55 FR 52813), can be viewed on FDA's website at http://www.fda.gov.

Specifically, following a request from the DOD, FDA granted waivers from its informed consent requirements for the use of two products in specific protocols in the Persian Gulf War: Pyridostigmine bromide and botulinum toxoid vaccine. FDA recognizes that the interim final rule did not work the way that the agency anticipated it would work; therefore, the agency is seeking broad public input to provide information to help FDA in making policy decisions on the future use of such investigational products and possible efficacy demonstrations for these products.

In order to provide a context for the decisionmaking process on the use of pyridostigmine bromide and the

botulinum toxoid vaccine during the Persian Gulf War, the following information is provided.

A. The Regulatory Process

FDA regulates the use of investigational drugs under provisions of the Federal Food, Drug, and Cosmetic Act (the act). In FDA terms, drugs not approved for marketing and drugs studied for treatment other than that identified in the approved labeling, are investigational. In order for clinical testing to proceed with unapproved products (or, in some cases, for testing approved products for unapproved uses), an investigational new drug (IND) application is filed with FDA. The IND must contain information sufficient to demonstrate that it is reasonable to study the drug in humans, including drug composition, manufacturing and control data, the results of animal studies and, if available, prior human testing, and the protocol for the planned study. The investigator must agree to a number of commitments including obtaining approval of an institutional review board (IRB) before proceeding, obtaining written informed consent from subjects, and reporting adverse effects that occur as specified in the protocol.

The act requires that investigators inform subjects receiving drugs under an IND that the drugs are investigational and ''obtain the consent of such human beings or their representatives, except where they deem it not feasible, or in their professional judgment, contrary to the best interests of such human beings.'' There have been few instances in which obtaining informed consent has not been considered feasible or contrary to patients' interests.

During the months preceding the Persian Gulf War, DOD had discussions with FDA regarding the potential use of specific investigational products in military personnel serving in the Gulf. It was thought that the products discussed represented the best preventive or therapeutic treatment for diseases endemic to the area and in providing protection against possible chemical or biological weapons. DOD requested the assistance of FDA in allowing the use of these products in certain battlefield or combat-related situations in which they considered obtaining informed consent ''not feasible.'' DOD's explanation as to why obtaining informed consent would not be feasible under battlefield conditions included the following:

(1) It is not acceptable from a military standpoint to defer to whatever might be the soldier's personal preference concerning a preventive or therapeutic treatment that might save his life, avoid endangerment of the other personnel in his unit and accomplish the combat mission.

(2) Based on unalterable requirements of the military field commander, it is not an option to excuse a nonconsenting soldier from the military mission.

(3) It would not be defensible militarily, or ethically, to send the soldier unprotected into danger.

(4) Special military exigencies sometimes must supersede normal rights and procedures that apply in the civilian community and, thus, military regulations state that military members may be required to submit to medical care determined necessary to preserve life, alleviate suffering or protect the health of others.

At the time, FDA gave considerable deference to the DOD's judgment and expertise regarding the feasibility of obtaining informed consent under battlefield conditions. Thus, in response to DOD's request, in the **Federal Register** of December 21, 1990 (55 FR 52813), FDA published an interim regulation amending its informed consent regulations at 21 CFR 50.23(d).

B. The Interim Regulation

The interim regulation allowed the Commissioner to determine, upon receipt of an appropriate request from DOD, that obtaining informed consent from military personnel for use of a specific investigational drug or biologic would not be feasible in certain circumstances, and to grant a waiver from the requirement for obtaining such consent.

The exception applied, on a case-by-case basis, only to investigational drugs (including antibiotic and biological products) for use in a specific military operation involving combat or the immediate threat of combat. The regulation requires the request to include: (1) The justification for the conclusion (made by physicians responsible for the medical care of the military personnel involved and the investigators involved) that the use is required to facilitate the accomplishment of the military mission, and the use would preserve the health of the individuals and the safety of other personnel, without regard for any individual's preference for alternate treatment or no treatment; and (2) a statement that a duly constituted IRB has reviewed and approved the use of the investigational drug without informed consent.

Under the interim rule, the Commissioner may find that informed consent is not feasible (and thus may be waived) ''only when withholding treatment would be contrary to the best interests of military personnel and there is no available satisfactory alternative therapy.'' The rule sets forth four additional factors that the Commissioner is to consider in making his determination. These factors are: (1) The extent and strength of the evidence of the safety and efficacy of the drug for the intended use, (2) the context in which the drug will be administered (e.g., battlefield or hospital), (3) the nature of the disease or condition for which the preventive or therapeutic treatment is intended, and (4) the nature of the information to be provided to the recipients of the drug concerning the potential risks and benefits of taking or not taking the drug. A determination by the Commissioner that obtaining informed consent is not feasible and withholding treatment would be contrary to the best interests of military personnel expires at the end of 1 year, unless renewed at DOD's request, or when DOD informs the Commissioner that the specific military operation creating the need for the use of the investigational drug has ended, whichever is earlier. In addition, when the Commissioner has issued a waiver to DOD, he may revoke the waiver based on changed circumstances.

The appropriate FDA review division and the Informed Consent Waiver Review Group (ICWRG) assessed each request for waiver from the informed consent requirements. The ICWRG included senior management of FDA and the National Institutes of Health's Office of Protection from Research Risks, supplemented by technical agency experts as appropriate for the particular investigational drug being considered for exception. The ICWRG considered DOD's justification supporting the request for the waiver and the reviewing division's evaluation of the available safety and efficacy data. The ICWRG requested additional supporting information in some cases and identified changes needed in the information to be provided to the troops. The ICWRG then made a recommendation to the Commissioner regarding whether or not to grant the waiver. The Commissioner made a decision on the request and informed DOD in writing.

On December 28, 1990, DOD submitted protocols under IND's and requests for waiver of informed consent for pyridostigmine bromide 30-milligram (mg) tablets and botulinum toxoid vaccine. (Subsequently, DOD submitted a waiver request for multishield topical skin protectant, but later withdrew this request.) Pyridostigmine bromide was considered

a potentially useful pretreatment against certain nerve gases; botulinum toxoid vaccine is widely accepted as offering protection against toxins produced by *Clostridium Botulinum*, the bacterium that causes botulism.

The Commissioner approved DOD's waiver requests for pyridostigmine bromide 30-mg tablets and botulinum toxoid vaccine on December 31, 1990, and January 8, 1991, respectively. Both products were administered to portions of the military personnel who participated in Operation Desert Storm.

Following the cessation of combat activities, the Assistant Secretary of Defense (Health Affairs) notified the Commissioner in a letter dated March 15, 1991, that DOD considered the two waivers granted under the interim rule to be no longer in effect. He also informed the Commissioner that DOD had ultimately decided to administer the botulinum toxoid on a voluntary basis.

C. Comments Received on the Interim Rule

Twenty-two written comments were submitted to the agency in the brief 30-day comment period following publication of the interim rule in the **Federal Register** of December 21, 1990. Comments were received from physicians, members of IRB's, organizations concerned with bioethical issues, patient advocacy groups, and private citizens. The majority of the comments were supportive of the rule, although often with some qualification or suggested change. However, a number of comments expressed vehement opposition to the interim rule, both on general principle and with regard to one or more of its provisions. For example, one comment stated that the request for waiver of informed consent is merely an expedient solution to a problem that should be solved much better in other ways. This comment suggested that FDA modify its drug approval process so that therapies such as those that were sanctioned for use under the interim rule could be granted marketing approval notwithstanding the absence of substantial evidence of their effectiveness against nerve gas or biological warfare agents. Several comments stated that the interim regulation did not provide for recipients of investigational therapies to receive appropriate information on the treatment to be administered. Two comments stated that the interim rule should be modified to require that the reviewing IRB be unaffiliated with DOD. Five comments stated that the interim rule is a violation of fundamental ethical principles. The comments described the rule as ''* * * a flagrantly immoral violation of human rights,'' adding that ''Wartime does not justify experimentation without consent,'' and ''No explanation, whatever it might be, is acceptable to justify these actions.''

D. Summary of Litigation Regarding the Interim Rule

On January 11, 1991, Public Citizen Health Research Group filed suit against the Department of Health and Human Services in the United States District Court on behalf of an unnamed serviceman stationed in Saudi Arabia, his wife, and all others similarly situated. In the Complaint, the plaintiff (''Doe'') alleged that: (1) The interim rule was outside FDA's statutory authority under the act, (2) DOD's use of unapproved investigational drugs, under the informed consent waiver, could not be reconciled with language in the 1985 Defense Department Authorization Act, and (3) the Government's use of drugs on unconsenting persons was a deprivation of liberty in violation of the Fifth Amendment. The district court dismissed the Complaint holding that the Complaint questioned ''a military decision that is not subject to judicial review.'' (*Doe* v. *Sullivan*, 756 F. Supp. 12, 14 (D.D.C. 1991)). In an alternative holding, the district court also rejected on the merits the statutory and constitutional challenges stated in the complaint.

On appeal, a three-judge panel of the United States Court of Appeals for the District of Columbia Circuit affirmed by a two-to-one vote the district court's order dismissing the Complaint on the grounds that FDA's rule was within FDA's authority, and not barred by the 1985 Department of Defense Authorization Act or the due process clause of the Fifth Amendment. The dissenting judge was of the opinion that the case was moot.

E. DOD's Experience With Pyridostigmine Bromide and Botulinum Toxoid

Following the approval of the waiver requests, DOD dispensed pyridostigmine bromide tablets and administered botulinumtoxoid to U.S. troops involved in Operations Desert Shield and Desert Storm who were deemed to be at high risk for exposure to organophosphorus nerve agents or bacterial agents. As part of the legal requirements for the use of products under an IND, DOD was required to collect data on the safety and efficacy of the two agents. This information is summarized as follows:

1. Safety Data on Pyridostigmine

U.S. troops who were deemed to be at high risk for exposure to organophosphorus nerve agents received pyridostigmine bromide tablet packages for self-administration use when ordered to take them as prophylaxis against nerve agents. Unit commanders had discretion on whether, and when, to order use of the pyridostigmine bromide, and could delegate this authority to the lowest level of field command. Documentation does not exist on how far down the command chain the authority was delegated in each unit, or whether or when each unit issued orders to begin taking the pyridostigmine, or who took pyridostigmine.

The Department of the Army conducted three separate surveys in an effort to determine the incidence and severity of side effects associated with the use of pyridostigmine bromide as a nerve agent pretreatment.

Survey I was a questionnaire sent to 42 selected medical personnel involved in Operation Desert Shield and Operation Desert Storm; 23 of these questionnaires were completed and returned. Among the 23 medical officers who returned the survey, 10 responded that their overall impression was that the drug was tolerated either very well or well. The most common side effects reported were gastrointestinal (abdominal cramps, nausea, and diarrhea). Less common side effects were weakness and light-headedness, exacerbation of asthmatic symptoms, fatigue, sleep disturbances, and reduced mental concentration. Of the 5,825 medical personnel reported on, 8 were hospitalized for side effects that were attributed to pyridostigmine. The reasons listed for hospitalization included exacerbation of cholelithiasis, asthma, and allergic skin reaction.

Survey II was a questionnaire given to an unspecified number of soldiers deployed in Operation Desert Storm; 149 of these soldiers responded. Of those individuals who took the drug, 37.5 percent experienced side effects. The most common side effects were gastrointestinal in nature. Nausea was reported most frequently (11 percent of subjects), and headache was the second most frequent side effect reported (7.5 percent of subjects).

Survey III was designed to document the effects of pyridostigmine on aviators' ability to carry out combat missions. One hundred eighteen aviators participated in the survey, 48 of whom were taking other medications concomitantly. The majority of those taking other medications were taking

the antibiotic ciprofloxacin. Twenty-six of the 108 aviators who indicated that they had taken the drug reported experiencing side effects they attributed to pyridostigmine, mainly headaches and diarrhea.

The *Journal of the American Medical Association* published the result of one retrospective study that reported on the 18th Airborne Corps (Corps) use of pyridostigmine. The Corps instructed 41,650 soldiers (6.5 percent women) to take pyridostigmine at the beginning of Operation Desert storm in January 1991. Approximately 30 medical officers (physicians and physician's assistants) provided their impressions of the incidence of physiologic responses and potential adverse effects to pyridostigmine. A total of 483 aid station or clinic visits were related to pyridostigmine administration; 313 of these visits were due to ''gastrointestinal disturbances severe enough to prompt medical attention.'' And ''[a]nother 150 soldiers had frequency or urgency of urination.'' Less than 5 percent of the 41,650 soldiers complained of headaches, rhinorrhea, diaphoresis, or tingling of extremities. The article reported that 1 percent of the troops perceived the need for a medical visit and less than 0.1 percent discontinued pyridostigmine based on medical advice (LTC Jill R. Keeler, et al., ''Pyridostigmine Used as a Nerve Agent Pretreatment Under Wartime Conditions,'' *Journal of the American Medical Association*, vol. 266, no. 5, August 7, 1991).

2. Safety and Efficacy Data on Botulinum Toxoid Vaccine

As noted previously, DOD advised FDA that the military command in the theater of operations administered this vaccine on a voluntary basis. Approximately 8,000 service members were reported to have received the botulinum toxoid vaccine. Most of these individuals received two doses.

The Department of the Army collected safety information through a retrospective survey on local and generalized reactions experienced by soldiers vaccinated with the botulinum toxoid vaccine. The survey, conducted on August 27, 1991, was given to individuals who received one or more doses of the vaccine (between January 3, 1991, and March 2, 1991) in the Persian Gulf, and who had received no other vaccines against biological warfare agents. One hundred and twenty-one responses were received. With respect to local reactions, 84 percent of vaccinated individuals reported either no local reactions (72.5 percent) or redness and/or swelling less than 6 inches in any dimension (11.57 percent). One individual reported post-vaccination injection site pain that temporarily (one half day) interfered with his ability to perform his duties but resolved quickly. With respect to systemic reactions to the vaccine, 97.52 percent of respondents reported having none. Of the three respondents who reported systemic reactions, two reported mild systemic effects such as headache and muscle aches, and the third also reported nausea, fever, and fatigue; none of these events were reported to have persisted or have resulted in limitations on activity.

In 1992, DOD carried out a followup study, with informed consent, on 327 selected military personnel who received the botulinum toxoid vaccine during Operation Desert Shield and Operation Desert Storm. The objectives of this study were, in part, to evaluate the persistence of antibodies to botulinum toxoid vaccine received during the Gulf War and, to determine the serological response 30 days after a booster dose. The evaluation demonstrated that 35 of the 327 had measurable antibody 18 to 24 months following primary vaccination. The percentage of antibody varied depending on whether the individuals had received 1, 2, or 3 primary vaccinations ((0/10 (0 percent), 27/244 (11.1 percent), and 8/73 (11 percent) of individuals who had received 1, 2, or 3 primary vaccinations, respectively). This response was to be expected at this followup time point in individuals receiving anything less than the full primary immunization and booster dose. Thirty days after the booster dose was administered, 7/10 (70 percent), 238/244 (97.5 percent), and 72/72 (98.6 percent) of individuals who had received 1, 2, or 3 of the primary dose series, respectively, responded with a significant increase in toxin neutralizing antibody titer to botulinum type A.

3. Information Supplied to Military Personnel

DOD has stated that its implementation of plans for providing service members with information about the investigational products was frustrated due to time limitations.

In order to evaluate the effectiveness of its efforts to disseminate information to military personnel regarding the safety, risks, and possible benefits of pyridostigmine, the Army surveyed an unspecified number of personnel regarding their views on the adequacy of the information that they received. This was a part of Survey II described in section I.E.1 of this document. Those surveyed were asked whether they thought the training that they received was adequate and to comment about any problems with their training.

One hundred forty-nine individuals responded to this survey. In response to the question ''Was training about pyridostigmine adequate?'', 43.7 percent of the respondents answered in the negative. Most of those who felt that the training was inadequate expressed a desire for more information on side effects, long-term effects, and the drug's mechanism of action. The following is a sample of some of the comments received (both by those who felt the training was inadequate and those who felt it was adequate but could have been better):

(a) ''No standard side effects given.''

(b) ''No training on side effects.''

(c) ''People were worried about the drug's side effects. Many people avoided taking it. Some people would double dose after missing one.''

(d) ''Not trained on drug action, but yes on side effects.''

(e) ''Combat lifesavers brief it and said it was FDA approved.''

(f) ''Many soldiers didn't take the tablets due to the fact that they weren't FDA approved or thought not.''

(g) ''Didn't know what it did, what it was for. Disregarded instructions to take it.''

(h) ''Training was not enough in layman's terms. You would need to know more about nerve agents.''

Veterans made similar comments on the adequacy of the information they received at hearings before the Senate Committee on Veterans' Affairs and the Presidential Advisory Committee on Gulf War Veterans' Illnesses.

As part of Survey I described in section I.E.1 of this document, 15 of the 23 medical officers who returned the survey responded that to their knowledge, the information sheet on pyridostigmine bromide was not distributed to personnel instructed to take pyridostigmine bromide. Two respondents said that the information was distributed, and one respondent, whose unit was not instructed to begin pretreatment with pyridostigmine bromide, replied that he had the sheet available for distribution.

Although FDA did not require the Army to attempt to evaluate the effectiveness of its educational efforts, the Army did so in an effort to monitor its own performance and perhaps learn about how education might be improved in the future. While it is difficult to evaluate the validity of the Army's findings (due to the difficulty of measuring the effect of response bias in Survey II), FDA is concerned about the high level of dissatisfaction expressed

by this small sample of military personnel. Their responses indicate that the information on pyridostigmine was not distributed as intended and the Army's educational activities were uneven and possibly inappropriate to the education level of all personnel. Their responses also indicate that because of the inadequate information provided to the soldiers, that at least some soldiers either took the wrong amount of pyridostigmine or disregarded orders to take it completely. Based on subsequent DOD statements, FDA has concluded that the information sheet on pyridostigmine was not provided and disseminated to military personnel in the Gulf as conditioned in the Commissioner's letter granting the waiver under the interim rule.

With respect to botulinum toxoid vaccine, there is a lack of clarity as to whether the conditions of waiver were met and applied or whether informed consent was actually obtained.

F. Other Information Related to the Interim Rule

There has been extensive examination of the use of the interim rule, pyridostigmine bromide, and the botulinum toxoid vaccine during Operation Desert Storm. This focused examination is, in part, the result of interest in determining the cause of a variety of health effects suffered by veterans who served in the Gulf War.

On May 6, 1994, the United States Senate Committee on Veterans' Affairs held a hearing on ''Is Military Research Hazardous to Veterans' Health? Lessons From World War II, the Persian Gulf, and Today.'' The Chairman, in his opening statement, stated his view that the issue needed to be resolved. Witnesses at the hearing included ethicists, four veterans with stories of illnesses allegedly related to exposures they experienced either in the military or working for the military, and scientists and officials from the Department of Veterans Affairs, DOD, FDA, and the Department of Agriculture.

The Presidential Advisory Committee on Gulf War Veterans' Illnesses' final report reviewed these issues extensively. In its interim report (February 1996), the committee described a number of shortcomings in DOD's use of investigational products during the Gulf War and recommended, among other things, that:

If FDA decides to reissue the interim final rule as final, it should first issue a Notice of Proposed Rule Making. Among the areas that specifically should be revisited are: adequacy of disclosure to service personnel; adequacy of recordkeeping; long term followup of individuals who receive investigational products; review by an IRB outside of DOD; and additional procedures to enhance understanding, oversight, and accountability. (p. 24)

This report further stated:

The activities of FDA and DOD related to the use of drugs and biologics intended to protect against [chemical and biological warfare] CBW remain an area of considerable interest to the Committee. In particular, we plan to explore with FDA possible alternatives to the interim final rule to help ensure troops are protected against CBW. Some observers have suggested an approval standard that recognizes surrogate endpoints and other data indicative of efficacy for vaccines, drugs, devices, and antibiotics intended for CBW defense might be a more appropriate policy than a waiver of informed consent. (p. 44)

On May 7, 1996, Public Citizen, the National Veterans Legal Services Program, and the National Gulf War Resource Center, Inc., submitted a petition to FDA requesting that the Commissioner repeal the interim rule. The petition set forth a number of grounds for this request, including: The ethics of the rule continues to be questioned; the military did not provide the information regarding the effects of experimental drugs that FDA considered essential to permitting their use without informed consent; DOD failed to keep the necessary records on the administration and effects of the experimental drugs; the waiver of informed consent was not necessary (botulinum toxoid vaccine was ordered to be given on a voluntary basis and ''the fact that the PB tablets were self-administered by the troops underscores that it was possible to inform and obtain the consent of the military personnel who took these tablets''); the safety of the experimental drugs is still questionable; and administration of these drugs without informed consent was not limited to military personnel.

The petition concluded with the following:

The FDA should repeal the Interim Rule in light of all the problems encountered in its implementation. Not only did the Interim Rule fail to operate in the manner the FDA intended, but it also allowed the military to circumvent the safeguards the FDA offered to rationalize this departure from its ordinary rules on informed consent. The military did not follow through with many conditions that the FDA deemed crucial to granting a waiver of this critical requirement. (p. 26)

On September 13, 1996, the Assistant Secretary of Defense, Health Affairs, provided DOD's comments on the petition to FDA and urged that it be denied. DOD's comments included the following statements:

1. When the President commits U.S. military forces to a combat, peacekeeping, or humanitarian deployment, the U.S. Government has a duty to take all reasonable precautions to bring about a successful completion of the mission and a safe return of the deployed forces.

2. The Government's duty to take all reasonable precautions to preserve the fighting force must include recognition of the startling proliferation of chemical and biological weapons among potential adversaries and terrorist organizations and an obligation to implement the best possible medical countermeasures.

3. Implementation of the best possible medical countermeasures may require the standardized treatment use of an investigational new drug or vaccine for all personnel at risk in a military combat exigency, including those personnel who, for whatever reason or no reason at all, would prefer an alternate treatment or no treatment.

4. The current rule is an extremely limited authority, requiring case-by-case justification, available only under extraordinary circumstances, and explicitly restricted to advancing the best interests of the military personnel concerned.

5. The current rule is fully consistent with law and ethics.

6. Overall, notwithstanding some problems in carrying out the designed treatment protocols, the two uses made of the current rule during the Persian Gulf War support the rule's continuation.

7. Initiatives since the Gulf War, including current operations in Bosnia, have improved DOD's ability to implement medical countermeasures under the authority of the current rule, should that become necessary in the future.

This petition is pending before the agency.

II. Scope of Comments Requested

In light of the many complex ethical, scientific, and public health issues associated with the use of investigational products during the Gulf War and the waiver of the requirement to obtain informed consent, FDA is soliciting broad public comment on the advisability of the agency: (1) Revoking or amending the interim final rule that permits the Commissioner to determine that obtaining informed consent from military personnel for the use of an investigational drug or biologic is not feasible in certain situations related to military combat, and (2) identifying the evidence needed to demonstrate safety and effectiveness for such investigational drugs that cannot ethically be tested on humans for purposes of determining their efficacy because they would involve administering a severely toxic substance to human volunteers. The agency encourages written comments from all interested parties, including, but not limited to, consumers, patient groups, veterans and veteran groups, active military personnel, organizations and departments, ethicists, scientists,

researchers with particular expertise in this area, and health care professionals.

Interested persons may, on or before October 29, 1997, submit to the Dockets Management Branch (address above) written comments regarding the questions identified in section II of this document (referencing the number of the question(s) being addressed). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The agency specifically requests comments on the following:

A. The Interim Rule

(1) Should the agency revoke the interim rule? If so, why?

(2) Are there circumstances under which use of the interim rule would be justified? If so, what are those circumstances?

(3) The interim rule is based on the premise that informed consent is not feasible in military combat exigencies because if a soldier were permitted to say ''no,'' this could jeopardize the individual soldier's life, endanger other personnel in his or her unit, and jeopardize the accomplishment of the combat mission. DOD has alleged that it is not an option to excuse a nonconsenting soldier from a military mission. Given the experience in the Gulf War, does this rationale still hold?

(4) Instead of waiving the requirement for informed consent, is it feasible to obtain anticipatory consent from military personnel during peace time for the future use of investigational products during a military conflict? If it is feasible, would such consent be valid as ''informed consent''? What would be the needed consent algorithm to make it valid and feasible?

(5) Instead of waiving the requirement for informed consent, is it feasible to obtain anticipatory consent from military recruits (prior to their recruitment into the military) for the future use of investigational products during a military conflict? If it is feasible, would such consent be valid? What would be the needed consent algorithm to make it valid and feasible?

(6) If the interim rule is needed, are there changes that should be made to it based on experiences during and following the Gulf War? If so, what are these changes and why should they be made?

(7) Can or should the interim rule be narrowed in scope? If so, how?

(8) If the rule were to be reproposed:

(a) Should there be a requirement that DOD's proposed use of the investigational product(s) be approved by an IRB that is independent of DOD? If so, why should DOD be held to a requirement not imposed on other institutions, and what should be the requirement for that independent IRB? Can this be accomplished without compromising military or national security?

(b) Should the authority to make the ''feasibility determination'' (i.e., whether obtaining informed consent is ''not feasible'') under the interim rule be vested in persons or entities other than the Commissioner of FDA?

(c) Should the rule be more specific in describing the information that must be supplied to military personnel, or should FDA have wide latitude to make such determinations on a case-by-case basis?

(d) Should additional measures be taken to insure that information required by FDA is effectively conveyed to the affected military personnel? If so, what should these measures be?

(e) Should the rule address what constitutes adequate recordkeeping and adequate long term followup of individuals who receive investigational products? If so, in what way?

(f) Should the rule contain additional procedures to enhance understanding, oversight, and accountability? If so, what are these procedures?

(g) Should the rule contain additional procedures to track noncompliance?

B. When Is It Ethical to Expose Volunteers to Toxic Chemical and Biological Agents to Test the Effectiveness of Products That May Be Used to Provide Potential Protection Against Those Agents?

The agency recognizes that reliance on nonhuman studies will almost always give greater uncertainty about effectiveness than would studies in humans. Therefore, the agency is also seeking comments on the ethical and scientific considerations of conducting human efficacy trials with these products. For example, the agency is interested in receiving comment on whether it is ethical to conduct challenge studies in humans if, should the test product fail, there is strong reason to believe the effect of the challenge could be reversed or effectively treated. What if the effect of the challenge could not be reversed or effectively treated? What would be the needed risk/benefit assessment? Who could volunteer for such studies? Would it be ethically preferable to carry out such studies in people who could be exposed to the toxic substance? Should the agency further explore these issues in a separate public forum?

C. If Products That May Be Used to Provide Potential Protection Against Toxic Chemical and Biological Agents Cannot Be Ethically Tested in Humans, What Evidence Would Be Needed to Demonstrate Their Safety and Effectiveness?

(1) Should FDA identify the evidence needed to demonstrate safety and effectiveness for drugs that cannot ethically be tested on humans to demonstrate efficacy when such tests would involve administering a severely toxic substance to human volunteers? If ''yes,'' what should constitute the evidence needed to demonstrate safety and efficacy? (The current statutory standard requires, among other things, there be ''substantial evidence'' that the drug is effective; ''substantial evidence'' means evidence ''consisting of adequate and well-controlled investigations, including clinical investigations * * * on the basis of which it could fairly and responsibly be concluded by such experts that the drug'' is effective.)

(2) If the agency were to identify the evidence needed to demonstrate safety and effectiveness of these products, would this preclude the need for the interim rule? What specific advantages would this offer over the interim rule?

(3) Civilian populations may require products used in the prevention or treatment of the serious or life-threatening effects from exposure to toxic chemical or biological agents, e.g., in the event of exigencies such as the release of toxic chemical agents in the Tokyo subway system. Thus, should the agency consider identifying the evidence needed to demonstrate safety and effectiveness for these products which would apply to both civilian as well as military populations?

Dated: July 7, 1997.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

[FR Doc. 97–20311 Filed 7–29–97; 10:58 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–012–B]

Review of the Control of Hazardous Energy Sources (Lockout/Tagout) Standard

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Extension of time for filing public comments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is conducting a review of the Control of Hazardous Energy Sources (Lockout/Tagout) standard in order to determine, consistent with Executive Order 12866 on Regulatory Planning and Review and section 610 of the Regulatory Flexibility Act, whether this standard should be maintained without change, rescinded, or modified in order to make it more effective or less burdensome, consistent with the objectives of the Occupational Safety and Health Act. The review will consider the application of Executive Order 12866 and the directive of the Regulatory Flexibility Act to achieve statutory goals with as little economic impact as possible on small employers.

OSHA published a **Federal Register** notice on May 29, 1997 requesting public comments concerning OSHA's review of the Lockout/Tagout standard (29 CFR 1910.147) and announcing a public meeting on June 30, 1997 (62 FR 29089, May 29, 1997). In the **Federal Register** notice announcing the public meeting, OSHA stated that it would accept written comments through August 1, 1997. In response to requests from persons commenting at the public meeting held on June 30, 1997, OSHA has granted a one week extension of the time period to file written comments.

DATES: Written comments will be accepted through August 8, 1997.

ADDRESSES: Written comments should be sent to the Docket Officer, Docket S–012–B, OSHA Docket Office, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 219–7894.

FOR FURTHER INFORMATION CONTACT: Nancy Dorris, Office of Regulatory Analysis, Directorate of Policy, Occupational Safety and Health Administration, Room N3627, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 219–4690, extension 134, Fax (202) 219–4383.

Authority: This document was prepared under the direction of Gregory R. Watchman, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C., this 25th day of July, 1997.

Gregory R. Watchman,

Acting Assistant Secretary.

[FR Doc. 97–20107 Filed 7–30–97; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–200–C]

Review of the Ethylene Oxide Standard

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Extension of time for filing public comments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is conducting a review of the Ethylene Oxide standard in order to determine, consistent with Executive Order 12866 on Regulatory Planning and Review and section 610 of the Regulatory Flexibility Act, whether this standard should be maintained without change, rescinded, or modified in order to make it more effective or less burdensome in achieving its objectives, to bring it into better alignment with the objectives of Executive Order 12866, or to make it more consistent with the objectives of the Regulatory Flexibility Act to achieve regulatory goals while imposing as few burdens as possible on small employers.

OSHA published a **Federal Register** notice on May 27, 1997 requesting public comments concerning OSHA's review of the Ethylene Oxide standard (29 CFR 1910.1047) and announcing a public meeting on June 30, 1997 (62 FR 28649, May 27, 1997). In the **Federal Register** notice announcing the public meeting, OSHA stated that it would accept written comments through August 1, 1997. In response to requests from persons commenting at the public meeting held on June 30, 1997, OSHA has granted a one week extension of the time period to file written comments.

DATES: Written comments will be accepted through August 8, 1997.

ADDRESSES: Written comments should be sent to the Docket Officer, Docket H–200–C, OSHA Docket Office, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 219–7894.

FOR FURTHER INFORMATION CONTACT: Nancy Dorris, Office of Regulatory Analysis, Directorate of Policy, Occupational Safety and Health Administration, Room N3627, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 219–4690, extension 134, Fax (202) 219–4383.

Authority: This document was prepared under the direction of Gregory R. Watchman, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C., this 25th day of July, 1997.

Gregory R. Watchman,

Acting Assistant Secretary.

[FR Doc. 97–20108 Filed 7–30–97; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–33–1–7343; FRL–5866–7]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Louisiana: Enhanced Motor Vehicle Inspection and Maintenance (I/M) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed conditional approval, and proposed disapproval.

SUMMARY: The EPA previously published a **Federal Register** (FR) notice proposing conditional approval of the Louisiana I/M SIP. The notice was published on June 9, 1997 (62 FR 31388). The approval was conditioned on the State obtaining reauthorization and continuous operating authority for the I/M program, and program start-up on January 1, 1999. The State failed to obtain the necessary legislation during the 1997 regular Legislative Session. Consequently, EPA believes that conditional approval is no longer appropriate. Therefore, EPA is withdrawing its proposed conditional approval. At the same time, EPA is proposing disapproval of the revision to the I/M SIP submitted by the State of Louisiana on August 18, 1995 and May 30, 1996. This action is taken under section 110 of the Clean Air Act (the Act) as amended in 1990. The EPA is proposing a disapproval because the State has not obtained the legislative authority needed for reauthorization

and continuous implementation of the program. The EPA cannot approve a SIP, under the Clean Air Act, which lacks continuing legislative authority.

DATES: This withdrawal is made on July 31, 1997. Comments on the proposed disapproval must be received on or before September 2, 1997.

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

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

Louisiana Department of Environmental Quality, Air Quality Compliance Division, 7290 Bluebonnet, 2nd Floor, Baton Rouge, Louisiana.

Louisiana Department of Environmental Quality Capital Regional Office, 11720 Airline Highway, Baton Rouge, Louisiana.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7367.

SUPPLEMENTARY INFORMATION:

I. Background

On August 18, 1995, and in a later submittal, the State of Louisiana submitted plans for an I/M program in response to the requirements of the Act and to Federal I/M rules promulgated on November 5, 1992 (40 CFR 51.350, *et seq.*). Serious ozone nonattainment areas are required by the Act to implement enhanced vehicle I/M programs. The Louisiana plan would put a vehicle I/M program in place in the six parish Baton Rouge ozone nonattainment area starting January 1999. The plan was not submitted under the National Highway System Designation Act, which amended the Clean Air Act I/M requirement in certain respects. An I/M program is not needed to provide the reductions necessary to support a demonstration of the Baton Rouge 15% Rate-of-Progress Plan or the Post-1996 Rate of Progress/Attainment Demonstration Plan. A proposed conditional approval of this plan was published in the **Federal Register** on June 9, 1997 (62 FR 31388). The plan was proposed for approval with the conditions that the program start in January 1999, and that the State obtain legislative authority for continuous program operation. The State statute had required program reauthorization in 1997 and in odd-numbered years thereafter.

II. Analysis of Legislative Authority

Under 40 CFR 51.372(a)(6) of the Federal I/M rule, the SIP submittal must include legal authority for the I/M program until such time as it is no longer necessary. Legal authority in the revised Louisiana SIP is limited to reauthorization by the State Legislature in odd-numbered years starting in 1997. The EPA considered this a major deficiency in the SIP, and made correcting this deficiency one condition toward full approval of the SIP. The Clean Air Act section 110(a)(2)(E) requires that all SIPS, to be approvable, must include adequate authority under State law to implement the plan.

The State Legislature held a regular session from April 1, 1997, through June 23, 1997. Neither of the two bills relating to I/M were enacted. The Legislature recessed without providing the necessary legal authority for program reauthorization or continuous program operation, and will not meet in regular session until the spring of 1999. A fee bill to fund program development also was not acted upon. Consequently, the State will not have legal authority to implement the I/M program after 1997.

III. Rulemaking Action

The EPA is withdrawing the proposed conditional approval appearing at 62 FR 31388, June 9, 1997, since Louisiana failed to enact continuing legislative authority during the 1997 session. Louisiana could not comply with the proposed condition in the notice.

The EPA also proposes to disapprove the Louisiana I/M SIP under sections 110(k) and 182 of the Act since the State did not obtain reauthorization and continuous legislative authority for I/M program operation. A disapproval is being proposed because the State's I/M SIP does not meet all the requirements of the Act and the federal I/M rules.

Today's rulemaking action withdraws the previous proposed conditional approval, and proposes to disapprove the State's I/M SIP until such time as the State corrects the major deficiency relating to legislative authority.

Under section 179(a)(2), if the EPA Administrator takes final disapproval action on a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) of the Act (unless the deficiency has been corrected within 18 months of such disapproval). Section 179(b) provides two sanctions available to the Administrator: revocation of highway funding and the imposition of emission offset requirements. The 18-month period referred to in section 179(a) will begin on the effective date established in the final disapproval action. If the deficiency is not corrected within six months of the imposition of the first sanction, the second sanction will also apply. This sanctions process is set forth in 40 CFR 52.31. Today's action serves only to propose disapproval of the State's revision, and does not constitute final agency action. Thus, the sanctions process described above does not commence with today's action.

Also, 40 CFR 51.448(b) of the federal transportation conformity rules currently state that if the EPA disapproves a submitted control strategy implementation plan revision which initiates the sanction process under section 179 of the Act, the conformity status of the transportation plan and transportation improvement program shall lapse 120 days after the EPA's final disapproval without a protective finding, and no new project-level conformity determinations may be made. Furthermore, no new transportation plan, Transportation Improvement Program, or projects may be found to conform, until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted, found complete, and conformity to this submission is determined.

The timeframe for the conformity lapse, which, as discussed above, is 120 days after the effective date of EPA's final disapproval action, could be changed by a revision to EPA's conformity rule. On July 9, 1996, EPA published (61 FR 36112) a proposed rule which would modify the Transportation Conformity rule. A key provision contained in the proposal was a change in the penalty that occurs 120 days after a final disapproval action. Instead of a lapse, a less punitive conformity freeze was proposed to occur in 120 days. In EPA's proposed conformity rule revision, the more restrictive lapse would be imposed 2 years after a final disapproval action. Therefore, if the conformity rule is finalized as proposed, the conformity lapse will take place 2 years from the effective date of the final disapproval action, and a freeze would be imposed in the period between 120 days and 2 years following the effective date of this

action. Louisiana will ultimately be subject to the provisions contained in EPA's final conformity rule.

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

The Regional Administrators' decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Act, as amended, and EPA regulations in 40 CFR part 51.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

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

C. Small Business Regulatory Enforcement Fairness Act

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the small business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. House of Representatives and the Comptroller General of the general Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandate Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local or tribal governments in aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. This Federal action imposes no new requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 21, 1997.

Lynda F. Carroll,

Acting Regional Administrator.

[FR Doc. 97–20179 Filed 7–30–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 173–0044b; FRL–5867–4]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Sacramento Metropolitan Air Quality Management District and Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to act on revisions to the California State Implementation Plan (SIP) consisting of two volatile organic compound (VOC) negative declarations from the Sacramento Metropolitan Air Quality Management District for Plastic Parts Coating: Business Machines and Plastic Parts Coating: Other and six negative declarations from the Santa Barbara County Air Pollution Control District for the following VOC source categories: Industrial Wastewater, Plastic Parts Coating: Business Machines, Plastic Parts Coating: Other, Industrial Cleaning Solvents, Offset Lithography, and Shipbuilding Coatings. The intended effect of proposing to include these negative declarations in the SIP is to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is acting on the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A rationale for this action is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by September 2, 1997.

ADDRESSES: Written comments on this action should be addressed to: Julie A. Rose, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the negative declarations are available for public inspection at EPA's Region 9 office and at the following locations during normal business hours.

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Air Docket (6102), U.S. Environmental Protection Agency, 40l ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826

Santa Barbara County Air Pollution Control District, Agency, 26 Castilian Drive, B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection

Agency, 75 Hawthorne Street, San Francisco, CA 94105–3901 Telephone: (415) 744–1184

SUPPLEMENTARY INFORMATION: This document concerns negative declarations for VOC source categories from the Sacramento Metropolitan Air Quality Management District (SMAQMD) and the Santa Barbara County Air Pollution Control District (SBCAPCD). On June 6, 1996, the SMAQMD submitted two negative declarations for the following VOC source categories: Plastic Parts Coating: Business Machines and Plastic Parts Coating: Other. On July 12, 1996, the SBCAPCD submitted six negative declarations for the following VOC source categories: Industrial Wastewater, Plastic Parts: Business Machines, Plastic Parts: Other, Industrial Cleaning Solvents, Offset Lithography, and Shipbuilding Coating. These negative declarations confirm that the respective source categories are not present in the SMAQMD or the SBCAPCD. The negative declarations were submitted to EPA by the California Air Resources Board as revisions to the SIP on the dates indicated.

For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 16, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–20218 Filed 7–30–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–5862–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Removal of Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing repeal of the exclusion that appears in the final rule published at 56 FR 67197 (December 30, 1991) regarding a delisting granted to Reynolds Metals Company (Reynolds), Gum Springs, Arkansas. The exclusion granted to Reynolds on December 30, 1991, was to exclude (or delist), certain solid wastes (i.e., kiln residue from treatment of spent potliner from primary aluminum reduction) generated at Reynolds' facility from the lists of hazardous wastes contained in 40 CFR 261.24, 40 CFR 261.31, 40 CFR 261.32 and 40 CFR 261.33 (hereinafter all sectional references are to 40 CFR unless otherwise indicated). This proposed decision to repeal the exclusion is based on an evaluation of waste-specific information provided by Reynolds and obtained by EPA either independently or from the Arkansas Department of Pollution Control and Ecology (ADPC&E) subsequent to the promulgation of the exclusion. If this proposed decision is finalized, all future waste generated at Reynold's Gum Springs, Arkansas facility will no longer be excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) and must be handled as hazardous waste in accordance with 40 CFR parts 260 through 266, 268 and 273 as well as any permitting standards of 40 CFR part 270.

DATES: The EPA is requesting public comments on this proposed decision. Comments will be accepted until September 2, 1997. Comments postmarked after the close of the comment period will be stamped ''late'', and will not be considered in formulating a final decision.

Any person may request a hearing on this proposed decision by filing a request by August 15, 1997. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Send three copies of your comments. Two copies should be sent to William Gallagher, Delisting Program, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the Arkansas Department of Pollution Control and Ecology, P.O. Box 8913, Little Rock, Arkansas 72209–8913. Identify your comments at the top with this regulatory docket number: F–97–ARDEL–REYNOLDS. Requests for a hearing should also be addressed to William Gallagher.

The RCRA regulatory docket for this proposed rule is located at Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202 and is available for viewing in the EPA library on the 12th floor from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The docket may also be viewed at the Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72209. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION, CONTACT: For technical information concerning this notice, contact William Gallagher, Delisting Program (6PD–O), Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–6775.

SUPPLEMENTARY INFORMATION:

I. Background

A. ''Delisting'', in General

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, the EPA published an amended list of hazardous wastes from nonspecific and specific sources. This list has been amended several times, and is published in §§ 261.31, 261.32 and 261.33. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11 (a)(2) or (a)(3).

In 1988,[1] the Agency determined that spent potliners are a solid waste that may pose a substantial present or potential hazard to human health or the environment when improperly transported, treated, stored, disposed of, or otherwise managed. It was determined that spent potliners contain toxic constituents that are mobile and/or persistent in the environment. Spent potliners were originally listed as hazardous waste because: (1) Spent potliners contain significant amounts of iron cyanide complexes and free cyanide, both of which EPA detected in spent potliners in significant concentrations; (2) free cyanide is extremely toxic to both humans and aquatic life if ingested; (3) available data indicated that significant amounts of free cyanide and iron cyanide will leach from potliners if spent potliners are stored or disposed in unprotected piles outdoors and are exposed to rain water; (4) damage incidents have been reported that are attributable to improper disposal of spent potliners, demonstrating migration, mobility, and persistence of waste constituents and demonstrating that substantial hazard can result from improper management of this waste; and (5) generation of large quantities of the waste increases the

[1] 53 FR 35412 (September 13, 1988)

potential for hazard if mismanagement should occur.

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous. Therefore, §§ 260.20 and 260.22 provide a variance procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. *See,* § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require EPA to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for EPA to determine based on actual or theoretical data whether the waste contains any of the other identified constituents at levels not protective of human health and the environment through comparison to maximum contaminant levels, drinking water standards, etc. *See,* § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes that are delisted (i.e., excluded) are evaluated to decide whether they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether their waste exhibits a hazardous waste characteristic as defined by §§ 261.21 through 261.24. The Agency may also impose additional conditions to ensure the waste does not result in a health hazard, and has the ability to consider and act on new information if it becomes available.

In addition, mixtures containing listed hazardous wastes and residues from the treatment, storage, or disposal of listed hazardous wastes are also considered hazardous wastes. *See,* §§ 261.3 (a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion but remain hazardous wastes until excluded.

B. The Reynold's ''Delisting'' Petition

On August 14, 1989, Reynolds Metals Company (Reynolds), located in Bauxite, Arkansas, petitioned EPA pursuant to §§ 260.20 and 260.22 to exclude kiln residue derived from processing K088 spent potliner wastes at its R.P. Patterson facility in Gum Springs, Arkansas from hazardous waste regulation. Reynolds conducted the demonstration for the delisting at its Bauxite, Arkansas, facility but later moved its thermal treatment process from Bauxite, Arkansas, to the Reynolds facility located in Gum Springs, Arkansas. Specifically, Reynolds requested an exclusion (i.e., for a waste that had not yet been generated) for kiln residue from the treatment of spent potliner from four Reynolds aluminum reduction facilities. Reynolds petitioned EPA for the exclusion based on: (1) descriptions of a full-scale process used to treat spent potliner; and (2) characterization of untreated spent potliner and residue generated at Reynolds' Bauxite, Arkansas, facility during the treatment of spent potliners from four Reynolds aluminum reduction facilities. In support of its petition, Reynolds submitted: (1) Detailed descriptions of its waste treatment process; (2) a description of the processes generating spent potliners that were treated by the rotary kiln process; (3) total constituent analysis results for the eight metals listed in § 261.24; (4) total constituent analysis results for antimony, beryllium, nickel, cyanide, and fluoride from representative samples of both the kiln residue and the untreated spent potliner; (5) Extraction Procedure [2] leachate analysis results for the eight metals listed in § 261.24, antimony, beryllium, nickel, cyanide, and fluoride from representative samples of the kiln residue; (6) Toxicity Characteristic Leaching Procedure, test Method 1311 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846 (hereinafter the TCLP) [3] leachate analyses for the metals in § 261.24 (except mercury), antimony, beryllium, nickel, cyanide, and fluoride from representative samples of the kiln residue; (7) total constituent analysis results for volatile and semivolatile organic compounds, dioxins, and furans from representative samples of the kiln residue; and (8) test results and information regarding the hazardous waste characteristics of ignitability, corrosivity, and reactivity.

Moreover, Reynolds requested that the exclusion also apply to the waste generated by an additional kiln in order for Reynolds to expand its treatment capacity. The second kiln was established in conjunction with the first kiln in Gum Springs, Arkansas, and similarly treats spent potliner.

C. EPA Evaluation of Reynolds ''Delisting'' Petition

The EPA evaluated the information and analytical data provided by Reynolds in support of its petition. Specifically, EPA evaluated the petitioned waste (i.e., the treatment residues) against the listing criteria for K088 listed waste and factors cited in § 261.11(a)(3). Based on that review, EPA determined that the waste was nonhazardous with respect to the original listing criteria (i.e., presence of cyanide in the residue). The EPA then evaluated the waste with respect to other factors or criteria to assess whether there was a reasonable basis to believe that additional factors could cause the waste to be hazardous. In accordance with § 260.22, EPA was required to consider whether the waste was acutely toxic, the toxicity of the constituents, the concentration of the constituents in the waste, ''their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability''.

For this delisting determination, the EPA used such information to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned waste. As explained in the final rule delisting the waste, EPA assumed that disposal in a subtitle D landfill was the most reasonable, worst-case disposal scenario for Reynolds' petitioned waste. This assumption is based in part on Reynolds' original delisting petition that stated that the waste would be disposed of in an on-site monofill or in a municipal landfill. The EPA determined the major exposure route of concern would be ingestion of contaminated ground water. Evaluations of wind blown dust and surface water runoff were conducted and determined not to be a concern. The EPA Composite Model for Landfills (EPACML) was used to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the

[2] The Extraction Procedure was the accepted leachate test in 1989 when Reynolds originally submitted its petition.

[3] The Toxicity Characteristic Leaching Procedure replaced the Extraction Procedure as the standard leaching procedure for hazardous waste in 1990.

disposal of Reynolds' petitioned waste on human health and the environment. At the time of the Reynolds petition submittal, the Agency had developed a ground water model which could address a large number of limitations in the ground water models used in 1989. *See,* 56 FR 32993, July 18, 1991 and 56 FR 67197, December 30, 1991. Specifically, EPA used the maximum estimated waste volume and the maximum reported TCLP extract concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-based levels (i.e, Maximum Contaminant levels, drinking water standards, etc.) used in delisting decision-making for the hazardous constituents of concern.

The EPA believed that this fate and transport model represented a reasonable worst-case scenario for disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario was appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA subtitle C. The delisting process was established on the basis that if it could be demonstrated that the waste concentrations would not exceed the health based concentrations at a hypothetical downgradient well, when modeled using the assumed worst-case scenario, the waste could be delisted. Based on this evaluation, EPA believed that the hazardous constituents in Reynolds' petitioned waste would not leach and migrate at concentrations above the health-based levels used in delisting decision-making and, therefore, would not pose a threat to human health and the environment. Accordingly, after providing the required public notice and opportunity to comment EPA concluded that: (1) The waste to be excluded was not hazardous based upon the criteria for which K088 was listed, and (2) no other hazardous constituents or factors that could cause the waste to be hazardous were present in the waste at levels of regulatory concern. For complete information on EPA's proposed and final decisions to grant Reynold's delisting petition see 56 FR 32993 (July 18, 1991) and 56 FR 67197 (December 30, 1991) respectively.

As part of the decision to grant the Reynolds delisting petition, EPA imposed requirements that Reynolds conduct ongoing sampling of the treatment residue using the TCLP to verify that the hazardous constituents remaining in the residue were below the established delisting levels for those constituents. No requirements were established for sampling the monofill residue leachate.

D. Reynolds' Current Disposal of the Delisted Treatment Residue

Reynolds presently uses its process to treat its own spent potliner K088 wastes and those from other sources, and has disposed approximately 300,000 cubic yards of the residue in a single lined monofill located at the Gum Springs site. According to Reynolds, from June 1994 to March 1996, the leachate generated from the landfill (approximately 7,000,000 gallons of leachate) was shipped off-site to a Reynolds facility located in Sherwin, Texas, for use as a water conditioner (a practice now no longer employed by Reynolds). Since April 1996, the company also has used approximately 150,000 cubic yards of the delisted residues in mine reclamation activities at its Hurricane Creek, Arkansas, mining site as fill material in unlined pits, and as test material for all-weather road surfaces at the mining site and at the Gum Springs Plant.

As required by the delisting conditions, Reynolds has conducted ongoing daily sampling (TCLP) of the treatment residue generated by its treatment of spent potliner K088 waste to determine if the hazardous constituents remaining in the residue are below the established delisting levels. See Part 261 Appendix IX-Table 2, Reynolds Metals Company, Condition (2)(B). According to Reynolds' test results, the leachate generated from using the test method prescribed by Reynolds' exclusion (the TCLP) do not indicate that the health-based delisting levels established for the constituents of concern in the residue have been exceeded. (See Table 1).

TABLE 1.— TCLP LEACHATE DATA FOR RESIDUES (MILLIGRAMS PER LITER, mg/L)[1]

TCLP results from ongoing verification testing			
Date of report	Arsenic (mg/L)	Cyanide [2] (mg/L)	Fluoride (mg/L)
Delisting Limit	0.6	2.4	48
Health Based Level	[3]0.05	[4]0.2	[4]4
4/6/94	<0.002	<0.5	28.8
5/10/94	0.002	0.733	26.6
3/22/95	<0.005	1.28	32.4
9/28/95	0.008	2.00	27.0
1/14/96	0.010	1.22	32.0
4/2/96	<0.002	1.90	31.1
9/26/96	0.015	1.70	25.5

[1] Representative sample of data collected from daily analyses for Reynolds Metals Company's Laboratory Reports for the Kiln Product.
[2] Deionized water leachate used in lieu of TCLP extraction media.
[3] Maximum Contaminant Level.
[4] National Primary and Secondary Drinking Water Standards.

II. Repeal of Final Rule Granting Reynolds' Delisting Petition

A. Highly Alkaline Nature of Reynolds' Treatment Residue

Subsequent to issuing the final rule granting Reynolds' delisting petition, EPA has obtained additional information gathered after the operations at the Gum Springs facility began. Specifically, EPA now has received and analyzed data regarding the makeup of the actual residue leachate generated by Reynolds' K088 treatment process and data from the Hurricane Creek mining site. As explained in greater detail below, those data indicate that the monofill leachate contains levels of hazardous constituents significantly higher than the health-based delisting levels. Those data also show that the leachate is

hazardous waste as defined by § 261.22. The leachate is corrosive with a pH in the range of 12.5–13.5. In light of those actual field data, EPA has now initially concluded that the Agency's 1991 determination under § 260.22, that no other hazardous constituents or factors that could cause the K088 treatment residue resulting from Reynolds' treatment process to be hazardous are present in the waste at levels of regulatory concern, needs to be revised.

Specifically, EPA now preliminarily concludes that the highly alkaline nature of the treatment residue is a factor which warrants retaining it as a hazardous waste. As supported by the data recently gathered by EPA and the State of Arkansas and discussed below, the mobility of the arsenic, cyanide, and fluoride remaining in the treatment residue increases in the highly alkaline matrix. This results in these compounds leaching from the residue at hazardous levels under most disposal scenarios, including those utilized by Reynolds. In addition, the leachate is a hazardous waste because it exhibits the hazardous waste characteristic of corrosivity. Therefore, based on this new data, the treatment residue should not remain delisted.

The EPA believes that the highly alkaline nature of the Reynolds treatment residue is due to the high pH of each of the materials being combined in the treatment process (i.e., spent potliner, brown sand, and limestone). Spent potliner alone has been found to raise the pH of deionized water from 7 to 12.0.[4] Historically, the pH of spent potliner has ranged from 11–13 when measured. Brown sand is an alkaline mud produced from the extraction of alumina from bauxite ore with sodium hydroxide, and contains significant concentrations of highly caustic sodium hydroxide residuals. Its pH has been measured at ranges from 12–14. Limestone (pH 9–10) is a caustic material whose intended use in the process is to react with soluble fluoride salts in spent potliner to form stable, relatively insoluble, calcium fluoride. However, the high alkalinity of brown sand together with spent potliner and limestone provides no neutralization of the inherent alkalinity of the residue; in confirmation, the pH of deionized water leach solutions (for cyanide extraction) of the Reynolds' treatment residue has been found to range from 11.9 to 12.2.[5]

As EPA noted in the Emergency Rule for the K088 national capacity variance (*See,* 62 FR 1993, January 14, 1997) cyanide (for example, alkali-metallic cyanide complexes) is soluble, and even insoluble iron cyanides can be solubilized under highly alkaline conditions. While the total cyanide concentration in the treated waste has been reduced by Reynolds' treatment process, cyanide remaining in the residue is environmentally mobile and appears in high concentrations in the alkaline leachate from the Gum Springs landfill. As a result, almost all forms of remaining cyanide (free cyanide and cyanide complexes) are detected in the Gum Springs leachate. However, at a neutral pH, only the soluble free cyanide would be expected in the leachate. Moreover, although, the final exclusion did not express concerns with the presence of arsenic in the treatment residue, high concentrations of arsenic are present in the residue leachate sampled from the monofill. It is believed that the high degree of arsenic in the leachate is also due to the highly alkaline nature of the treatment residue. Arsenic in the treated spent potliner will be predominantly in the III oxidation state because of the high operating temperature of the rotary kilns. Arsenic probably would normally remain in the III oxidation state, whether in the solid phase or in leachate, however, arsenic III solubility and mobility tend to increase under highly alkaline conditions.

B. EPA Analysis of Data

The EPA has completed an analysis of data gathered from Reynolds, the ADPC&E and its independent sampling of the residue. Those data consist of leachate samples from Reynolds' monofill and from the Reynolds Hurricane Creek mining site. Those data support the Agency's preliminary conclusion that Reynolds' treatment residue should not remain delisted. For example, the Reynolds and ADPC&E sampling data from the residue leachate from the dedicated monofill show that the leachate contains concentrations of hazardous constituents above the delisting limits, (See Table 2).

TABLE 2

Residue leachate data from monofill [1]

Date	pH	Arsenic (mg/L)	Cyanide (mg/L)	Fluoride (mg/L)
Delisting Limits	.....	0.6	2.4	48
Health-Based Level	.....	[2] 0.05	[3] 0.2	[3] 4
4/6/94	13.5	.....	18.8	5.2
5/11/94	.....	3.54	.....	.....
3/22/95	.....	12.8	22	.....
9/28/95	13.1	10.6	35.3	2650
1/5/96	12.5	7.0	.....	.....
4/2/96	12.9	11.5	41.4	2320
9/26/96	12.75	6.55	46.5	2228

[1] These samples were collected during Reynolds' semi-annual landfill sampling events and an ADPC&E inspection.
[2] Maximum Contaminant Level.
[3] National Primary and Secondary Drinking Water Standards.

Data from samples of the actual leachate from the monofill taken in September 1996, shows total cyanide concentrations in the actual leachate are 46.5 mg/L (the maximum cyanide concentration allowable under the Reynolds' exclusion is 2.4 mg/L); arsenic concentrations are at 6.55 mg/L (Reynolds' delisting maximum concentration is 0.6 mg/L); and fluoride concentrations are at 2228 mg/L (Reynolds' delisting maximum concentration is 48 mg/L). The residue leachate concentrations from the monofill are orders of magnitude higher

[4] Attachments to December 9, 1996, letter from Pat Grover of Reynolds Metals Company to Michael Shapiro, Director, Office of Solid Waste. Results cited are from the analysis of 100 grams of solid material leached with 2-liters of deionized water (1:20 ratio).

than the average predicted TCLP leachate values, (See Table 3).

TABLE 3

Comparison of leachate concentrations from monofill and TCLP concentrations (mg/L)

Constituent	DL [1]	HBL [1]	(A)	(B)	(A)÷(B)
			Monofill Leachate (4/94–9/96).	Average TCLP (4/94–9/96).	Leachate-TCLP=Comparative Strength of Monofill Leachate.
Arsenic	0.6	[2] 0.05	3.54—12.8	0.006	590—2133
Cyanide	2.4	[3] 0.2	18.8—46.5	1.30	14.46—35.77
Fluoride	48	[3] 4	5.2—2650	29.06	.179—91.19

[1] DL=Delisting Limit in mg/L; HBL = Health Based Level in mg/L.
[2] Maximum Contaminant Level.
[3] National Primary and Secondary Drinking Water Standards.

Further, the Gum Springs monofill leachate also has a pH of 12.5 to 13.5, exceeding the pH level of 12.5 identifying a waste as hazardous due to the characteristic of corrosivity. *See* § 261.22. The leachate from the residue is a hazardous waste.

An analysis of surface water run off from treated spent potliner used as test roadbeds at the Hurricane Creek Mine by ADPC&E in September 1996 found concentrations of the following hazardous constituents of concern: total cyanide concentrations of 2.0 mg/L (compared with a health-based level of 0.2 mg/L) [6]; arsenic concentrations at 1.24 mg/L (compared with the health-based level of 0.05 mg/L) [7]; and fluoride concentrations at 229 mg/L (compared with the health-based level of 4.0 mg/L) [8],(See, sampling results provided by ADPC&E included in the docket, items F–97–ARDEL–REYNOLDS–002). In addition, EPA performed sampling at the Hurricane Creek mine reclamation site in March 1997. Results from the sampling of the residue used as fill material indicate TCLP leachable concentrations of fluoride in the residue used as fill material at the mine site ranged from 17.0 mg/L—86.4 mg/L (compared to the health-based level of 4.0 mg/L).[9] The cyanide concentrations in the residue used as fill material ranged from 0.01 mg/L—0.79 mg/L. (compared to the health-based number of 0.2 mg/L).[10] Water samples taken from boreholes placed in the mine reclamation area show arsenic concentrations at 19.8 mg/L (compared to the health-based level of 0.05 mg/L), cyanide concentrations at 3.3 mg/L (compared to the health-based level of 0.2 mg/L) and fluoride concentrations at 2320 mg/L (compared to the health-based level of 4.0 mg/L). This indicates that when placed in an acidic environment, the waste continues to leach at levels which would not be protective of human health and the environment.

Values for pH, arsenic, fluoride, and cyanide differ significantly between the TCLP extract for treated spent potliner and the actual residue leachate from the monofill. EPA assumed that the TCLP would accurately predict the leachate quality of the treated spent potliner when evaluating Reynolds' petition in 1991 and used the maximum TCLP leachate concentrations and the EPACML model to evaluate the compliance point concentrations for the waste. The EPACML projected that no hazardous constituents would migrate from the landfill at concentrations that would exceed the health-based levels at a receptor well.

Based on the actual data when using the TCLP the delisted material has always met the delisting criteria as prescribed in the December 1991 exclusion or the residue has been further treated when a batch failed to meet the delisting criteria. The predicted leachate characteristics (via TCLP), however, do not correlate to the actual leachate concentrations, (See, Table 4).

TABLE 4.—Leachate Concentrations (mg/L) TCLP vs. Actual Leachate

Inorganic constituents	Leachate analyses	
	TCLP (1991 petition)	Landfill (1994–1996)
Arsenic	0.018	3.54–12.8
Cyanide	0.014	18.8–46.5
Fluoride	29.0	5.2–2650

In this limited circumstance, the TCLP was not an accurate predictor for the actual leachability of the treated residue. This is a distinct and unusual case. The Agency anticipated that certain situations might arise, as stated in the Response to Comments on the promulgation of revisions to the TCLP method. *See*, 55 FR 11798 (March 29, 1990).

The EPA is continuing to investigate the reasons for the discrepancies between the predicted and actual results, but the initial findings indicate a possible explanation. The EPA suspects that the highly alkaline residue does not leach under the TCLP test conditions because the solubility and mobility of arsenic, cyanide, and fluoride remaining in the residue do not occur at the extraction conditions of the test (liquid to solid ratio). The liquid to solid ratio for the TCLP test is 20:1 (2 liters of extraction fluid/100 grams of residue). The liquid to solid ratios of the monofill range 0.15:1—0.09:1 based on rainfall amounts and in situ waste volume. *See*, F–97–ARDEL-REYNOLDS–010. The difference in the TCLP liquid to solid ratio and the actual monofill liquid to solid ratio contributes to the differing results. The TCLP appears to be diluting the concentrations of the constituents leaching from the residue.

When the measured leachate concentrations are input into the EPACML model, the residue fails to meet the delisting criteria for arsenic, cyanide, and fluoride, (See, Table 5). The concentrations of constituents in the actual landfill leachate can pose a threat to human health and the environment. Further, the leachate exhibits the characteristic of corrosivity.

[5] Id. at Attachment 1.
[6] *See* 56 FR 33006.
[7] *Id.*
[8] *Id.*
[9] *Id.*

Table 5.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (MG/L) TCLP /ACTUAL LANDFILL LEACHATE

Inorganic constituents	Compliance point concentrations [1] (mg/L)		Health based levels [2] (mg/L)
	TCLP	Landfill	
Arsenic	0.0026	0.295–1.07	[3] 0.05
Cyanide	0.021	1.57–4.291	[4] 0.2
Fluoride	2.42	0.433–221	[4] 4.0

[1] Compliance Point Concentrations are calculated using the TCLP leachate concentration divided by a dilution attenuation factor (DAF) of 12. The DAF corresponds to the maximum volume of 300,000 cubic yards of residue generated Reynolds annually).
[2] *See,* 56 FR 33006, December 30, 1991 located in the RCRA public docket for today's document.
[3] Maximum Contaminant Level.
[4] National Primary and Secondary Drinking Water Standards.

The EPA believes that this is an anomalous case because of the unique characteristics of Reynolds' waste (i.e., very caustic) and treatment process. The EPA's reasoning in evaluating the difference between predicted using the TCLP and actual landfill leachate results and findings relating to the mine reclamation site are expressly limited to this isolated waste, treatment process, and circumstance. It is to be anticipated that no test methodology will be universally appropriate in all circumstances and will be varied based upon discrete site-specific conditions as was anticipated by the rule promulgating revisions to the TCLP referenced above. It is for just such reasons that the Agency did not so limit the appropriate test method for making all delisting decisions. The EPA finds that there are distinct differences in the assumptions made in use of the TCLP and the actual monofill conditions as well as most other potential disposal scenarios. For example, Reynolds' waste is not co-disposed with 95 per cent municipal waste as assumed by the TCLP worst case scenario. The leaching of Reynolds' waste by rain water (with little buffer capacity) occurs in lieu of the simulated municipal landfill leachate (where the leaching media is designed with a certain buffer capacity). Finally, highly alkaline conditions (pH 12.5–13.5) exist in the monofill as opposed to the low pH (<5) conditions normally anticipated in municipal landfills.

C. Conclusion

Based on the information described above, EPA believes that Reynolds' residue from the treatment of K088 spent potliner from the list of hazardous waste contained in § 261.32 should not remain delisted. Based on more than two years of sampling data from the actual treatment residue leachate and data gathered during EPA's sampling event in March 1997, EPA believes that the residue does not meet the § 260.22 criteria for delisting. Therefore, EPA proposes to repeal the final rule published at 56 FR 67197 (July 18, 1991) granting Reynolds' petition for an exclusion from K088 hazardous waste listing contained in §§ 261.31 and 261.32 for certain solid waste generated at Reynolds Metals Company, Gum Springs, Arkansas.

The leachate from the kiln residue contains cyanide concentrations which greatly exceed the health-based limit of 0.2 mg/L. Cyanide is extremely toxic when it is ingested in free form and less toxic when ingested in complex form. In its most toxic form, cyanide can be fatal to humans at a concentration of 300 parts per million. Cyanide affects human tissues ability to use oxygen. Some health effects from low level cyanide exposures are breathing difficulties, headaches, skin irritation and in some cases sores. Moreover, the concentrations of arsenic, a human carcinogen, far exceed the maximum contaminant level of 0.05 mg/L. The concentrations of fluoride at the compliance point are well above the drinking water standard of 4 mg/L. Fluoride concentrations as low as 4 mg/L have been determined to mottle teeth.

The resultant leachate from the kiln residue is a characteristic hazardous waste (corrosive). The premise on which the delisting was based, that the TCLP test would be an appropriate test to model the fate and transport of hazardous constituents in this waste is not supported by the actual leachate data. The inherent waste-like qualities of the kiln residue (i.e., the high pH and the potential for the leachate contacting the residual to solubilize and increase the mobility of toxic constituents) also support repeal of the rule which delisted the treated kiln residue. The kiln residue's potential to cause damage to human health and the environment, especially under its current management practices, provides yet another reason for reestablishing regulatory control over the kiln residue. Based on the leachate data provided, information from the treatment process, and evaluation of the additional uses of the residue employed by Reynolds, EPA concludes that the rule delisting the kiln residue should be repealed.

It is EPA's understanding that Reynolds is currently making several treatment process modifications to address the leachate issues surrounding the treated kiln residue. If the repeal of the final rule becomes effective, Reynolds may submit to the Agency a new delisting petition for the wastes generated from the modified treatment process.

D. Interim Status for Reynolds' Monofill

Because of the delisting granted to Reynolds' treatment residue generated at its Gum Springs facility, Reynolds can presently dispose of the treatment residue in its single lined on-site monofill without obtaining Resource Conservation and Recovery Act (RCRA) subtitle C interim status or an RCRA subtitle C permit. However, if EPA finalizes this proposed repeal of the Reynolds' delisting, Reynolds must manage the treatment residue as a hazardous waste and must dispose of the waste in either a unit permitted under subtitle C of RCRA or a unit which meets interim status standards under subtitle C of RCRA and all applicable state regulations.

Under RCRA Section 3005(e), any person who owns or operates a facility required to have a permit under subtitle C and which ''is in existence on the effective date of statutory or regulatory changes under [subtitle C] that render the facility subject to the requirement to have a permit under Section 3005'', may qualify for interim status, provided the requirements of Section 3005 are met. It is EPA's understanding that Reynolds has begun a lateral expansion of its landfill, which should meet the subtitle C minimum technological requirements (MTR), for disposal of future wastes. In EPA's view, the repeal represents a ''regulatory change'' that may render Reynolds'' upgraded monofill subject to the requirements of subtitle C, if the

repeal of Reynolds' delisting is finalized. If Reynolds' new MTR landfill is in existence at the time of the regulatory change, EPA expects that the new MTR landfill may be eligible for interim status under RCRA Section 3005(e) provided that Reynolds complies with the interim status standards contained in § 265.1, *et seq.* and meets applicable State regulations.

E. Best Demonstrated Available Technology

The EPA also notes that Land Disposal Restrictions (LDR) treatment standards for spent potliners expressed as numerical concentrations limits were established in 61 FR 15584 (April 8, 1996). There is no inherent conflict between a finding that a waste has been treated to satisfy LDR requirements and a finding that the treatment residue nevertheless remains a hazardous waste. This in fact is the normal case (few residues from treating listed wastes have been delisted even after being treated to satisfy LDR requirements), and is directly contemplated in RCRA Section 3004 (m)(2).

III. Effective Date

This rule, if made final, will become effective 60 days from final publication. The HSWA of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. The EPA believes that 60 days will be sufficient for Reynolds to come into compliance with today's rule. The 60 days will allow Reynolds to either make arrangements to send its hazardous waste treatment residue to a disposal facility permitted under subtitle C of RCRA or to seek interim status for its on-site disposal facility (see interim status discussion above).

IV. Regulatory Impact Analysis Under Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order (EO), which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the EO.

The EPA has determined that today's final rule is a not a significant rule under EO 12866 because it is a site-specific rule that directly affects only the waste treatment residue from the Reynolds' Gum Springs, Arkansas, facility.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider ''small entities'' throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Act are only those ''businesses, organizations and governmental jurisdictions subject to regulation.''

Today's rule, if promulgated, will directly affect only the Reynolds Metals Company, therefore, no small entities will be adversely affected. The EPA certifies pursuant to the provisions at 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, authorizes the Director of the OMB to review certain information collection requests by Federal agencies. The EPA has determined that this proposed rule will not impose any new record keeping or reporting requirements that would require OMB approval under the provisions of the Paperwork Reduction Act of 1980.

VII. Unfunded Mandate Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub .L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local or tribal governments or the private sector.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Because today's proposed rule directly affects only the Reynolds Gum Springs, Arkansas, facility, EPA finds that the rule does not impose any enforceable duty upon State, local, and tribal governments. Thus, today's rule is not subject to the requirements of sections 203 and 205 of the UMRA.

List of Subjects in 40 CFR Part 261

Environmental Protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: July 16, 1997.

Robert E. Hannesschlager,

Acting Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922 and 6938.

Appendix IX to Part 261—[Amended]

2. In Appendix IX to part 261, table 2 is amended by removing the entry ''Reynolds Metals Company'', Gum Springs, Arkansas''.

[FR Doc. 97–19885 Filed 7–30–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 97–157; FCC 97–245]

Reallocation of TV Channels 60–69, the 746–806 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this Notice of Proposed Rule Making (NPRM), the Commission proposes to reallocate the 746–806 MHz band, currently comprising television (TV) channels 60–69. The Commission proposes to allocate 24 megahertz, at 764–776 MHz and 794–806 MHz, to the fixed and mobile services, and to designate this spectrum for public safety use. The Commission proposes to allocate the remaining 36 megahertz at 746–764 MHz and 776–794 MHz to the fixed, mobile, and broadcasting services; and anticipates that licenses in this portion of the band may be assigned through competitive bidding. These allocations would help to meet the needs of public safety for additional spectrum, make new technologies and services available to the American public, and allow more efficient use of spectrum in the 746–806 MHz band. The Commission also considers issues related to protecting existing and proposed TV stations on channels 60–69 from interference until the transition to digital TV (DTV) is complete, but defer specific interference protection standards to a separate proceeding on service rules in the 746–806 MHz band.

DATES: Comments must be filed on or before September 15, 1997, and reply comments must be filed on or before October 14, 1997.

ADDRESSES: Comments and reply comments should be sent to the Office of Secretary, Federal Communications Commission, Washington, DC 20554. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed.

FOR FURTHER INFORMATION CONTACT: Sean White, Office of Engineering and Technology, (202) 418–2453, swhite@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, ET Docket 97–157, FCC 97–245, adopted July 9, 1997, and released July 10, 1997. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Summary of Notice of Proposed Rule Making

1. In this NPRM, the Commission proposes to reallocate 24 megahertz of spectrum at 764–776 MHz and 794–806 MHz to the fixed and mobile services, and reserve this spectrum for the exclusive use of public safety services. The Commission also proposes to reallocate the 746–764 MHz and 776–794 MHz bands to the fixed, mobile, and broadcasting services, and anticipates that licenses in this spectrum will be assigned by competitive bidding.

2. TV channels 60–69 (746–806 MHz) are relatively lightly used for full service television operations. There are currently only 95 full service analog stations, either operating or with approved construction permits on these channels. In the *Sixth Report and Order* in MM Docket No. 87–268 (DTV Proceeding), 62 FR 26684, May 14, 1997, the Commission adopted a Table of Allotments for digital television. This Table provides all eligible broadcasters with a second 6 MHz channel to be used for DTV service during the transition from analog to digital television service. The DTV Table also, *inter alia*, facilitates the early recovery of a portion of the existing broadcast spectrum, specifically, channels 60–69, by minimizing the use of these channels for DTV purposes. The DTV Table provides only 15 allotments for DTV stations on channels 60–69 in the continental United States.

3. In providing for early recovery of spectrum, the Commission also observed that there is an urgent need for additional spectrum to meet important public safety needs, including voice and data communications, and to provide for improved interoperability between public safety agencies. We indicated that spectrum in the region of the 746–806 MHz band may be appropriate to meet some of these needs. The Commission stated that we would initiate a separate proceeding to reallocate the spectrum at channels 60–69 in the very near future, and that we would give serious consideration to allocating 24 megahertz of this spectrum for public safety use and consider allocating the remaining 36 megahertz in the 746–806 MHz band for assignment by auction.

4. In 1995, the Commission, along with the National Telecommunications and Information Administration, established the Public Safety Wireless Advisory Committee (PSWAC) to study public safety telecommunications requirements. The PSWAC was chartered, *inter alia*, to advise the Commission on total spectrum requirements for the operational needs of public safety entities in the United States through the year 2010. On September 11, 1996, the PSWAC issued its *Final Report.* The PSWAC found that the currently allocated public safety spectrum is insufficient to support current voice and data needs of the public safety community, does not provide adequate capacity for interoperability channels, and is inadequate to meet future needs, based on projected population growth and demographic changes. In the *Final Report*, the PSWAC stated that data communication needs are also expected to grow rapidly in the next few years, and wireless video needs are expected to expand quickly. In addition, new spectrum is required to support new capabilities and technologies, including high speed data and video. The PSWAC found that, in the short term, 24 or 25 megahertz of new public safety spectrum is needed, and concluded that public safety users should be granted access to portions of the unused spectrum in the 746–806 MHz band.

5. The Commission tentatively proposes to allocate the spectrum at TV channels 63, 64, 68, and 69 (the 764–776 MHz and 794–806 MHz bands) for public safety. There are several reasons why the Commission believes these channels would best serve the needs of public safety. These channels are relatively lightly used by full service television broadcasting, so this spectrum would offer the fewest restrictions on public safety operations. Further, since the 794–806 MHz band is subjacent to existing public safety operations in the 806–824 MHz band, it holds the best potential for expansion of

and interoperability with existing systems. The close proximity to existing spectrum used for public safety could also reduce the difficulty and cost of designing equipment. The Commission is aware that public safety systems typically employ systems that for technical reasons require some minimum separation between the receive and transmit frequencies, and believes the proposed allocation would permit systems to be deployed with adequate separation between transmit and receive frequencies.

6. The Commission proposes to reallocate the remaining 36 MHz of spectrum in the 746–806 MHz band to the fixed and mobile services, and retain the existing broadcast allocation. This would allow the maximum diversity in service offerings and the broadest licensee discretion, consistent with international allocations. Internationally, the band is allocated on a primary basis to the broadcasting service and on a secondary basis to the fixed and mobile services in Region 2. A footnote to the International Table of Frequency Allocations elevates the allocation to the fixed and mobile services to primary status in the United States, Mexico, and several other Region 2 countries. This spectrum is located near spectrum now used for cellular telephone and other land mobile services, and it could be used to expand the capacities of these services. Other possible applications for this spectrum include wireless local loop telephone service, video and multimedia applications, wireless cable services, and industrial communications services. Additionally, under the proposal, parties would be able to obtain licenses in this spectrum to offer broadcasting.

7. The Commission solicits public comment on the proposed allocation, and defers consideration of protection of TV transmission in the bands, licensing, and service rules to a separate proceeding.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act,[1] the Commission has prepared an Initial Regulatory Flexibility Analysis of the expected significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making* (NPRM). 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 *NPRM* provided above. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[2]

A. Need for and Objectives of the Proposed Rules

This NPRM proposes to reallocate the 746–806 MHz band, television (TV) Channels 60–69, to other services. We propose to allocate 24 megahertz at 764–776 MHz and 794–806 MHz for public safety use. We propose to allocate the remaining 36 megahertz at 746–764 MHz and 776–794 MHz to the fixed and mobile services, and to retain the allocation to the broadcasting service in these bands. We further propose to protect full-power TV stations in the band until the transition to digital television (DTV) is complete, and to retain the secondary status in the band of Low Power TV (LPTV) and TV translator stations. These allocations would help alleviate a critical shortage of public safety spectrum, make new technologies and services available to the American public, and allow more efficient use of spectrum in the 746–806 MHz band.

B. Legal Basis

The proposed action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), and 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

1. Definition of a ''Small Business''

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 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 Standard Industrial Classification (''SIC'') Code 4833—Television Broadcasting Stations, may have a maximum of $10.5 million in annual receipts in order to qualify as a small business concern. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

2. Issues in Applying the Definition of a ''Small Business''

As discussed below, we could not precisely apply the foregoing definition of ''small business'' in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We were unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

3. Television Station Estimates Based on Census Data

The NPRM will affect full service television stations, TV translator facilities, and LPTV stations. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business.[3] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[4] Included in this industry are commercial, religious, educational, and other television stations.[5] Also included

[1] 5 U.S.C. 603.

[2] *See id.* § 603(a).

[3] 13 CFR § 121.201, Standard Industrial Code (SIC) 4833 (1996).

[4] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9 (1995).

[5] *Id. See* Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes ''Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in

Continued

are establishments primarily engaged in television broadcasting and which produce taped television program materials.[6] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[7]

There were 1,509 television stations operating in the nation in 1992.[8] That number has remained fairly constant as indicated by the approximately 1,551 operating television broadcasting stations in the nation as of February 28, 1997.[9] For 1992 [10] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments.[11] Thus, the rules will affect approximately 1,551 television stations; approximately 1,194 of those stations are considered small businesses.[12] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. We recognize that the rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations in the United States.[13] According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations in the United States.[14]

There are currently 4,977 TV translator stations and 1,952 LPTV stations which would be affected by the allocation policy and other policies in this proceeding.[15] The Commission does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As indicated earlier, approximately 77 percent of television stations are designated under this analysis as potentially small business. Given this, LPTV and TV translator stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

4. Alternative Classification of Small Television 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 (''EEO'') rule for broadcasting.[16] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.[17] We estimate that the total number of commercial television stations with 4 or fewer employees is 132 and that the total number of noncommercial educational television stations with 4 or fewer employees is 136.[18]

We have concluded that the 746–806 MHz band can be recovered immediately, and that it is in the public interest to reallocate this spectrum to uses in addition to TV broadcasting. We believe that such a reallocation is possible while continuing to protect TV. There are 95 full power TV stations, either operating or with approved construction permits, in Channel 60–69. There are also nine proposed stations, and approximately 15 stations will be added during the DTV transition period, for a total of approximately 119 nationwide. There are also approximately 1,366 LPTV stations and TV translator stations in the band, operating on a secondary basis to full power TV stations. We propose to immediately reallocate the 746–806 MHz band in order to maximize the public benefit available from its use.

The RFA also includes small governmental entities as a part of the regulatory flexibility analysis.[19] The definition of a small governmental entity is one with a population of fewer than 50,000.[20] There are approximately 85,006 governmental entities in the

this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[6] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 7, Appendix A–9.

[7] *Id.*; SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

[8] FCC News Release No. 31327, January 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 7, Appendix A–9.

[9] FCC News Release No. 7033, March 6, 1997.

[10] Census for Communications' establishments are performed every five years ending with a ''2'' or ''7''. *See* Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 7, at III.

[11] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[12] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1997 total of 1551 TV stations to arrive at 1,194 stations categorized as small businesses.

[13] *Minority Commercial Broadcast Ownership in the United States*, U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program (''MTDP'') (April 1996). MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.

[14] *See* Comments of American Women in Radio and Television, Inc. in MM Docket No. 94–149 and MM Docket No. 91–140, at 4 n.4 (filed May 17, 1995), *citing* 1987 Economic Censuses, *Women-Owned Business*, WB87–1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. *Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, Notice of Proposed Rule Making, 10 FCC Rcd 2788, 2797 (1995), 60 FR 06068, February 1, 1995.

[15] FCC News Release No. 7033, March 6, 1997.

[16] The Commission's definition of a small broadcast station for purposes of applying its EEO rule was adopted prior to the requirement of approval by the Small Business Administration pursuant to section 3(a) of the Small Business Act, 15 U.S.C. § 632(a), as amended by section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102–366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103–403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and an opportunity for comment. *See Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925, June 6, 1970.

[17] *See, e.g.*, 47 CFR § 73.3612 (Requirement to file annual employment reports on Form 395-B applies to licensees with five or more full-time employees); *First Report and Order* in Docket No. 21474 (In the Matter of Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395), 70 FCC 2d 1466 (1979), 44 FR 6722, February 2, 1979. The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making* in MM Docket No. 96–16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996), 61 FR 09964, March 12, 1996. One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees. *Id.* at ¶ 21.

[18] We base this estimate on a compilation of 1995 Broadcast Station Annual Employment Reports (FCC Form 395–B), performed by staff of the Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

[19] 5 U.S.C. § 601(5).

[20] *Id.*

nation.[21] This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number have populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000.[22] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the approximately 85,006 governmental entities, we estimate that 96 percent, or 81,600, are small entities that may be affected by our rules.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

None.

E. Significant Alternatives to Proposed Rules which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

We do not propose to provide LPTV and TV translator stations with the same protection afforded to full-power TV stations. Because of the large number of such stations, protecting them would significantly diminish the utility of the 746–806 MHz band to both public safety and commercial users. Also, LPTV and TV translator stations are secondary in this band, and we have proposed to make public safety and commercial services primary in the band. We remain concerned, however, for the interests of LPTV and TV translator stations because they are a valuable part of the American telecommunications structure and economy. For this reason, we seek measures which will allow as many LPTV and TV translator stations as possible to remain in operation. At a minimum, we propose to continue the secondary status of these stations, so that they will not be required to change or cease their operations until they actually interfere with one of the newly-allocated services. We also request comment on a number of measures which may alleviate the impact of reallocation of the 746–806 MHz band on LPTV and TV translator stations. We request comment on these options, with emphasis on how we can ensure fairness to all licensees, and how we can best balance the interests of current and future licensees to the benefit of the public.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules.

None.

List of Subjects in 47 CFR Part 2

Frequency allocations and radio treaty matters, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–20078 Filed 7–30–97; 8:45 am]

BILLING CODE 6712–01–P

[21] 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

[22] *Id.*

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–161; RM–9111]

Radio Broadcasting Services; Susquehanna, PA and Walton, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KG Broadcasting, Inc., proposing the substitution of Channel 223B1 for Channel 223A at Susquehanna, Pennsylvania, and the modification of Station WKGB–FM's license accordingly. To accommodate the upgrade, petitioner also proposes the substitution of Channel 248A for Channel 221A at Walton, New York, and the modification of Station WDLA–FM's license accordingly. Channel 223B1 can be allotted to Susquehanna in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.9 kilometers (3.7 miles) east to accommodate petitioner's requested site. The coordinates for Channel 223B1 at Susquehanna are North Latitude 41–56–05 and West Longitude 75–32–00. *See* Supplementary Information, *infra*.

DATES: Comments must be filed on or before September 15, 1997, and reply comments on or before September 30 , 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Benjamin J. Smith, President, KG Broadcasting, Inc., 776 Conklin Road, Binghamton, New York 13903 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–161, adopted July 16, 1997, and released July 25, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Additionally, Channel 248A can be allotted to Walton in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) southeast to avoid a short-spacing to the licensed site of Station WYXL(FM), Channel 247B, Ithaca, New York. The coordinates for Channel 248A at Walton are North Latitude 42–08–10 and West Longitude 75–04–48. Since Susquehanna and Walton are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–20166 Filed 7–30–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–162, RM–9112]

Radio Broadcasting Services; Hutchinson, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Gary L. Violet requesting the allotment of Channel 240A to Hutchinson, Kansas. Channel 240A can be allotted to Hutchinson in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 240A at Hutchinson are 38–04–54 NL and 97–55–42 WL.

DATES: Comments must be filed on or before September 15, 1997, and reply comments on or before September 30, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gary L. Violet, 331 Lookout Point, Hot Springs National Park, Arkansas 71913 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No.97–162, adopted July 16, 1997, and released July 25, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–20167 Filed 7–30–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD39

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To List Dudleya Blochmaniae ssp. Insularis, Dudleya sp. nov. ''East Point'', and Heuchera Maxima as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposal to list *Dudleya blochmaniae* ssp. *insularis, Dudleya* sp. nov. ''East Point'', and *Heuchera maxima* as endangered species under the Endangered Species Act of 1973, as amended (Act). The Service finds that information now available, discussed below, justifies withdrawal of the proposed listings of these species as endangered. The National Park Service (NPS) has implemented measures that significantly reduce the risks to *Dudleya blochmaniae* ssp. *insularis* and *Dudleya* sp. nov. ''East Point'' and has sponsored field surveys that have identified a greater abundance and distribution for *Heuchera maxima.* Based on this information the Service concludes that listing of these species is not warranted.

DATES: This withdrawal notice is made July 31, 1997.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Ventura Field Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Ventura, California, 93003.

FOR FURTHER INFORMATION CONTACT: Tim Thomas, at the above address or by telephone (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1995 the Service published in the **Federal Register** (60 FR 37993) a proposal to list 16 plant species from the northern Channel Islands as endangered.

Included among these 16 taxa were *Dudleya blochmaniae* ssp. *insularis* (Santa Rosa Island dudleya), *Dudleya* sp. nov. ''East Point'' (munchkin dudleya), and *Heuchera maxima* (Island alum-root), the subject taxa of this notice of withdrawal. Santa Rosa Island dudleya (*Dudleya blochmaniae* ssp. *insularis*) was first described as *Hasseanthus blochmaniae* ssp. *insularis* by Reid Moran (1950a) based on a collection made at ''Old Ranch Point'' on Santa Rosa Island in 1950. Moran (1953) treated *Hasseanthus* as a subgenus of *Dudleya; Hasseanthus* had previously been segregated from *Dudleya* on the basis of stem characteristics and the presence of vernal (withering) leaves. In so doing, he published the new combination *Dudleya blochmaniae* ssp. *insularis* (Moran 1953). Though Thompson (1993) recently resegregated *Hasseanthus* from *Dudleya* at the generic level, he provided no new evidence for this action. Moreover, given that the base chromosome number of *Hasseanthus* and *Dudleya* is the same (n=17) and that species of *Hasseanthus* and *Dudleya* are completely interfertile but will not cross with other family genera, splitting these taxa at the generic level is inappropriate. As a result, the taxon will be recognized in this notice of withdrawal under the name *Dudleya blochmaniae* ssp. *insularis.*

Dudleya blochmaniae ssp. *insularis* is a small succulent perennial in the stonecrop family (Crassulaceae). The plant has a corm-like root structure, and 15 to 30 oblanceolate leaves in a basal rosette, from which several flowering stems 3 to 7 centimeters (cm) (1.2 to 2.8 inches (in)) long arise. The white, five-petaled flowers and the resulting fruits are fused at the base and wide-spreading distally. This subspecies is distinguished from two other mainland subspecies of *D. blochmaniae* on the basis of the more numerous rosette leaves, shorter floral stems, more pronounced glaucousness of young floral stems and their leaves, and the size and shape of the lower bracts (Moran 1950a, Bartel 1993).

Dudleya blochmaniae ssp. *insularis* is only known from the type locality near Old Ranch Point, also known as Marsh Point, on the east end of Santa Rosa Island. The taxon occupies an area of less than 1 hectare (2 acres) of an

ancient marine terrace with a cobble surface, and associated with owl's clover (*Castilleja exserta*), goldfields (*Lasthenia californica*), and alien annual grasses, primarily *Bromus* and *Vulpia* species. The habitat is relatively open with low densities of non-native annual grasses. In 1993, the number of individuals was estimated to be 2,000 (Rutherford and Thomas, pers. obs. 1993). NPS and National Biological Survey (now Biological Resources Division of the U.S. Geological Survey) staff established demographic plots in 1994. In 1995 and 1996, the NPS erected an electric fence around Skunk Point, including all habitat occupied by *D. blochmaniae* ssp. *insularis* and a population of the federally threatened snowy plover, during the spring and summer seasons to eliminate potential damage from cattle. Cattle tracks and droppings inside the exclosure indicate that entry has occurred in both years (McEachern 1996). However, cattle were removed whenever found within the fenced area and were not present long enough to adversely affect *D. blochmaniae* ssp. *insularis* (Jim Hutton, Island Ranger, pers. comm. 1996). Breaks in the fence were repaired immediately.

Dudleya sp. nov. ''East Point'' was collected by Reid Moran in 1950. In his dissertation on the genus *Dudleya,* he included it in the description of *D. greenei,* but remarked upon how it differed, and described it as ''*forma nana*.'' Subsequent floras treated the form in synonymy with *D. greenei* (Munz and Keck 1973, Smith 1976). In 1993, Paul H. Thomson illegitimately published the name *D. nana,* based on the description of *forma nana* in Moran's dissertation. An article describing this new species has been submitted by Stephen McCabe to the journal *Madroño.* This manuscript has been peer reviewed, the description was found to meet the code requirements for valid publication, and the reviewers felt that it was a distinct taxon (Painter *in litt.* 1997).

Like *Dudleya blochmaniae* ssp. *insularis* described above, *Dudleya* sp. nov. ''East Point'' is a small succulent perennial in the stonecrop family (Crassulaceae). The plant has a short caudex-like stem, and small, gray, ovate to oblanceolate leaves in a cluster of up to 20 basal rosettes, from which several flowering stems 2.5 to 7 cm (1 to 2.75 in) long arise. The pale yellow, five-petaled flowers are fused at the base and spread only at the tips.

Dudleya sp. nov. ''East Point'' is known only from one population comprising three colonies near East Point on Santa Rosa Island. The colonies occur on a low windswept ridge with a cobble soil surface, which is bereft of any other vegetation save scattered alien annual grasses, small-flowered iceplant (*Mesembryanthemum nodiflorum*), pineappleweed (*Ambylopappus pusillus*), and goldenbush (*Lasthenia californica*). The uppermost colony covers 26 square meters, the middle colony covers 88 square meters, and the lowermost colony covers 77 square meters (McEachern 1994). The total number of individuals in the three colonies has been estimated to be 3,200 (S. McCabe, pers. comm. 1994). In 1994, the NPS constructed a fence around the population to reduce browsing and trampling impacts, and to eliminate vehicle access to the middle colony. Observations by researchers indicate the following: the fencing has excluded cattle but not deer; the number of seedling plants was higher in late winter of 1995 than in May, a few months later, which may indicate a high seedling recruitment rate but a low seedling survivorship rate; and several inflorescences were clipped off by an unknown predator, possibly mice or insects (McEachern 1996). A low seedling survivorship rate is common among wild plants and is unlikely to pose a significant threat to a perennial species, which needs only to replace itself once over a period of many years to maintain a stable population size. A small fire burned vegetation surrounding the lower colony, but did not appear to damage the dudleya where the fuels are so light that fire cannot carry through the site.

Heuchera maxima (island alumroot) was described by E.L. Greene (1886a) based on collections from the ''northward slope of Santa Cruz Island.'' This nomenclature was retained in the most recent treatment of the genus (Elvander 1993). *Heuchera maxima* is a perennial herb in the saxifrage (Saxifragaceae) family. The round basal leaves are up to 7 cm (2.8 in) broad on long petioles up to 25 cm (10 in) in length. The flowering stalks are up to 6.1 decimeters (dm) (2 ft) long and scattered with small white-petaled flowers (Hochberg 1980b). No other *Heuchera* species occurs on the islands; however, young plants of *H. maxima* can resemble species of *Jepsonia, Lithophragma,* or *Saxifraga* that occurs on the islands. *Heuchera maxima* can be distinguished from these other taxa by its larger size at maturity, and flowers with ten stamens rather than five.

Heuchera maxima grows primarily on moist, shady, north-facing canyon bottoms, walls, and sea cliffs, but occurs in a few interior localities as well. Collections of *Heuchera maxima* were made from Santa Rosa Island by Hoffmann in 1929 and Dunkle in 1939; however, locality information for these collections is vague. More recently, the plant was collected from Cherry, Lobos, Ranch, and Windmill Canyons on Santa Rosa Island (Rutherford and Thomas 1994). It was relocated in three of those canyons during the 1994–1996 surveys, during which 27 additional populations with up to 150 plants in each were found (McEachern and Wilken 1996). *H. maxima* is also known from 11 locations on West Anacapa Island (Rutherford and Thomas 1994; S. Junak, in litt. 1984). On Santa Cruz Island, 16 populations with up to 170 plants per population have been reported from the west half of the northern shore (McEachern and Wilken 1996).

Summary of Comments and Recommendations

In the July 25, 1995, proposed rule (60 FR 37933) and associated notifications, all interested parties were requested to submit factual reports or information to be considered in making a final listing determination. An initial 75-day comment period closed on October 9, 1995. A second 30-day comment period closed on February 21, 1997. Appropriate Federal and State agencies, local governments, scientific organizations, and other interested parties were contacted and asked to comment. In accordance with Service policy published on July 1, 1994 (59 FR 34270), three appropriate and independent specialists were solicited regarding pertinent scientific or commercial data and assumptions relating to the proposed rule. Legal notices of the availability of the proposed rule were published on August 5, 1995, in the *Santa Barbara News-Press* and on August 11, 1995, in the *Los Angeles Times.*

The Service received 14 letters concerning the proposed rule during the comment periods, including those of one State agency and 11 individuals or groups. Because of the two public comment periods, some individuals or groups commented twice. Because the proposed rule included 16 plant taxa, only those comments specific to the three taxa addressed in this notice are discussed here. Comments not specific to these three taxa and general comments relevant to the proposed rule are discussed in a separate final rule published in today's **Federal Register** (Vol. 62 No. 147, July 31, 1997).

The Service has reviewed all of the written comments received during both comment periods and status reports and

population surveys that occurred in between the comment periods. Four commenters supported the listing proposal for the three taxa, one opposed their listing, and seven stated no specific opinion on the three taxa considered herein. Several commenters provided additional information and other clarifications that have been incorporated into the ''Summary of Factors'' section of this notice. Several comments dealt with matters of opinion or legal history, which were not relevant to the listing decision. The Service carefully considered all comments and information submitted relevant to this decision to withdraw the proposed listing. The Service response to those commenters supporting listing of these taxa can be found in the ''Summary of Factors'' section. Comments submitted are available for review at the Ventura Field Office (see **ADDRESSES**).

Summary of Factors Affecting the Species

The Service must consider five factors described in section 4(a)(1) of the Act when determining whether to list a species. These factors, and their application to the Service's decision to withdraw the proposal to list *Dudleya blochmaniae* (Eastw.) Moran ssp. *insularis* (Moran) Moran, *Dudleya* sp. nov. ''East Point'' S. McCabe, and *Heuchera maxima* Greene, are as follows:

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

The single most important loss of resources to insular ecosystems is the loss of soils, as the soils are the foundation for the unique island ecosystems and the insular endemic species found within them. This loss of soils is the result of historic grazing and browsing by sheep, goat, cattle, deer, elk, and bison, and rooting by pigs on the various islands starting in the early 1800's, and in certain cases, continuing today. Fencing installed by the NPS to exclude cattle from the two *Dudleya* taxa populations has significantly reduced the threat of soil loss in the habitat of these species. Cattle trampling, previously known to remove large numbers of *Dudleya* sp. nov. ''East Point'' plants, is no longer a significant threat. No cattle have broken through the fence at East Point. Although cattle have on several occasions gained access to the fenced areas through breaks in the fence where *Dudleya blochmaniae* ssp. *insularis* occurs, NPS staff has immediately removed the cattle upon discovery with no adverse impacts. Although deer and elk are not excluded by the fencing (Painter, *in litt.*, 1997), the Service believes that the impacts of these animals on the habitat for the two *Dudleya* species, in the absence of cattle, do not constitute a significant threat to the survival of these taxa. Both of the *Dudleya* populations occur on sites that are not favorable to either elk or deer utilization. If elk or deer do enter these areas, it is in limited numbers and for brief periods of time. Most of the habitat currently occupied by *Heuchera maxima* is out of reach of the effects of the trampling influence of the non-native mammals on the islands (McEachern and Wilken 1996).

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

In the horticultural trade, *Dudleya* have, in particular, been favorite collector species. *Dudleya* sp. nov. ''East Point'' was collected and introduced into the horticultural trade long ago as ''white sprite.'' *Dudleya blochmaniae* ssp. *insularis* though not in the trade, has been cultivated by *Dudleya* enthusiasts. While the limited distribution of these two taxa makes them of interest to such enthusiasts, in the absence of the larger combined threats of cattle trampling, collection alone does not pose a significant threat to these species. *Heuchera maxima* is also found in cultivation. Although the extent of collection of this taxon is uncertain, the Service believes that the threat from overcollection is insignificant given the number of populations of the species that are now known.

C. Disease or Predation

Disease is not known to be a factor affecting the taxa considered in this rule. Grazing by cattle was identified as a threat in the proposed rule. Consumption of individual plants by grazing animals has been known to impact the reproduction of these plants and has had other effects, such as trampling, erosion (see Factor A) and the introduction of non-native species (see Factor E). The fencing constructed to protect *Dudleya blochmaniae* ssp. *insularis* and *Dudleya* sp. nov. ''East Point'' populations from cattle has reduced the level of herbivory on these two taxa to where it no longer constitutes a significant threat to the survival of these species. The majority of the *Heuchera maxima* occur out of the reach of the effects of most non-native mammals on the islands (McEachern and Wilken 1996).

D. The Inadequacy of Existing Regulatory Mechanisms

The Service evaluated existing Federal, State, and local regulatory mechanisms prior to preparing the proposed rule for listing the two plant taxa. The Service found evidence of inadequacy of the existing regulatory mechanisms at that time. These regulatory mechanisms included: (1) Listing under the California Endangered Species Act (CESA); (2) the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA); (3) conservation provisions under section 404 of the Federal Clean Water Act and Section 1603 of the California Fish and Game Code; (4) occurrence with other species protected by the Federal Endangered Species Act; (5) land acquisition and management by Federal, State, or local agencies, or by private groups and organizations; and (6) local laws and regulations. The Service believes that actions taken by the NPS for the protection of *Dudleya blochmaniae* ssp. *insularis* and *Dudleya* sp. nov. ''East Point'' are sufficient to assure that regulatory mechanisms are adequate to protect these two plant taxa. *Heuchera maxima* is now known to be present in a sufficient number of populations (McEachern and Wilken 1996) so that any inadequacies of these regulatory mechanisms no longer pose a significant threat to this species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Introduced species of grasses and forbs have invaded many of California's plant communities. Such weedy species can displace the native flora by out-competing them for nutrients, water, light, and space. Weedy plant invasions are facilitated by disturbances such as grazing, developments, and various recreational activities.

Grazing by livestock typically changes the composition of native plant communities by reducing or eliminating species that cannot withstand trampling and predation (see Factors A and C), and enabling more resistant (usually alien) plant species to increase in abundance. Seed from non-sterile hay and animal feces increases the likelihood of invasion of exotic species and prevents re-establishment of native plants. Exotic species may flourish with grazing and may reduce or eliminate native plant species through competition for resources. The invasion of non-native species into the habitats of *Dudleya blochmaniae* ssp. *insularis* and *Dudleya* sp. nov. ''East Point'' was cited as a significant threat to these populations in the proposed rule

primarily due to the ongoing effects of alien mammals on these habitats. Due to the fencing installed by the NPS, these impacts have been reduced to the point that they no longer pose a significant threat to the survival of these taxa. With over 50 recently reported populations, *Heuchera maxima* is now known to occur in greater abundance than was previously known and, due to the discovery of these additional populations, the Service believes that this species is no longer threatened with extinction.

Because *Dudleya blochmaniae* ssp. *insularis* and *Dudleya* sp. nov. ''East Point'' are both known only from single populations with few individuals, they remain vulnerable to extinction due to random events, such as drought, and storms. Neither taxon has ever been reported to occur at any locality other than the single sites to which it is currently restricted. Pro-active recovery efforts to lessen the threat of such random events typically involve the establishment of additional populations, but Service policy precludes the introduction of listed species outside their historic range without specific approval from the Director. To lessen the vulnerability of these taxa to random events, the NPS has proposed to establish a seed banking program (NPS 1997). Because of the low probability of such a random event taking place, the significance of the threat from such an event in the absence of other factors, is insufficient to warrant listing of these species. *Heuchera maxima* is now known to occur in sufficient numbers that threats resulting from few, small populations are no longer of concern.

Finding and Withdrawal

After a thorough review and consideration of all information available the Service has determined that listing of *Dudleya blochmaniae* ssp. *insularis, Dudleya* sp. nov. ''East Point'' and *Heuchera maxima* as endangered is no longer warranted. The Service has carefully assessed the best scientific and commercial information available in the development of this withdrawal notice. Fencing installed by the NPS since the time of the proposed rule has sufficiently reduced the threats of soil loss, trampling and herbivory by cattle and non-native mammals, and the invasion of competitive alien weeds into habitat of the two dudleya species so that listing is no longer warranted. Other factors cited in the proposed rule, including overcollection, inadequate regulatory mechanisms, and extinction from random events, are of insufficient magnitude to warrant listing in the absence of any significant threat from other factors. *Heuchera maxima* is now known to occur in more than 50 populations and the Service now believes that this species is no longer threatened with extinction. A final rule listing the other 13 plant taxa included in the original proposed rule is published in the **Federal Register** concurrently with this notice of withdrawal of the proposal to list *Dudleya blochmaniae* ssp. *insularis, Dudleya* sp. nov. ''East Point'' and *Heuchera maxima*.

References Cited

A list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service Ventura Field Office (see **ADDRESSES** section).

Author: The primary author of this withdrawal notice is Tim Thomas, Ventura Field Office (see **ADDRESSES** section).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: July 24, 1997

John G. Rogers,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–20132 Filed 7–30–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 62, No. 147
Thursday, July 31, 1997

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 25, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and to the Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- **National Agricultural Statistics Service**

Title: Agricultural Resources Management, Chemical Use and Post-harvest Chemical Use Surveys.
OMB Control Number: 0535–0218.
Summary of Collection: Collect production cost data and data on the application of chemicals after harvesting of fruits and vegetables.
Need and Use of the Information: To provide estimates on the extent of residue of chemicals on fruits and vegetables; to produce environmental and economic estimates of the costs of farming.
Description of Respondents: Farms.
Number of Respondents: 72,195.
Frequency of Responses: Reporting: On occasion; Annually.
Total Burden Hours: 35,232.

- **Rural Housing Service**

Title: 7 CFR 3570–B, Community Facilities Grant Program.
OMB Control Number: 0575–0173.
Summary of Collection: The information collection includes an agreement for administrative requirements and a statement of inability to obtain credit from other sources.
Need and Use of the Information: The information is used to fulfill the requirements for the community facilities grant program.
Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.
Number of Respondents: 200.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 438.

- **Animal and Plant Health Inspection Service**

Title: Importation of Fresh Hass Avocado Fruit.
OMB Control Number: 0579–New.
Summary of Collection: Information collected includes an application for permit, phytosanitary inspection certificate, marking requirements and an annual work plan.
Need and Use of the Information: The information is needed to safely import fresh Hass Avocado fruit from Mexico.
Description of Respondents: Business or other for-profit; Individuals or households; Farms; State, Local or Tribal Government.
Number of Respondents: 157.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 3,098.

- **Rural Business-Cooperative Service**

Title: Cooperative Value-Added Program.
OMB Control Number: 0570–0019.
Summary of Collection: Information collected from respondents includes an application for Federal assistance and a project proposal.
Need and Use of the Information: The information will be used to determine eligibility for the funding of programs that will encourage value-added activities to enhance the economic sustainability of rural communities.
Description of Respondents: Not-for-profit institutions; Federal Government; State, Local or Tribal Government.
Number of Respondents: 75.
Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly.
Total Burden Hours: 1,446.

- **Grain Inspection, Packers and Stockyards Administration**

Title: Regulations and Related Reporting and Recordkeeping Requirements—Packers and Stockyard Programs.
OMB Control Number: 0580–0015.
Summary of Collection: Information collected includes applications for registration, trust fund agreements, special reports, and scale tests.
Need and Use of the Information: The information is used to provide business transaction safeguards that are necessary to protect financial interests and trade practices of livestock producers and others in the livestock industry.
Description of Respondents: Business or other for-profit.
Number of Respondents: 10,950.
Frequency of Responses: Recordkeeping; Reporting: On occasion; Semi-annually; annually.
Total Burden Hours: 301,106.

- **Agricultural Marketing Service**

Title: Olives Grown in California Marketing Order No. 932.
OMB Control Number: 0581–0142.
Summary of Collection: Information collected includes referendum ballots, assessments, sales reports, inventory holdings and marketing agreements.
Need and Use of the Information: The information is used to regulate the provisions of Marketing Order No. 932.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 692.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Every 2–6 yrs.

Total Burden Hours: 3,880.

Donald Hulcher,

Departmental Clearance Officer.

[FR Doc. 97–20235 Filed 7–30–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV97–998–2 NC]

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 to a currently approved information collection for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts (7 CFR part 998).

DATES: Comments on this notice must be received by September 29, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Jim Wendland, Marketing Specialist, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2170, or Fax: (202) 720-5698.

SUPPLEMENTARY INFORMATION:

Title: Marketing Agreement No. 146, Regulating the Quality of Domestically Produced Peanuts—7 CFR part 998.

OMB Number: 0581–0067.

Expiration Date of Approval: January 31, 1998.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing agreement and 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. Such 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), the Agreement was established for handlers who voluntarily signed it. Signers agreed to have peanuts inspected, meet both incoming and outgoing quality regulations, be chemically tested and certified ''negative'' as to aflatoxin. The Secretary of Agriculture is authorized to oversee the Agreement's operations and consider issuing regulations recommended by a committee of producer and handler representatives from each of the three areas.

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 Peanut Marketing Agreement program, which has been operating since 1965.

The Agreement authorizes the issuance of quality regulations along with inspection requirements. The Agreement also provides authority for limited indemnification. The Agreement, and rules and regulations issued thereunder, authorize the Peanut Administrative Committee (Committee), which is responsible for locally administering the program, to require handlers and growers to submit certain information. Much of the information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The Committee has developed forms as a means for persons to file required information with the Committee relating to peanut supplies, shipments, dispositions, and other information needed to carry out the purpose of the AMAA and Agreement. USDA forms are used by peanut growers and handlers, who are nominated by their peers to serve as representatives on the Committee, to submit their qualifications to the Secretary. Other USDA forms are used by handlers to sign the Agreement.

These forms require the minimum information necessary to effectively carry out the requirements of the Agreement, and their use is necessary to fulfill the intent of the AMAA as expressed in the Agreement.

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, which may be provided only aggregate (not confidential) information, 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 0.246 hours per response.

Respondents: Peanut producers and for-profit businesses handling fresh and processed peanuts produced in the 16-state production area.

Estimated Number of Respondents: 29.

Estimated Number of Responses per Respondent: 9.19.

Estimated Total Annual Burden on Respondents: 126 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. 0581–0067 and the Peanut Marketing Agreement No. 146, and be sent to USDA in care of Jim Wendland 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: July 24, 1997.

Ronald L. Cioffi,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 97–20041 Filed 7–30–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request—The Integrity Profile (TIP)

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's (FCS) intention to request OMB review of The Integrity Profile (TIP) data collection and reporting system.

DATES: Comments on this notice must be received by September 29, 1997.

ADDRESSES: Send comments and requests for copies of this information collection to: Stanley C. Garnett, Director, Supplemental Food Programs Division, Food and Consumer Service, U.S. Department of Agriculture, 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 the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information 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 responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, (703) 305–2749.

SUPPLEMENTARY INFORMATION:

Title: The Integrity Profile (TIP).

OMB Number: 0584–0401.

Expiration Date: 1–31–98.

Type of Request: Extention of a Currently Approved Collection.

Abstract: State agencies administering the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program) are required by 7 CFR 246.12(i)(3) to submit to FCS an annual summary of the results of their vendor monitoring efforts in order to provide Congress, senior FCS officials, as well as the general public, assurance that every reasonable effort is being made to ensure integrity in the WIC Program.

Since 1989, integrity data has been required to be submitted annually for analysis and the Vendor Activity Monitoring Profile (VAMP) report has been traditionally produced by FCS which shows the level of monitoring and investigation conducted by WIC State agencies to detect and eliminate, or substantially reduce, vendor fraud and abuse. The WIC Program recently reassessed State and Federal data collection and reporting needs as they relate to the integrity of the WIC Program. Based on this reassessment, The Integrity Profile (TIP) was developed, which will replace the current VAMP data system.

Approximately 25 data elements that had been reported in VAMP were eliminated and about 15 data elements were added to the data that is currently reported to form the new TIP reporting system. Whereas VAMP focused on vendors that were investigated, TIP will better reflect all monitoring efforts, not just investigations conducted. The TIP report will better describe State agency efforts to not only detect abuse but also prevent abuse from occurring and better describe the characteristics of the vendor population. Lastly, the TIP report makes better use of existing data that is captured in State automated systems. Reporting will be streamlined, as data will be downloaded from State systems and transmitted to FCS electronically.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20.8 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.

Respondents: The Program Director of each WIC State agency, which is generally a State Health Department or an Indian Tribal Organization.

Estimated Number of Respondents: 88 respondents.

Estimated Number of Responses Per Respondent: One.

Estimated Total Annual Burden on Respondents: 1,830.4 hours.

Dated: July 21, 1997.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 97–20237 Filed 7–30–97; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 06/26/97–07/22/97

Firm name	Address	Date petition accepted	Product
Sensor Scientific, Inc	6 Kings Bridge Road, Fairfield, NJ 07004.	06/26/97	Thermistors for measuring and controlling temperature.
S-Tech Design & Manufacturing, Inc.	480 SE 13th Avenue, Albany, OR 97321.	06/26/97	Golf club parts.
L.D.C., Inc	30R Houghton Street, Providence, RI 02904.	06/27/97	Metal jewelry findings.
Division Lead Limited Partnership.	7742 West 61st Street, Summit, IL 60501.	06/30/97	Lead shot, tubes and shapes of bismuth, tin and cadmium.
Golden West Circuits, Inc	15622 Computer Lane, Huntington Beach, CA 92649.	07/03/97	Printed circuit boards.
R.K.B. Opto-Electronics, Inc	P.O. Box 157, 6677 Moore Road, Syracuse, NY 13211.	07/07/97	Optical defect detection systems and replacement parts.
Beacon Looms, Inc	411 Alfred Avenue, Teaneck, NJ 07666.	07/09/97	Curtains, bedding products and linings and trimmings for caskets.
Curtiss-Wright Flow Control Corporation.	1966 East Broadhollow Road, East Farmingdale, NY 11735.	07/10/97	Valves.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 06/26/97–07/22/97—Continued

Firm name	Address	Date petition accepted	Product
Lasertechnics Marking Corporation.	5500 Wilshire Avenue, NE., Albuquerque, NM 87113.	07/11/97	Laser coding machines and systems for container labeling.
Michele Audio Corporation of America.	P.O. Box 566, Massena, NY 13662.	07/14/97	Plastic CD and cassette holders, audio cassette duplication and sound recordings and blank cassettes.
Berlin Glove Company, Ltd	150 West Franklin Street, Berlin, WI 54923.	07/14/97	Leather gloves and leather accessories.
Staab Battery Manufacturing Co., Inc.	931 South 11th Street, Springfield, IL 62703.	07/14/97	Batteries for autos, trucks, small engines, and marine use.
Solitron Devices, Inc	3301 Electronics Way, West Palm Beach, FL 33407.	07/14/97	Semi-conductor devices for defense and aerospace applications.
American Automated Stitching Service.	3051 Industrial 25th Street, Fort Pierce, FL 34946.	07/15/97	Ladies' underwear and sewing machine attachments.
Bateman Manufacturing Company, Inc.	2379 American Avenue, Hayward, CA 94545.	07/17/97	Metal parts for semi-conductor manufacturing.
Roma Tool & Plastics, Inc	19131 Industrial Boulevard, Elk River, MN 55330.	07/17/97	Molded thermoplastic and thermoset components.
Sutton Products, Inc	P.O. Box 160, Bergman, AR 72615.	07/17/97	Bar stools, wood turnings, quilt racks, chairs and other lumber products.
Binder Brothers, Inc	663 Grand Avenue, Ridgefield, NJ 07657.	07/17/97	Sterling silver and gold filled jewelry.
A. Diamond Productions, Inc. dba The Futon Shop.	2150 Cesar Chavez Road, San Francisco, CA 94124.	07/22/97	Futon furniture and accessories.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: July 23, 1997.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 97–20074 Filed 7–30–97; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure

AGENCY: Technology Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure will hold a meeting on August 27–28, 1997. The Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infractructure was established by the Secretary of Commece to provide industry advice to the Department on encryption key recovery for use by federal government agencies. All sessions will be open to the public.

DATES: The meeting will be held on August 27–28, 1997 from 9:00 a.m. to 6:00 p.m.

ADDRESSES: The meeting will take place at the DoubleTree Hotel, 205 Strander Blvd., Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Edward Roback, Committee Secretary and Designated Federal Official, Computer Security Division, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, Maryland, 20899; telephone 301–975–3696. Please do not call the conference facility regarding details of this meeting.

SUPPLEMENTARY INFORMATION:

1. Agenda:

Opening Remarks
Chairperson's Remarks
News updates (Members, Federal Liaisons, Secretariat)
Working Group (WG) Reports
Intellectual Property Issues (as necessary)
Public Participation
Plans for Next Meeting
Closing Remarks

Note: That the items in this agenda are tentative and subject to change due to logistics and speaker availability.

2. Public Participation: The Committee meeting will include a period of time, not to exceed thirty minutes, for oral comments from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the individual identified in the ''for further information'' section. In addition, written statements are invited and may be submitted to the Committee at any time. Written comments should be directed to the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899. It would be appreciated if sixty copies could be submitted for distribution to the Committee and other meeting attendees.

3. Additional information regarding the Committee is available at its world wide web homepage at: http//csrc.nist.gov/tacdfipsfkmi/.

4. Should this meeting be canceled, a notice to that effect will be published in the **Federal Register** and a similar notice placed on the Committee's electronic homepage.

Mark Bohannon,

Chief Counsel for Technology Administration.

[FR Doc. 97–20245 Filed 7–30–97; 8:45 am]

BILLING CODE 3510–CN–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

July 25, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 64505, published on December 5, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 25, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on July 31, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339	1,165,007 dozen
347/348	1,651,693 dozen
359–C/659–C [2]	1,363,001 kilograms
611–0 [3]	4,520,000 Square meters
619/620	9,079,933 Square meters

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, and 6211.42.0010; 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, and 6211.43.0010

[3] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025, 5516.14.0085

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–20142 Filed 7-30-97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius

July 25, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 1, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Categories 338/339 is being increased for shift and special shift, reducing the limits for Categories 336 and 638/639 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 56522, published on November 1, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 25, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 28, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on August 1, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month level [1]
336	95,664 dozen.
338/339	508,964 dozen.
638/639	423,767 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–20141 Filed 7-30-97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Turkey

July 25, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for carryover, carryforward, recrediting unused carryforward, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 54988, published on October 23, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 25, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 16, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, and man-made fiber textiles and textile products, produced or manufactured in Turkey and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on July 31, 1997 you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Fabric Group 219, 313, 314, 315, 317, 326, 617, 625/626/627/628/629, as a group..	162,385,149 square meters, of which not more than 41,034,835 square meters shall be in category 219; not more than 50,153,686 square meters shall be in category 313; not more than 29,180,327 square meters shall be in category 314; not more than 39,211,066 square meters shall be in category 315; not more than 41,034,835 square meters shall be in category 317; not more than 4,559,425 square meters shall be in category 326; and not more than 27,356,558 shall be in category 617.
Sublevel in Fabric Group, 625/626/627/628/629	18,472,517 square meters, of which not more than 7,854,980 square meters shall be in category 625; not more than 7,389,007 square meters shall be in category 626; not more than 7,389,007 square meters shall be in category 627; not more than 7,389,007 square meters shall be in category 628; and not more than 7,389,007 square meters shall be in category 629.
Limits not in a group	
200	1,731,418 kilograms.
300/301	8,430,153 kilograms.
335	303,770 dozen.
336/636	857,394 dozen.
338/339/638/639	5,434,683 dozen of which not more than 3,873,670 dozen shall be in 338–S/339–S/638–S/639–S [2].
340/640	1,645,183 dozen of which not more than 467,912 dozen shall be in Categories 340–Y/640–Y [3].

Category	Adjusted twelve-month limit [1]
341/641	1,624,696 dozen of which not more than 568,643 dozen shall be in Categories 341–Y/641–Y [4].
342/642	954,458 dozen.
347/348	5,520,377 dozen of which not more than 1,920,227 dozen shall be in Categories 347–T/348–T [5].
350	599,846 dozen.
351/651	837,339 dozen.
352/652	2,743,831 dozen.
361	1,934,713 numbers.
369–S [6]	2,000,124 kilograms.
410/624	1,283,728 square meters of which not more than 795,450 square meters shall be in Category 410.
448	41,436 dozen.
604	2,171,772 kilograms.
611	57,757,206 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[3] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[4] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054; Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[5] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6304.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[6] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–20143 Filed 7-30-97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1997 Correlation

July 25, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1997 Correlation

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1997) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the textile program. The Correlation should be amended to include the following changes in Category 301, effective on June 23, 1997:

Changes to the 1997 Correlation

Delete 5205.21.0000.

Add 5205.21.0020—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, single yarn, of combed fibers, exceeding 14 nm, ring spun.

Add 5205.21.0090—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, single yarn, of combed fibers, exceeding 14 nm but not exceeding 43 nm, other than ring spun.

Delete 5205.22.0000.

Add 5205.22.0020—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, single yarn, of combed fibers, exceeding 14 nm but not exceeding 43 nm, ring spun.

Changes to the 1997 Correlation

Add 5205.22.0090—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, single yarn, of combed fibers, exceeding 14 nm but not exceeding 43 nm, other than ring spun.

Delete 5205.23.0000.

Add 5205.23.0020—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, single yarn, of combed fibers, exceeding 43 nm but not exceeding 52 nm, ring spun.

Add 5205.23.0090—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, single yarn, of combed fibers, exceeding 43 nm but not exceeding 52 nm, other than ring spun.

Delete 5205.24.0000.

Add 5205.24.0020—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, single yarn, of combed fibers, exceeding 52 nm but not exceeding 80 nm, ring spun.

Add 5205.24.0090—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, single yarn, of combed fibers, exceeding 52 nm but not exceeding 80 nm, other than ring spun.

Delete 5205.26.0000.

Add 5205.26.0020—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not up for retail sale, single yarn, of combed fibers, measuring less than 125 decitex but not less than 106.38 decitex (exceeding 80 metric number but not exceeding 94 metric number), ring spun.

Add 5205.26.0090—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not up for retail sale, single yarn, of combed fibers, measuring less than 125 decitex but not less than 106.38 decitex (exceeding 80 metric number but not exceeding 94 metric number), other than ring spun.

Delete 5205.27.0000.

Add 5205.27.0020—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, single yarn, of combed fibers, measuring less than 106.38 decitex but not less than 83.33 decitex (exceeding 94 metric number but not exceeding 120 metric number), ring spun.

Add 5205.27.0090—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, single yarn, of combed fibers, measuring less than 106.38 decitex but not less than 83.33 decitex (exceeding 94 metric number but not exceeding 120 metric number), other than ring spun.

Delete 5205.28.0000.

Changes to the 1997 Correlation

Add 5205.28.0020—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, single yarn, of combed fibers, measuring less than 83.33 decitex (exceeding 120 metric number), ring spun.

Add 5205.28.0090—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, single yarn, of combed fibers, measuring less than 83.33 decitex (exceeding 120 metric number), other than ring spun.

Delete 5205.41.0000.

Add 5205.41.0020—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, multiple (folded) or cabled yarn, of combed fibers, not exceeding 14 nm per single yarn, ring spun.

Add 5205.41.0090—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, multiple (folded) or cabled yarn, of combed fibers, not exceeding 14 nm per single yarn, other than ring spun.

Delete 5205.42.0000.

Add 5205.42.0020—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, multiple (folded) or cabled yarn, of combed fibers, exceeding 14 nm but not exceeding 43 nm per single yarn, ring spun.

Add 5205.42.0090—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, multiple (folded) or cabled yarn, of combed fibers, exceeding 14 nm but not exceeding 43 nm per single yarn, other than ring spun.

Delete 5205.43.0000.

Add 5205.43.0020—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, multiple (folded) or cabled yarn, of combed fibers, exceeding 43 nm but not exceeding 52 nm per single yarn, ring spun.

Add 5205.43.0090—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, multiple (folded) or cabled yarn, of combed fibers, exceeding 43 nm but not exceeding 52 nm per single yarn, other than ring spun.

Delete 5205.44.0000.

Add 5205.44.0020—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, multiple (folded) or cabled yarn, of combed fibers, exceeding 52 nm but not exceeding 80 nm per single yarn, ring spun.

Add 5205.44.0090—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, multiple (folded) or cabled yarn, of combed fibers, exceeding 52 nm but not exceeding 80 nm per single yarn, other than ring spun.

Delete 5205.46.0000.

Changes to the 1997 Correlation

Add 5205.46.0020—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, multiple (folded) or cabled yarn, of combed fibers, measuring per single yarn less than 125 decitex but not less than 106.38 decitex (exceeding 80 metric number but not exceeding 94 metric number), ring spun.

Add 5205.46.0090—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, multiple (folded) or cabled yarn, of combed fibers, measuring per single yarn less than 125 decitex but not less than 106.38 decitex (exceeding 80 metric number but not exceeding 94 metric number), other than ring spun.

Delete 5205.47.0000.

Add 5205.47.0020—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, multiple (folded) or cabled yarn, of combed fibers, measuring per single yarn less than 106.38 decitex but not less than 83.33 decitex (exceeding 94 metric number but not exceeding 120 metric number), ring spun.

Add 5205.47.0090—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, multiple (folded) or cabled yarn, of combed fibers, measuring per single yarn less than 106.38 decitex but not less than 83.33 decitex (exceeding 94 metric number but not exceeding 120 metric number), other than ring spun.

Delete 5205.48.0000.

Add 5205.48.0020—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, multiple (folded) or cabled yarn, of combed fibers, measuring per single yarn less than 83.33 decitex (exceeding 120 metric number), ring spun.

Add 5205.48.0090—Cotton Yarn, not sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale, multiple (folded) or cabled yarn, of combed fibers, measuring per single yarn less than 83.33 decitex (exceeding 120 metric number), other than ring spun.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–20144 Filed 7-30-97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Office of Personnel Management and the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense

ACTION: Notice of a computer matching program between the Office of Personnel Management (OPM) and the Department of Defense (DoD) for public comment.

SUMMARY: The DoD, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between OPM and DoD that their records are being matched by computer. The record subjects are civil service annuitants who are reemployed in the Federal government. By comparing the data received through this computer matching program on a recurring basis, OPM and DoD will be able to make timely and accurate adjustments in salary and benefits. This program will prevent or correct overpayment, fraud and abuse, thus insuring proper benefit payments.

DATES: This proposed action will become effective September 2, 1997, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr., at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C, 552a), DoD and OPM have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to identify civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD. This match will insure that (1) annuities of DoD reemployed annuitants are terminated where applicable, and (2) salaries are

correctly offset where applicable. A cost benefit analysis, based on data collected from prior matches, shows that OPM will save approximately $222,500 over a 12-month period by performing this match.

DoD does not expect to realize any monetary savings from this matching program, but does benefit by having a mechanism to assist in correcting its civilian personnel data bases. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between OPM and DoD is available upon request to the public. Requests should be submitted to the address above or to the Chief, Quality Assurance Division, Retirement and Insurance Group, Office of Personnel Management, Washington, DC 20415.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on July 10, 1997, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (61 FR 6435, February 20, 1996). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: July 23, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

COMPUTER MATCHING PROGRAM BETWEEN THE OFFICE OF PERSONNEL MANAGEMENT AND THE DEPARTMENT OF DEFENSE ON REEMPLOYED ANNUITANTS

A. *Participating Agencies:* Participants in this computer matching program are the Quality Assurance Division, Retirement and Insurance Group, Office of Personnel Management (OPM), Washington, DC 20415 and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The OPM is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the Match:* The purpose of the computer matching program is to identify civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD. This match will help insure that (1) annuities of DoD reemployed annuitants are terminated where applicable and, (2) salaries are correctly offset where applicable.

C. *Authority of the Match:* Both OPM and DoD have responsibilities to monitor and adjust retirement benefits under Title 5 U.S.C. Section 8331 (CSRA), (especially 5 U.S.C. 8344) and Title 5 U.S.C. Section 8401 (FERSA) et seq. (especially 5 U.S.C. 8468).

D. *Records to be matched:* The match will involve the OPM system of records published as OPM Central-1, Civil Service Retirement and Insurance Records, 60 FR 63081, December 8, 1995 and the DoD system of records last published as Defense Manpower Data Center Data Base, S322.10 DMDC, 61 FR 6355, February 20, 1996.

Appropriate routine uses have been published by both agencies to permit disclosures needed to conduct this match. They are respectively identified and accentuated in the attached record system notices of the parties.

E. *Description of Computer Matching Program:* DMDC will match OPM data with DoD employee data for the same dates to make an initial determination. DMDC will share the matched information with appropriate DoD offices. DoD will screen the initial data appropriate to rule out matched individuals who are not valid matches according to information available to them at the time. DoD will take appropriate adjustment action for each matched individual including notification to OPM of individuals suspected of receiving retirement benefits to which they are not entitled.

Each individual identified as receiving prohibited retirement benefits will be notified of the match findings and will be afforded due process by OPM and given the opportunity to contest the findings and any actions that may ensue as a result of the match. Each individual identified as having improper salary will be notified by DoD and will be given an opportunity to contest the findings.

DMDC will provide OPM with an annual report summarizing the results of the matches.

The OPM file will contain the information on approximately 1.5 million CSRA and FERSA retirees. The DoD file contains approximately 800 thousand DoD civilian employee records.

The tape extract provided by OPM will contain the names, addresses, social security numbers, payment and service data of individuals receiving benefits from OPM.

F. *Inclusive Dates of the Matching Prgram:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this Federal Register notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on a quarterly basis. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between OPM and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for Receipt of Public Comments or Inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 97–19990 Filed 7–30–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Navy

Withdrawal of Surplus Land at Military Installations Designated for Realignment: Naval Air Station, Key West, Florida

SUMMARY: This Notice provides information on withdrawal of surplus property at the Naval Air Station, Key West, Florida.

SUPPLEMENTARY INFORMATION: In 1995, the Naval Air Station, Key West, Florida was designated for realignment pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, in April of 1996, approximately 168.14 acres of land and related facilities at this installation were declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended. Approximately 35 acres of land improved with 10 buildings have been requested for transfer by other federal agencies and was not included within the 168.14 acres. On July 3, 1997, a second determination was made to withdraw land and facilities previously reported as surplus that are now required by the federal government.

Notice of Surplus Property

Pursuant to paragraph (7)(B) of section 2905(b) of the Defense Base Closure and Realignment Act of l990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the withdrawal of previously reported surplus property at the Naval Air Station, Key West, FL is published in the **Federal Register**:

Description of Withdrawn Property

The following is a description of land and facilities at the Naval Air Station, Key West that are withdrawn from surplus by the federal government.

Land

Approximately 16 acres of improved and unimproved fee simple land at the Naval Air Station, Key West, FL known as the Trumbo Point Annex Tank Farm.

Buildings

The following is a summary of the facilities located on the above described land. Electrical distribution substations and the fuel farm maintenance facility consisting of 10 buildings.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 428–0436, or E.R. Nelson, Jr., Director, Real Estate Division, Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (803) 820–7494.

Dated: July 21, 1997.

M.D. Sutton,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–20086 Filed 7–30–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State agencies for Approval of Public Postsecondary Vocational Education

AGENCY: Department of Education.

ACTION: Request for Comments on Agency applying to the Secretary for Renewal of Recognition.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, Director, Accredition and Eligibility Determination Division, U.S. Department of Education, 600 Independence Avenue, SW., Room 3915 ROB–3, Washington, DC 20202–5244, telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

SUBMISSION OF THIRD-PARTY COMMENTS: The Secretary of Education recognizes, as reliable authorities as to the quality of education offered by institutions or programs within their scope, accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria for recognition. A notice published in the **Federal Register** on July 2, 1997 (Volume 62, page 35791) invited interested third parties to present written comments on agencies scheduled for review at the November 1997 meeting of the National Advisory Committee on Institutional Quality and Integrity. The purpose of this notice is to correct the information provided in the July 2, 1997 notice regarding the request for an expansion of scope submitted by the Accrediting Bureau of Health Education Schools. The correct information is included a that end of this notice. This notice also extends the deadline for interested third of scope from August 18, 1997 to September 2, 1997. All other provisions of the July 2, 1997 **Federal Register** notice remain in effect.

Request for an Expansion of Scope

1. Accrediting Bureau of Health Education Schools (Current scope of recognition; the accreditation of private, postsecondary allied health education institutions, private medical assistant programs, public and private medical laboratory technician programs, and allied health programs leading to the Associate of Applied Science and the Associate of Occupational Science degree. Requested expansion of scope: the accredition of institutions offering predominantly allied health education programs. ''Predominantly'' is defined by the agency as follows: at least 70 percent of the number of active programs offered are in the allied health area, and the number of students enrolled in those programs exceeds 50 percent of the institution's full-time equivalent (FTE) students, or at least 70 percent of the FTE students enrolled at the institution are in allied health programs.)

Dated: July 28, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–20200 Filed 7–30–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for the Southeast Drainage at the Weldon Spring Site

AGENCY: Office of Environmental Management, DOE.

ACTION: Floodplain Statement of Findings.

SUMMARY: This is a Floodplain Statement of Findings for the Southeast Drainage at the Weldon Spring Site, prepared in accordance with 10 CFR part 1022. The U.S. Department of Energy (DOE) proposes to remove contaminated sediment from the Southeast Drainage, an intermittent stream located in St. Charles County, Missouri (Fig.1). The lower portion of the drainage occurs within the 100-year floodplain of the Missouri River. DOE

prepared a floodplain and wetlands assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. The DOE will allow 15 days of public review after publication of the statement of findings before implementing the proposed action.

FOR FURTHER INFORMATION CONTACT: Mr. Steve McCracken, U.S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, MO 63304, (314) 441–8978

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: This Floodplain Statement of Findings for the Southeast Drainage at the Weldon Spring Site was prepared in accordance with 10 CFR Part 1022. A Notice of Floodplain and Wetlands Involvement was published in the **Federal Register** on Wednesday, April 16, 1997, FR Doc. 97–9805, and a floodplain and wetlands assessment was prepared. DOE is proposing to remove contaminated sediment from selected locations within the Southeast Drainage, an intermittent tributary of the Missouri River. Removal alternatives evaluated include:

- No Action.
- Conventional excavation of sediments at selected locations within the drainage using existing right-of-way routes.
- Conventional excavation of sediments at all targeted locations within the drainage using new off-road access and a haul route through the drainage.

The proposed action would utilize conventional excavation technologies and existing disturbed areas for right-of-way routes. The objective of the proposed action is to reduce the levels of contamination thereby reducing health risk. The 100-year floodplain of the Missouri River extends into the Southeast Drainage approximately 1,200 feet. The action is proposed to be located in the floodplain because the contaminated sediment to be removed occurs in scattered locations throughout the Southeast Drainage, including that portion which lies within the Missouri River 100-year floodplain. There are no practicable alternatives to locating the action in the floodplain.

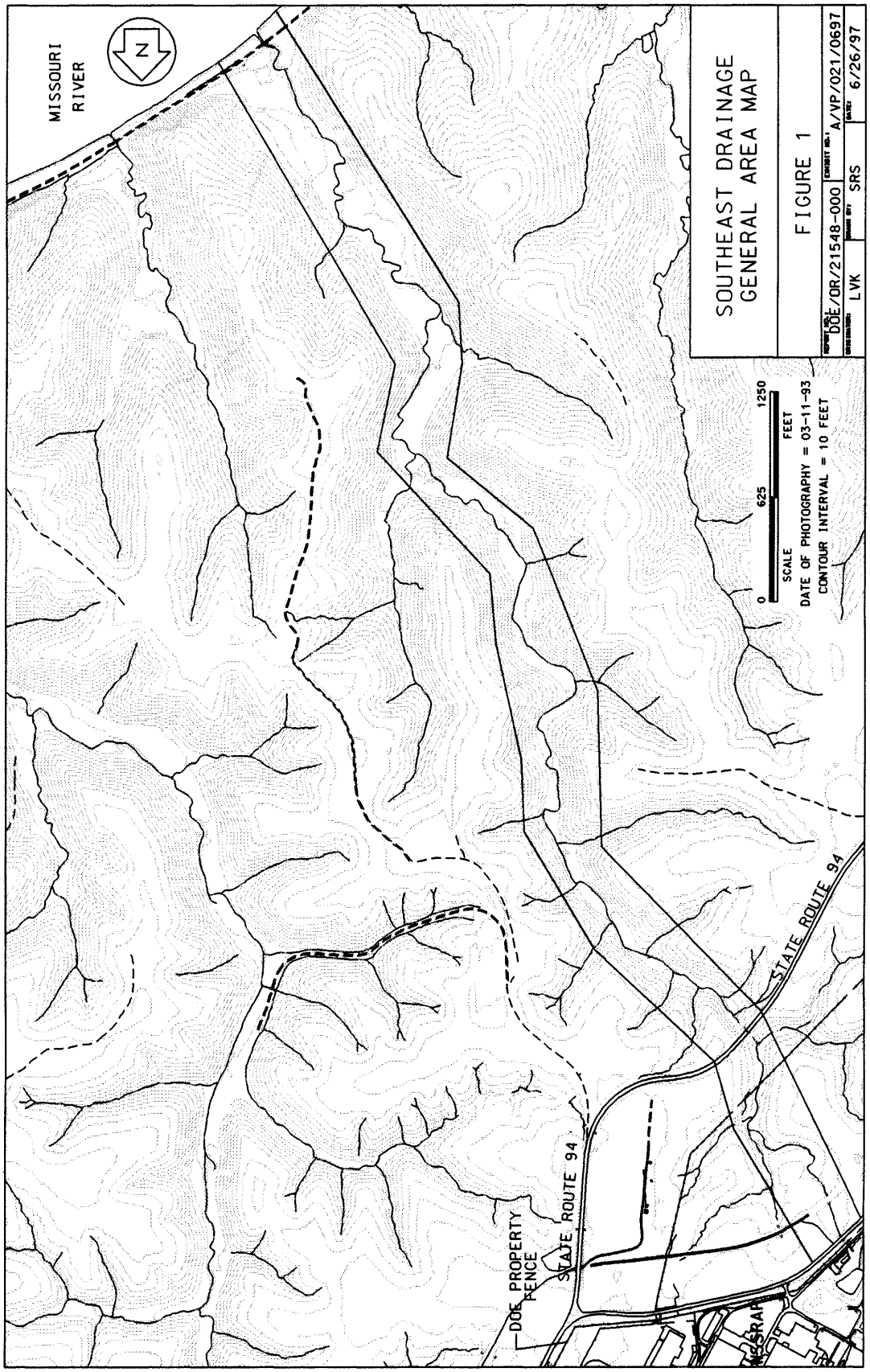
The proposed action would conform to applicable federal, state, and local floodplain protection standards. Good engineering practices would be employed to control sedimentation and erosion to downstream surface waters and adjacent floodplain areas. Water quality within the channel would be protected during excavation to the extent practicable by several measures. Administrative controls would be used to stop work during major storm events. When excavations would remain exposed overnight, erosion controls would be installed to minimize the transport of silt downstream by stormwater flows. Additionally, silt dams will be constructed within the drainage in areas where the existing right-of-way route deviates significantly from the defined channel. Restoration of excavated areas within the drainage would include grading to avoid steep or vertical slopes, and to minimize ponding and backfilling. Areas of exposed soil outside the stream channel would be mulched and reseeded with an annual grass to minimize erosion and allow the natural seedbank to reestablish vegetative cover. Impacts to the floodplain would be minimized by the avoidance (to the extent practicable) of adjacent floodplain areas. No long-term impacts are anticipated to the 100-year floodplain of the Missouri River. The proposed removal action would not impact floodplain storage capacity. No permanent structures would be constructed as part of the proposed action.

DOE will allow 15 days of public review after publication of the statement of findings prior to implementing the proposed action.

James L. Elmore,

Alternate NEPA Compliance Officer.

BILLING CODE 6450–01–P



[FR Doc. 97–20213 Filed 7–30–97; 8:45 am]

BILLING CODE 6450–01–C

DEPARTMENT OF ENERGY

Office of Industrial Technologies (OIT); Notice of Solicitation for the Chemical Industry Initiative

AGENCY: (DOE).

ACTION: Notice of Solicitation Availability.

SUMMARY: The Department of Energy (DOE) Office of Industrial Technologies (OIT) announces its interest in receiving applications for innovative research and development (R&D) to improve energy efficiency, and minimize the generation of wastes that supports the goals of Technical Vision 2020: The Chemical Industry. DOE and the chemical industry have entered into an memorandum of understanding to identify appropriate areas of joint research. The areas for collaborative research contemplated by this solicitation are catalysis, bioprocesses, and separation technologies.

DATES AND ADDRESSES: The complete solicitation document will be available on or about July 30, 1997 on the internet by accessing either the OIT grant program home page at (http://www.oit.doe.gov/ or the DOE Chicago Operations Office Acquisition and Assistance Group home page at (http://www.ch.doe.gov/business/ACQ.htm) under the heading ''Current Acquisition Activities'' Solicitation No. DE–SC02–97CH10885. Preapplications referencing DE–SC02–97CH10885 are due no later than 3:00 p.m. Central Daylight Time (CDT), 45 days after the issuance of the solicitation, and full applications are due no later than 3:00 p.m. (CDT), January 5, 1998. Awards are anticipated by February 25, 1998.

SUPPLEMENTARY INFORMATION: Completed applications referencing Solicitation Notice DE–SC02–97CH10885 must be submitted to: U.S. Department of Energy, Chicago Operations Office, Attn.: Earlette Robinson, Bldg. 201, Rm. 3E–10, 9800 South Cass Avenue, Argonne, IL 60439–4899.

DOE's Office of Industrial Technologies supports industry efforts to increase energy efficiency, reduce waste, and increase productivity. OIT's goal is to accelerate research, development, demonstration and commercialization of energy efficient, renewable and pollution-prevention technologies benefiting industry, the environment, and U.S. energy security.

The key objectives of this solicitation and the resulting projects are improvements of the competitive position of, and employment opportunities in, the U.S. chemical industry. These objectives are intended to be achieved through several avenues, such as the development of improved technologies and better application of existing technologies. As a result of this solicitation, DOE expects to award six (6) to twenty (20) cooperative agreements with an anticipated $4 million in total funding for FY 98. DOE will consider projects ranging from one (1) to five (5) years.

The solicitation invites applications from any non-profit or for-profit organization, university or other institution of higher education or non-federal agency or entity. National laboratories are not eligible for awards as prime recipients. A minimum cost-sharing commitment of 30 percent of the total cost of the project will be required from chemical industry sources for R&D projects. For demonstration projects, the minimum cost-sharing commitment is 50% of the total cost of the project.

FOR FURTHER INFORMATION CONTACT: Earlette Robinson at (630) 252–2667, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439–4899; by fax at (630) 252–5045; or by e-mail at earlette.robinson@ch.doe.gov.

Issued in Chicago, Illinois on July 24, 1997.

John D. Greenwood,

Acquisition and Assistance Group Manager.

[FR Doc. 97–20212 Filed 7–30–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Solicitation for Financial Assistance Applications; Develop a Regional Market Transformation Guide for Energy Efficiency

AGENCY: The Department of Energy (DOE)

ACTION: Notice of Solicitation for Financial Assistance Applications, Number DE–PS45–97R530361.

SUMMARY: The U. S. Department of Energy (DOE), Chicago Regional Support Office (CRSO), announces its intention to issue a competitive solicitation for applications for financial assistance to (1) Develop a Regional Market Transformation Guide for Energy Efficiency and (2) Conduct a workshop for governmental agencies and private organizations in the region to discuss market transformation opportunities within the region.

Availability of Funding in FY 1997

With this publication, the Chicago Regional Support Office is announcing the availability of up to $60,000 for this project during fiscal year 1997, which represents the first of what could be a several stage project to explore development of new market institutions in a restructured environment. Subsequent phases of this project, if any, will be separately awarded. The award will be made through a competitive process. The Chicago Regional Support Office intends to make only one award. DOE reserves the right to fund none of the applications.

Availability of the Solicitation

DOE expects to issue the solicitation on August 1, 1997. Requests for the solicitation must be in writing and directed to Lynda Keammerlen. Facsimiles and electronic mail are acceptable and can be transmitted to (312) 886–8561 or lynda.keammerlen@hq.doe.gov. Beginning August 1, 1997, solicitations may also be obtained through the Golden Field Office Home Page at http://www.eren.doe.gov/golden/solicit.htm, followed, within ten days, by written notification of receipt to Lynda Keammerlen.

Issued in Golden, CO.

Dated: July 17, 1997.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 97–20210 Filed 7–30–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. DH–012]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Vented Home Heating Equipment Test Procedure to HEAT–N–GLO Fireplace Products, Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. DH–012) granting a Waiver to HEAT–N–GLO Fireplace Products, Inc. (HEAT–N–GLO), from the existing Department of Energy (DOE or Department) test procedure for vented home heating equipment. The Department is granting HEAT–N–GLO's Petition for Waiver regarding the use of pilot light energy consumption in calculating the Annual Fuel Utilization Efficiency (AFUE) for its models BAYFYRE–TRS and 6000XLT vented heaters.

FOR FURTHER INFORMATION CONTACT:

Bill Hui, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station: EE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, Telephone: (202) 586–9145, Facsimile: (202) 586–4617, E-mail: william.hui@hq.doe.gov

or

Eugene Margolis, Esquire, U.S. Department of Energy, Office of General Counsel, Mail Station: GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, Telephone: (202) 586–9507, Facsimile: (202) 586–4116, E-mail: eugene.margolis@hq.doe.gov.

SUPPLEMENTARY INFORMATION: In accordance with Title 10 CFR 430.27(j), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, HEAT–N–GLO has been granted a Waiver for its models BAYFYRE–TRS and 6000XLT vented heaters, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on July 25, 1997.

Joseph J. Romm,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, Public Law 94–163, 89 Stat. 917, as amended (EPCA), which requires the Department to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including vented home heating equipment. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions, and will determine whether a product complies with the applicable energy conservation standard. These test procedures appear at Title 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding Title 10 CFR 430.27 to create a waiver process, 45 FR 64108 (September 26, 1980). Thereafter, the Department further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned the Department for a waiver of such prescribed test procedures, 51 FR 42823 (November 26, 1986).

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

HEAT–N–GLO Fireplace Products, Inc. (HEAT–N–GLO), filed a ''Petition for Waiver,'' dated April 10, 1997, in accordance with section 430.27 of Title 10 CFR Part 430. The Department published in the **Federal Register** on May 21, 1997, HEAT–N–GLO's Petition and solicited comments, data, and information respecting the Petition, 62 FR 27727 (May 21, 1997). HEAT–N–GLO also filed an ''Application for Interim Waiver'' under section 430.27(b)(2), which the Department granted on May 14, 1997, 62 FR 27727 (May 21, 1997).

No comments were received concerning either the ''Petition for Waiver'' or the ''Interim Waiver.'' The Department consulted with the Federal Trade Commission (FTC) concerning HEAT–N–GLO's Petition. The FTC does not have any objections to the issuance of the waiver to HEAT–N–GLO.

On February 28, 1997, the Department issued the Final Rule on test procedures for furnaces/boilers, vented home heating equipment, and pool heaters. 62 FR 26140, (May 12, 1997). This Final Rule incorporates test procedure waivers granted to different manufacturers regarding the use of pilot light energy consumption in calculating the Annual Fuel Utilization Efficiency (AFUE). This Waiver granted to HEAT-N-GLO expires on November 10, 1997, the date when the final test procedure rule becomes effective, resolving the issue necessitating this Waiver.

Assertions and Determinations

HEAT-N-GLO's Petition seeks a waiver from the Department's test provisions regarding the use of pilot light energy consumption in calculating the AFUE. The Department's test provisions in section 3.5 of Title 10 CFR Part 430, Subpart B, Appendix O, require measurement of energy input rate to the pilot light (Q_p) with an error no greater than 3 percent for vented heaters, and use of this data in section 4.2.6 for the calculation of AFUE using the formula: AFUE = $[4400\eta_{ss}\eta_u Q_{in\text{-}max}]/[4400\eta_{ss}Q_{in\text{-}max} + 2.5(4600)\eta_u Q_p]$. HEAT–N–GLO requests that it be allowed to delete Q_p and accordingly, the $[2.5(4600)\eta_u Q_p]$ term in the calculation of AFUE. HEAT-N-GLO states that its models BAYFYRE-TRS and 6000XLT vented heaters are designed with a transient pilot which is to be turned off by the user when the heater is not in use.

The control knob on the combination gas control in these heaters has three positions: ''OFF,'' ''PILOT,'' and ''ON.'' Gas flow to the pilot is obtained by rotating the control knob from ''OFF'' to ''PILOT,'' depressing the knob, holding in, pressing the piezo igniter. When the pilot heats a thermocouple element, sufficient voltage is supplied to the combination gas control for the pilot to remain lit when the knob is released and turned to the ''ON'' position. The main burner can then be ignited by moving an ON/OFF switch to the ''ON'' position. Instructions to users to turn the gas control knob to the ''OFF'' position when the heater is not in use, which automatically turns off the pilot, are provided in the User's Instruction Manual and on a label adjacent to the gas control valve. If the manufacturer's instructions are observed by the user, the pilot light will not be left on. Since the current Departmental test procedure does not address this issue, and since others have received the same waiver under the same circumstances, HEAT-N-GLO asks that the Waiver be granted.

Previous Petitions for Waiver under the same circumstances have been granted by the Department to Appalachian Stove and Fabricators, Inc., 56 FR 51711 (October 15, 1991); Valor Inc., 56 FR 51714 (October 15, 1991); CFM International Inc., 61 FR 17287 (April 19, 1996); Vermont Castings, Inc., 61 FR 17290 (April 19, 1996); Superior Fireplace Company, 61 FR 17885 (April 23, 1996); Vermont Castings, Inc., 61 FR 57857 (November 8, 1996); EAT-N-GLO Fireplace Products, Inc., 61 FR 64519 (December 5, 1996); CFM Majestic Inc., 62 FR 10547 (March 7, 1997); Hunter Energy and Technology Inc., 62 FR 14408 (March 26, 1997); Wolf Steel Ltd., 62 FR 14409 (March 26, 1997); and Fireplace Manufacturers Incorporated, 62 FR 34443 (June 26, 1997).

Based on the Department's review of how HEAT-N-GLO's models BAYFYRE-TRS and 6000XLT vented heaters operate and the fact that if the manufacturer's instructions are followed, the pilot light will not be left

on, the Department grants HEAT-N-GLO its Petition for Waiver to exclude the pilot light energy input in the calculation of AFUE.

This decision is subject to the condition that the heaters shall have an easily read label near the gas control knob instructing the user to turn the valve to the off-position when the heaters are not in use.

It is, therefore, ordered that:

(1) The ''Petition for Waiver'' filed by HEAT-N-GLO Fireplace Products, Inc. (Case No. DH–012), is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix O of Title 10 CFR Part 430, Subpart B, HEAT-N-GLO Fireplace Products, Inc., shall be permitted to test its models BAYFYRE-TRS and 6000XLT vented heaters on the basis of the test procedure specified in Title 10 CFR Part 430, with modifications set forth below:

(i) Delete paragraph 3.5 of Appendix O.

(ii) Delete paragraph 4.2.6 of Appendix O and replace with the following paragraph:

4.2.6 Annual Fuel Utilization Efficiency. For manually controlled vented heaters, calculate the Annual Fuel Utilization Efficiency (AFUE) as a percent and defined as:

$$AFUE = \eta_u$$

where η_u is defined in section 4.2.5 of this appendix.

(iii) With the exception of the modification set forth above, HEAT-N-GLO Fireplace Products, Inc., shall comply in all respects with the test procedures specified in Appendix O of Title 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until November 10, 1997, the date when the Department's final test procedure appropriate to models BAYFYRE-TRS and 6000XLT vented heaters manufactured by HEAT-N-GLO Fireplace Products, Inc., becomes effective.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that a factual basis underlying the Petition is incorrect.

(5) Effective July 25, 1997, this Waiver supersedes the Interim Waiver granted HEAT-N-GLO Fireplace Products, Inc., on May 14, 1997, 62 FR 27727 (May 21, 1997). (Case No. DH–012).

Issued in Washington, DC, on July 25, 1997.

Joseph J. Romm,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 97–20211 Filed 7–30–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–517–002]

Algonquin LNG, Inc.; Notice of Compliance Filings

July 25, 1997.

Take notice that Algonquin LNG, Inc. (Algonquin LNG), 1284 Soldiers Field Road, Boston, Massachusetts, 02135, filed three non-environmental compliance filings in Docket No. CP96–517–002, (see items filed June 4, 1997, July 8, 1997, and July 11, 1997). These filings are related to its certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act (NGA) and its abandonment authority for services and facilities under Section 7(b) of the NGA granted by the Commission's Order of May 6, 1997 (79 FERC 61,139). Algonquin LNG has certificate (and abandonment) authorization for new services, and new, modified (and retired) facilities, such that it will have the enhanced flexibility to receive from its customers natural gas to be liquefied and stored as liquefied natural gas (LNG), and to withdraw and deliver, as requested by its customer(s), such natural gas in liquid or gaseous form (LNG enhancement project). The Commission's May 6th Order required certain non-environmental compliance filings to be made within 60 days of the date of the order.

On June 4, 1997, Algonquin LNG filed in Docket No. CP96–517–002, a letter with the Commission explaining its accounting treatment for services rendered under the Allens Avenue Operational Coordinational Agreement (Allens Avenue Agreement). Algonquin LNG said that no accounting entries related to such services were needed because no revenues would be received and no variable costs would be incurred as a result of the Allens Avenue Agreement.

On July 8, 1997, Algonquin LNG filed in Docket No. CP96–517–002, certain revised *pro forma* tariff sheets for its Second Revised Volume No. 1 (which will go into effect when the LNG enhancement project goes into service), revised certificate application Exhibits N, O, and P, and revised *pro forma* service agreements for the LNG enhancement project. Algonquin LNG said that pending rehearing, it has stated its *pro forma* LNG service rates for the LNG enhancement project in one part.[1] The revised *pro forma* tariff sheets are also intended to be in compliance with Order No. 587 (Standards for Business Practices of Interstate Natural Gas Pipelines (GISB)) for the LNG enhancement project.[2] Further, Algonquin LNG seeks waiver of the GISB standard No. 1.3.10 relating to nominations, and waiver of GISB standards related to electronic bulletin boards.

On July 11, 1997, Algonquin LNG filed in Docket No. CP96–517–002, a revised abandonment application Exhibit Y, relating to the accounting treatment of abandoned equipment, structures and improvements, property to be removed and salvaged, and related deferred income tax accounting adjustments.

Any person desiring to be heard or to make any protest with reference to these three compliance filings should on or before August 15, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.20). 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 the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Any party which previously filed a motion to intervene in Docket No. CP96–517–000 need not file such motion again, but merely protest or comment upon the three compliance filings.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these three filings, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under

[1] Pending rehearing, the May 6th Order requires Algonquin LNG to state its rates in several parts.

[2] Algonquin LNG has filed, and the Commission has acted upon, tariff sheets in compliance with GISB for its ongoing operations in Docket No. RP97–90, *et al.*, see letter order of July 3, 1997.

the procedure herein provided for, unless otherwise advised, it will be unnecessary for Algonquin LNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–20118 Filed 7–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2414–000]

Lowell Congeneration Company Limited Partnership; Notice of Issuance of Order

July 28, 1997.

Lowell Cogeneration Company Limited Partnership (Lowell) filed an application seeking Commission authorization to engage in the wholesale sale of electric energy and capacity at market-based rates, and for certain waivers and authorizations. In particular, Lowell requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Lowell. On July 17, 1997, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's July 17, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Lowell 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 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Lowell is hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Lowell, compatible with the public interest, and reasonably necessary or appropriate for such purpose.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Lowell's issuances of securities or assumptions of liabilities.* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 18, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–20145 Filed 7–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–73–007]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 25, 1997.

Take notice that on July 22, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheet listed below to be effective May 1, 1997.

Substitute First Revised Sheet No. 126.

MRT states that this tariff sheet is filed to correct First Revised Sheet No. 126 which due to an oversight, did not include Section 8.3(a) on the final tariff copy. This section was included on the red-lined copy but was inadvertently left off the final tariff sheet which was filed on October 31, 1996 in compliance with Order No. 587.

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 18 CFR 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. 97–20125 Filed 7–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–426–000]

Nautilus Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

July 25, 1997.

Take notice that on July 23, 1997, Nautilus Pipeline Company, LLC (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A to the filing, to become effective October 1, 1997.

Nautilus states that the purpose of this filing is to comply with order Nos. 582 & 582–A, issued September 28, 1995 in Docket No. RM95–3, in which the Commission revised, reorganized and updated its regulations governing the form composition, and filing of rates and tariffs for interstate pipeline companies. Specifically Nautilus indicates the tendered tariff sheets revise its tariff to:

(1) Expand the table of contents to include the sections of the general terms and conditions in accordance with Section 154.104;

(2) Add a statement to Nautilus' general terms and conditions for periodic reports in accordance with Section 154.502; and

(3) Change the rates to reflect a thermal unit in accordance with Section 154.107(b).

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, NE., Washington DC 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions and protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. 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. 97–20127 Filed 7–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–306–003]

Paiute Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 25, 1997.

Take notice that on July 22, 1997, Paiute Pipeline Company (Paiute) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Sixth Revised Sheet No. 10. Paiute requests that the tendered tariff sheet be accepted for filing to become effective August 1, 1997.

Paiute states that the purpose of its filing is to place into effect an interim annual rate reduction of $3,423,656 while the Commission considers a settlement offer filed by Paiute on July 1, 1997 in this general rate proceeding. Paiute indicates that as a result of its original rate change filing in this proceeding, Paiute is presently collecting motion rates, subject to refund, pending the outcome of a hearing. Paiute states, however, that its settlement offer would resolve all issues in this proceeding, and that it believes that the settlement offer is uncontested. Paiute proposes in the instant filing to reduce its rates to the settlement rate levels, on an interim basis, pending the Commission's decision on the settlement offer.

In the event that the settlement offer is not approved or made effective pursuant to its terms, Paiute requests the right to terminate the interim rate reduction on thirty days' notice and resume collection of its motion rates during the pendency of this proceeding. Paiute states that it will not seek permission to recover from its customers the difference between the motion rats and the interim reduced rates for the period that the interim reduced rates are in effect.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–20124 Filed 7–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2875–000]

Penobscot Bay Energy Company, L.L.C.; Notice of Issuance of Order

July 28, 1997.

Penobscot Bay Energy Company, L.L.C. (PBEC) submitted for filing a rate schedule under which PBEC will engage in wholesale electric power and energy transactions as a marketer. PBEC also requested waiver of various Commission regulations. In particular, PBEC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by PBEC.

On July 21, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by PBEC should file a motion to intervene 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 385.214).

Absent a request for hearing within this period, PBEC is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of PBEC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions, to intervene or protests, as set forth above, is August 20, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE. Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–20147 Filed 7–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–655–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authority

July 25, 1997.

Take notice that on July 21, 1997, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP97–614–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to add an interconnect with Badger Oil Company (Badger), located in Terrebonne Parish, Louisiana, under Texas Gas' certificate issued in Docket No. CP82–407–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas proposes to modify an existing receipt point, which consists of a dual 2-inch meter run and electronic measurement equipment, to provide bidirectional measurement capability in order to provide gas lift service requested by Badger. Texas Gas states this existing point is located on their Bay Junop-Bay Round 8-Inch Line, at Pass Wilson platform, Ship Shoal Block 41, Offshore Louisiana.

Texas Gas states that Badger will reimburse them in full for the cost of the facilities to be installed by Texas Gas, which cost is estimated to be $11,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a

protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–20119 Filed 7–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3665–000]

Union Electric Company; Notice of Filing

July 25, 1997.

Take notice that on July 8, 1997, Union Electric Company (UE) filed with the Federal Energy Regulatory Commission an application for authority to charge market based rates and for certain waivers and authorizations. UE requested waiver of notice to permit its proposed rate schedule to become effective on July 9, 1997, one day after the date of filing.

[FR Doc. 97–20121 Filed 7–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3663–000]

Union Electric Development Corporation; Notice of Filing

July 25, 1997.

Take notice that on July 8, 1997, Union Electric Development Corporation (UEDC) filed with the Federal Energy Regulatory Commission an application for authority to charge market based rates and for certain waivers and authorizations. UEDC requested waiver of notice to permit its proposed rate schedule to become effective on July 9, 1997, one day after the date of filing.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 August 6, 1997. 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. 97–20120 Filed 7–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3306–000]

UTIL Power Marketing, Inc.; Notice of Issuance of Order

July 28, 1997.

UTIL Power Marketing, Inc. (UTIL) submitted for filing a rate schedule under which UTIL will engage in wholesale electric power and energy transactions as a marketer. UTIL also requested waiver of various Commission regulations. In particular, UTIL requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by UTIL.

On July 22, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by UTIL 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 385.214).

Absent a request for hearing within this period, UTIL is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of UTIL's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 21, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street NE, Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–20148 Filed 7–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–423–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 25, 1997.

Take notice that on July 21, 1997, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 452, to become effective August 20, 1997.

WNG states that the purpose for the instant filing is to amend Exhibit A to the Form of Storage Service Agreement Under Rate Schedule FSS. Service under Rate Schedule FSS is available to parties who have an effective ITS, FTS, or SFT Service Agreement. When WNG filed its Form of Service Agreement for FSS, it inadvertently omitted from Exhibit A the line for referencing the associated transportation agreement(s). WNG is making this filing to correct this omission.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–20126 Filed 7–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2532–000 and ER97–2904–000]

Zond Development Corporation and Zond Minnesota Development Corporation II; Notice of Issuance of Order

July 28, 1997.

Zond Development Corporation (Zond) and Zond Minnesota Development Corporation II (Zond Minnesota) are subsidiaries of Enron Corporation and are now affiliated with Portland General Electric Company. Zond and Zond Minnesota have filed applications requesting that the Commission authorize them to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Zond and Zond Minnesota requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Zond and Zond Minnesota. On July 17, 1997, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceedings.

The Commission's July 17, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (F), (G), and (I):

(F) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Zond and Zond Minnesota 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 385.214.

(G) Absent a request to be heard within the period set forth in Ordering Paragraph (F) above, Zond and Zond Minnesota are hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Zond and Zond Minnesota, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(I) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Zond's and Zond Minnesota's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 18, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–20146 Filed 7–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG97–80–000, et al.]

CEA Bhilai Energy Company Ltd., et al.; Electric Rate and Corporate Regulation Filings

July 22, 1997.

Take notice that the following filings have been made with the Commission:

1. CEA Bhilai Energy Company Ltd.

[Docket No. EG97–80–000]

On July 15, 1997, CEA Bhilai Energy Company Ltd. (CBEC), with its principal office at 608 St. James Court, St. Denis Street, Port Louis, Mauritius 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.

CBEC is a company organized under the laws of Mauritius. CBEC will be engaged, directly or indirectly through an Affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating a coal-fired generating facility constituting of two electric generating units, each with a nameplate rating of approximately 287 megawatts and incidental facilities located in Madhya Pradesh, India and to engage in project development activities with respect thereto.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Cincinnati Gas & Electric Company and PSI Energy, Inc.

[Docket No. EC93–6–004]

Take notice that on July 10, 1997, the Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI) tendered for filing a motion requesting authority to defer for 24 months the date by which a new 345 kV transmission line must be constructed pursuant to a condition of the Commission's approval of the merger of PSI and CG&E.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. ROXDEL

[Docket No. ER97–3556–000]

Take notice that on July 1, 1997, ROXDEL, tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for order accepting rate schedule for power sales at market-based rates. ROXDEL requests waiver of the 60-day filing requirements and requests that its FERC Electric Rate Schedule No. 1 be accepted as of July 2, 1997.

A copy of this filing has been served on the New York State Public Service Commission.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Illinois Power Company

[Docket No. ER97–3558–000]

Take notice that on July 1, 1997, Illinois Power Company (IP), tendered for filing a Service Agreement and Network Operating Agreement under which it will provide Network Integration Service to The Cincinnati Gas & Electric Company (CG&E), an Ohio Corporation, PSI Energy, Inc. (PSI), an Indiana corporation, (collectively Cinergy Operating Companies) and Cinergy Services, Inc. (Cinergy Services), a Delaware Corporation, as agent for and on behalf of the Cinergy Operating Companies (Cinergy). Service will be provided in accordance to IP's Open Access Transmission Tariff on file with the Commission. Illinois Power and Cinergy are requesting an effective date as of 6/1/97.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corporation

[Docket No. ER97–3559–000]

Take notice that on July 1, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission executed form Service Agreements between NMPC and multiple parties (Purchasers). The Service Agreements specify that the Purchasers have signed on to and have agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and the Purchasers to enter into separately scheduled transactions under which NMPC will sell to the Purchasers capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence for each Purchaser.

NMPC is : (a) Generally requesting an effective date of July 1, 1997, for the agreements, and (b) requesting waiver of the Commission's notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission, and the companies included in a Service List enclosed with the filing.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Company Services, Inc.

[Docket No. ER97–3560–000]

Take notice that on July 1, 1997, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed a Letter Agreement extending, through August 31, 1997, certain transmission service agreements between the Tennessee Valley Authority and Alabama Power Company.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER97–3561–000]

Take notice that on July 1, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing amendments to its Power Sales Tariff dated June 24, 1994, as amended, forms of Service Agreement and Service Specifications, and an amendment to the Standards of Conduct filed on January 3, 1997 in Docket No. OA97–439–000. The amendments provide for the sale of energy and capacity at market rates, and for the resale of transmission rights. Virginia Power requests waiver of any regulations that may be required to permit these amendments to become effective on August 31, 1997, sixty (60) days from today.

Comment date: Agusut 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER97–3562–000]

Take notice that on July 1, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and CMS Marketing, Services and Trading Company.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER97–3563–000]

Take notice that on July 1, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Cajun Electric Power Cooperative, Inc.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER97–3564–000]

Take notice that on July 1, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and the City of Osceola, Arkansas for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Central Power and Light Company; West Texas Utilities Company; Public Service Company of Oklahoma; Southwestern Electric Power Company

[Docket No. ER97–3565–000]

Take notice that on July 1, 1997, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the ''CSW Operating Companies'') submitted for filing service agreements under which the CSW Operating Companies will provide transmission and ancillary services to Electric Clearinghouse, Inc. (ECI), Equitable Power Services Company (Equitable) and Cinergy Services, Inc. (Cinergy), PSI Energy, Inc. (PSI) and The Cincinnati Gas & Electric Company (CG&E) in accordance with the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that a copy of this filing has been served on ECI, Equitable, Cinergy, PSI and CG&E.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Minnesota Power & Light Company

[Docket No. ER97–3566–000]

Take notice that on July 7, 1997, Minnesota Power & Light Company (MP), tendered for filing signed Service Agreements with Madison Gas & Electric Company, PacifiCorp Power Marketing, Inc., Williams Energy Services Company, and WPS Energy Services, Inc., under MP's market-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER97–3567–000]

Take notice that on July 1, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and MidCon Power Services Corp. (MidCon).

Cinergy and MidCon are requesting an effective date of June 30, 1997.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Central Illinois Light Company

[Docket No. ER97–3568–000]

Take notice that on July 1, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and a service agreement for one new customer.

CILCO requested an effective date of June 1, 1997.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Kentucky Utilities Company

[Docket No. ER97–3569–000]

Take notice that on July 1, 1997, Kentucky Utilities Company (KU), tendered for filing service agreements between KU and East Kentucky Power Cooperative, CMS Marketing, Services and Trading and The Utility-Trade Corporation under its Transmission Services (TS) Tariff and with The Utility-Trade Corporation under its Power Services (PS) Tariff.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. The Washington Water Power Company

[Docket No. ER97–3570–000]

Take notice that on June 30, 1997, The Washington Water Power Company, tendered for filing a 120-day Interim Extension Agreement to the Mid-Columbia Hourly Coordination Agreement dated July 1, 1987.

A copy of this filing has been mailed to each of the parties to the Mid-Columbia Hourly Coordination Agreement.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Northern States Power Company (Minnesota Company)

[Docket No. ER97–3571–000]

Take notice that on June 30, 1997, Northern States Power Company (Minnesota) (NSP), tendered for filing an Agreement dated June 10, 1997, between NSP and the City of Shakopee (City). In a previous agreement dated March 26, 1997, between the two parties, City agreed to continue paying NSP the current wholesale distribution substation rate of $0.47/kW-month until June 30, 1997. Since the March 26, 1997, agreement has terminated, this new Agreement has been executed to continue the current wholesale distribution substation rate of $0.47/kW-month until June 30, 1998.

NSP request the Agreement be accepted for filing effective July 1, 1997, and requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Washington Water Power

[Docket No. ER97–3572–000]

Take notice that on June 30, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed Service Agreements under WWP's FERC Electric Tariff Original Volume No. 9. WWP requests waiver of the prior notice requirement and requests an effective date of June 1, 1997.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER97–3573–000]

Take notice that on June 30, 1997, the PJM Interconnection, L.L.C. (PJM) filed, on behalf of the Members of the LLC, membership applications of AYP Energy, Inc., Enron Power Marketing, Inc., and Northeast Utilities Service Company. PJM requests an effective date of June 28, 1997.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Boston Edison Company

[Docket No. ER97–3575–000]

Take notice that on June 30, 1997, and amended on July 9, 1997, Boston Edison Company of Boston, Massachusetts tendered a rate schedule for the sale of capacity from its entitlements in the generating units respectively owned by Ocean State Power and Ocean State Power II to the New England Power Pool participants. Boston Edison asks for a July 1, 1997, effective date.

Boston Edison states that it has served copies of its filing on the affected customer and the Massachusetts Department of Public Utilities.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Southwestern Public Service Company

[Docket No. ER97–3576–000]

Take notice that on June 30, 1997, Southwestern Public Service Company (Southwestern) submitted a Rate Schedule for Sale, Assignment, or Transfer of Transmission Rights (Rate Schedule). The Rate Schedule will allow Southwestern to resell transmission rights in accordance with Order Nos. 888 and 888–A.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Pennsylvania Power & Light Co.

[Docket No. ER97–3577–000]

Take Notice that on June 30, 1997, Pennsylvania Power & Light Company (PP&L), tendered for filing an application for membership in the Western System Power Pool.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. East Texas Electric Cooperative, Inc.

[Docket No. ER97–3578–000]

Take notice that on June 30, 1997, East Texas Electric Cooperative, Inc. (ETEC), tendered for filing a proposed amendment to the Wholesale Power Contract dated June 24, 1993 between ETEC and Northeast Texas Electric Cooperative, Inc. (NTEC). The proposed amendment reflects the assignment by NTEC to ETEC of NTEC's rights and obligations under the Unit Power Sales Agreement between NTEC and Entergy Power, Inc., dated January 22, 1992.

Copies of the filing were served on the public utility's customers, and the Public Utility Commission of Texas.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Minnesota Power & Light Company

[Docket No. ER97–3579–000]

Take notice that on July 1, 1997, Minnesota Power & Light Company (MP), tendered for filing signed Service Agreements with Madison Gas & Electric Company and Williams Energy Services Company under MP's cost-based Wholesale Coordination Sales Tariff WCS–1 to satisfy its filing requirements under this tariff.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. New England Power Company

[Docket No. ER97–3582–000]

Take notice that on July 2, 1997, New England Power Company filed:

(i) An agreement between Ocean State Power (OSP) and the corporate entities that are participants in the New England Power Pool (NEPOOL);

(ii) An agreement between Ocean State Power II (OSP II) and the corporate entities that are participants in NEPOOL;

(iii) An agency agreement among OSP and the Ocean State Unit I purchasers; and

(iv) An agency agreement among OSP II and the Ocean State Unit II purchasers.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. GS Electric Generating Coop., Inc.

[Docket No. ER97–3583–000]

Take notice that on July 2, 1997, GS Electric Generating Cooperative, Inc. (GSE), tendered for filing an initial rate schedule and request for certain waivers and authorizations pursuant to 35.12 of the Commissions's regulations. The initial rate schedule provides for the sale of the output of GSE's ownership share of the Mustang Station, a generation unit to be located near Denver City, Texas, to Golden Spread Electric Cooperative, Inc. (Golden Spread). GSE requests the Commission to set an effective date for the rate schedule on the date of commercial operation of the Mustang Station which is estimated to be the fourth quarter of 1998.

Copies of the filing were served upon GSE's jurisdictional customer, Golden Spread, and Golden Spread's eleven member distribution cooperatives. A copy of the filing was also served upon the Public Utility Commission of Texas.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Southern California Edison Company

[Docket No. ER97–3584–000]

Take notice that on July 2, 1997, Southern California Edison Company (Edison), tendered for filing an executed umbrella Service Agreement (Service Agreement) with the City of Vernon, for Short-Term Firm Point-To-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff).

Edison filed the executed Service Agreements with the Commission in compliance with applicable Commission regulations. Edison also submitted revised Sheet Nos. 165 and 166 (Attachment E) to the Tariff, which is an updated list of all current subscribers. Edison requests waiver of the Commission's notice requirement to permit an effective date of July 3, 1997 for Attachment E, and to allow the Service Agreement to become effective according to its terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Montaup Electric Company

[Docket No. ER97–3600–000]

Take Notice that on July 3, 1997, Montaup Electric Company (Montaup) tendered for filing the following documents:

1. An agreement between Ocean State Power (OSP), as agent for Montaup, Boston Edison Company (BECO) and New England Power Company (NEP) and the Participants in the New England Power Pool (NEPOOL).

2. An agreement between Ocean State Power II (OSPII), as agent for Montaup, BECO and NEP and the Participants in NEPOOL.

3. An agency agreement between OSP, on the one hand, and Montaup, BECO and NEP, on the other hand.

4. An agency agreement between OSPII, on the one hand, and Montaup, BECO and NEP, on the other hand.

According to Montaup, the purpose of the agreements is to allow the sale of incremental power to be produced by the two Ocean State Power units to NEPOOL Participants in order to enable NEPOOL to avoid a capacity shortage during the summer season of 1997. Montaup has asked the Commission for a waiver to permit the agreements to take effect on July 1, 1997.

Comment date: August 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Pacific Gas and Electric Company

[Docket No. OA97–619–000]

Take notice that on July 11, 1997, Pacific Gas and Electric Company (PG&E) tendered for filing a Revised Open Access Transmission Tariff in compliance with FERC Order No. 888–A. PG&E proposes that this Tariff, as may be subject to refund or otherwise, become effective on July 11, 1997. PG&E is requesting any necessary waivers.

Copies of this filing have been served upon the California Public Utilities Commission and all other parties listed in the official Service List complied by the Federal Energy Regulatory Commission (Commission) in Docket No. OA96–28–000.

Comment date: August 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Carolina Power & Light Company

[Docket No. OA97–620–000]

Take notice that on July 10, 1997, Carolina Power & Light Company (CP&L) tendered for filing compliance revisions to its Open Access Transmission Tariff as required by Order No. 888–A.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: August 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. New England Power Company

[Docket No. OA97–621–000]

Take notice that on July 11, 1997, New England Power Company (NEP) tendered for filing a compliance tariff, pursuant to Commission Order No. 888–A. NEP made the filing on behalf of itself and its four retail affiliates.

Comment date: August 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Northwestern Public Service Company

[Docket No. OA97–622–000]

Take notice that Northwestern Public Service Company (NWPS) on July 10, 1997, tendered for filing NWPS's FERC Open Acess Transmission Tariff as required by Order No. 888–A.

Copies of the filing were served upon NWPS's wholesale electric customers, interested public bodies, and all parties previously requesting copies.

Comment date: August 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Concord Electric Company

[Docket No. OA97–623–000]

Take notice that on July 10, 1997, Concord Electric Company filed original and revised tariff sheets to its open access transmission tariff to comply with FERC Order No. 888–A. Concord Electric Company states that it has served copies of its filing on the New Hampshire Public Utilities Commission and all parties listed on the official service list in Concord Electric Company's original open access transmission tariff proceeding, Docket No. OA97–5–000. In addition, Concord Electric Company states that as of the date of its filing, it had no transmission customers under its open access transmission tariff.

Comment date: August 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Northeast Utilities Service Company

[Docket No. OA97–630–000]

Take notice that on July 11, 1997, Northeast Utilities Service Company (NUSCO) on behalf of the Northeast Utilities (NU) System Companies, tendered for filing revised standards of conduct to satisfy the requirements of the Commission's Order No. 889–A.

Comment date: August 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Puget Sound Energy, Inc.

[Docket No. OA97–631–000]

Take notice that on July 10, 1997, Puget Sound Energy, Inc. tendered for filing Second Revision Sheets to its Open Access Transmission Tariff, FERC Electric, Original Vol. 7.

Comment date: August 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Exeter & Hampton Electric Co.

[Docket No. OA97–634–000]

Take notice that on July 11, 1997, Exeter & Hampton Electric Company filed original and revised tariff sheets to its open access transmission tariff to comply with FERC Order No. 888–A. Exeter & Hampton Electric Company states that it has served copies of its filing on the New Hampshire Public Utilities Commission and all parties listed on the official service list in Exeter & Hampton Electric Company's original open access transmission tariff proceeding, Docket No. OA97–4–000. In addition, Exeter & Hampton Electric Company states that as of the date of its filing, it had no transmission customers under its open access transmission tariff.

Exeter & Hampton requests an effective date of July 11, 1997, for the proposed tariff sheets.

Comment date: August 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. The United Illuminating Company

[Docket No. OA97–640–000]

Take notice that on July 11, 1997, The United Illuminating Company (UI) tendered for filing proposed changes to its Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4 (Tariff) to comply with the Commission's changes to the pro forma tariff contained in Order No. 888–A, 62 Fed. Reg. 12,274 (March 4, 1997), FERC Stats. & Regs. ¶31,048 (1997), reh'g__pending. In this filing, UI also proposes changes to update the index in the Tariff of point-to-point transmission services customers.

UI served a copy of this filing upon all persons listed on the official service list compiled by the Secretary in Docket No. OA96–171–000, upon the current customers under the Tariff, and upon the Connecticut Department of Public Utility Control and McCallum Enterprises I Limited Partnership.

Comment date: August 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Tampa Electric Company

[Docket No. OA97–642–000]

Take notice that on July 14, 1997, Tampa Electric Company (Tampa Electric) filed a revised open access transmission tariff in compliance with Order No. 888–A, the Commission's Order on Rehearing in Docket Nos. RM95–8–000 and RM94–7–001. Tampa Electric included in the revised tariff certain changes to the Available Transmission Capability provisions directed by the Commission in its omnibus order of January 29, 1997 in American Electric Power Service Corp., Docket No. OA96–183–000, et al., and provisions intended to conform Tampa Electric's scheduling procedures with regional/historical practices.

Tampa Electric proposes that the revised tariff be made effective on May 3, 1997, and, to the extent necessary, requests waiver of the Commission's notice requirement.

Copies of the filing have been served on the customers under Tampa Electric's preexisting open access transmission tariff and the intervenors in Docket No. OA96–116–000, Tampa Electric's prior open access tariff docket, as well as the Florida Public Service Commission.

Comment date: August 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Virginia Electric and Power Company

[Docket No. OA97–644–000]

Take notice that on July 14, 1997 Virginia Electric and Power Company tendered for filing a Compliance Tariff pursuant to Order No. 888–A.

Comment date: August 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Consolidated Edison Company

[Docket No. OA97–646–000]

Take notice that on July 14, 1997, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing its revised open access transmission tariff (the Tariff) in compliance with the Commission's Order No. 888A.

Con Edison states that a copy of this filing has been served by mail to all parties included on the service list in the above docket and the New York State Public Service Commission.

Comment date: August 15, 1997, 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. 97–20027 Filed 7–30–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL97–45–000, et al.]

Southwestern Electric Power Company, et al.; Electric Rate and Corporate Regulation Filings

July 25, 1997.

Take notice that the following filings have been made with the Commission:

1. Southwestern Electric Power Company

[Docket No. EL97–45–000]

Take notice that on July 7, 1997, Southwestern Electric Power Company tendered for filing a Petition for Waiver of Fuel Clause Regulations.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Virginia Electric and Power Company

[Docket No. ER97–3561–000]

Take notice that on July 16, 1997, Virginia Electric and Power Company

(Virginia Power), tendered for filing an amendment in the above-referenced docket.

Comment date: August 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Interstate Power Company

[Docket No. ER97–3586–000]

Take notice that on July 1, 1997, Interstate Power Company (IPW) tendered for filing Revised Exhibit C of the Transmission Utilization Agreement between IPW and Cooperative Power Association (CPA) (FERC Rate Schedule No. 131). Exhibit C contains the interconnection points between IPW and CPA.

Comment date: August 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. The Toledo Edison Company

[Docket No. ER97–3587–000]

Take notice that on July 2, 1997, The Toledo Edison Company (TE) filed an Electric Power Service Agreement between TE and Virginia Electric & Power Company.

Comment date: August 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Pool

[Docket No. ER97–3599–000]

Take notice that on July 3, 1997, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Indeck Maine Energy, L.L.C. (Indeck Maine). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit Indeck Maine to join the over 120 Participants that already participate in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Indeck Maine a Participant in the Pool. NEPOOL requests an effective date on or before August 1, 1997, or as soon as possible thereafter for commencement of participation in the Pool by Indeck Maine.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Sierra Pacific Power Company

[Docket No. ER97–3601–000]

Take notice that on July 3, 1997, Sierra Pacific Power Company, tendered for filing a refund report in compliance with the directive of the May 28, 1997 order in the above-captioned docket that approved a settlement that established rates for services Sierra renders under its open-access transmission tariff.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Company

[Docket No. ER97–3602–000]

Take notice that on July 3, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreement to provide Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with Public Service of New Mexico (PNM).

A copy of this filing has been served on PNM, the New Mexico Public Service Commission and the Arizona Corporation Commission.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Duquesne Light Company

[Docket No. ER97–3603–000]

Take notice that on July 3, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated June 24, 1997 with PECO Energy Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds PECO Energy Company as a customer under the Tariff. DLC requests an effective date of June 24, 1997 for the Service Agreement.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER97–3604–000]

Take notice that on July 3, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Southern Energy Trading and Marketing, Inc. (Southern Energy).

Cinergy and Southern Energy are requesting an effective date of July 1, 1997.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Bangor Hydro-Electric Company

[Docket No. ER97–3605–000]

Take notice that on July 3, 1997, Bangor Hydro-Electric Company filed an unexecuted service agreement for non-firm point-to-point transmission service with the NEPOOL Participants.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Company

[Docket No. ER97–3606–000]

Take notice that on July 3, 1997, Florida Power & Light Company filed executed Service Agreements with Energy Services, Inc. and NP Energy Inc. for service pursuant to Tariff No. 1 for Sales of Power and Energy by Florida Power & Light. FPL requests that each Service Agreement be made effective on June 16, 1997.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Pacific Gas and Electric Company

[Docket No. ER97–3607–000]

Take notice that on July 3, 1997, Pacific Gas and Electric Company (PG&E), tendered for filing; (1) an agreement dated as of June 17, 1997, by and between PG&E and PacifiCorp entitled Service Agreement for Firm Point-to-Point Transmission Service (Service Agreement); and (2) a request for termination of this Service Agreement.

The Service Agreement was entered into for the purpose of firm point-to-point transmission service for 80 MW of power delivered to PacifiCorp at PG&E's Midway Substation. The effective date of termination is either the requested date shown below or such other date the Commission deems appropriate for termination.

Service agreement	Term	Requested effective date for termination
Service Agreement No. ____ under FERC Electric Tariff, Original Volume No. 3	June 3, 1997 through June 30, 1997	June 30, 1997.

Copies of this filing have been served upon the California Public Utilities Commission and PacifiCorp.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. South Carolina Electric & Gas Company

[Docket No. ER97–3608–000]

Take notice that on July 3, 1997, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement establishing NorAm Energy Services, Inc. (NORAM) as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon NORAM and the South Carolina Public Service Commission.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Central Illinois Public Service Company

[Docket No. ER97–3609–000]

Take notice that on July 3, 1997, Central Illinois Public Service Company (CIPS), submitted a Service Agreement, dated June 25, 1997, establishing NP Energy Inc. as a customer under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of June 25, 1997 for the service agreement and the revised Index of Customers. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon NP Energy Inc. and the Illinois Commerce Commission.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Northeast Utilities Service Company

[Docket No. ER97–3610–000]

Take notice that on July 3, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide Non-Firm Point-to-Point Transmission Service to the New England Power Pool under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to the New England Power Pool.

NUSCO requests that the Service Agreement become effective June 15, 1997.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Puget Sound Energy, Inc.

[Docket No. ER97–3611–000]

Take notice that on June 16, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing an Amended Service Agreement for Firm Point-To-Point Transmission Service (Service Agreement) with MP Energy as Transmission Customer. A copy of the filing was served upon MP Energy.

The Amended Service Agreement is for firm point-to-point transmission service.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Northeast Utilities Service Company

[Docket No. ER97–3613–000]

Take notice that on July 7, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Orange and Rockland, Inc., under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to the Orange and Rockland, Inc.

NUSCO requests that the Service Agreement become effective July 3, 1997.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Northeast Utilities Service Company

[Docket No. ER97–3614–000]

Take notice that on July 7, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Orange and Rockland, Inc., under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to Orange and Rockland, Inc.

NUSCO requests that the Service Agreement become effective July 3, 1997.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Houston Lighting & Power Company

[Docket No. ER97–3615–000]

Take notice that on July 7, 1997, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with Williams Energy Services Company (Williams) for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Second Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of July 7, 1997.

Copies of the filing were served on Williams and the Public Utility Commission of Texas.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Northeast Utilities Service Company

[Docket No. ER97–3617–000]

Take notice that on July 7, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with the ProMark Energy, under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the ProMark Energy.

NUSCO requests that the Service Agreement become effective June 3, 1997.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Kansas City Power & Light Company

[Docket No. ER97–3620–000]

Take notice that on July 7, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated June 12, 1997, between KCPL and Western Farmers Electric Cooperative. KCPL proposes an effective date of June 21, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888 in Docket No. OA96–4–000.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Kansas City Power & Light Company

[Docket No. ER97–3621–000]

Take notice that on July 7, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated June 10, 1997, between KCPL and CMS Marketing, Services and Trading. KCPL proposes an effective date of June 21, 1997, and requests waiver of the Commission's notice requirement. This Agreement

provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888 in Docket No. OA96–4-000.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Southern Company Services, Inc.

[Docket No. ER97–3622–000]

Take notice that on July 7, 1997, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed a service agreement for network integration transmission service between SCS, as agent for Southern Companies, and Southern Wholesale Energy, a Department of SCS, as agent for Mississippi Power Company, under Part III of the Open Access Transmission Tariff of Southern Companies.

Comment date: August 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Houston Lighting & Power Company

[Docket No. ER97–3616–000]

Take notice that on July 7, 1997, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with NGTS Energy Services (NGTS) for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Second Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of July 7, 1997.

Copies of the filing were served on NGTS and the Public Utility Commission of Texas.

Comment date: August 8, 1997, 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. 97–20241 Filed 7–30–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–133]

Grand River Dam Authority; Notice of Availability of Final Environmental Assessment

July 25, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has prepared a final environmental assessment (FEA) for an application for approval of a marina expansion. Grand River Dam Authority proposes to permit Mr. Terry Frost, d/b/a Cherokee Yacht Club, to expand an existing marina on Grand Lake's Duck Creek. Cherokee Yacht Club requests permission to add two covered docks containing 53 boat slips to an existing marina consisting of 134 slips and 2 gas docks. The proposal would bring the total number of slips to 187. In the FEA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action significantly affecting the quality of the human environment. The Pensacola Project is on the Grand River, in Craig, Delaware, Mayes, and Ottawa counties, Oklahoma.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for review at the Commission's Reference and Information Center, Room 2–A, 888 First Street, NE, Washington, DC 20426. Additional informational can be obtained by calling the project manager, John Estep, at (202) 219–2654.

Lois D. Cashell,

Secretary.

[FR Doc. 97–20122 Filed 7–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters

July 25, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Non-Project Use of Project Lands and Waters.

b. Project Name and No: Catawba-Wateree Project, FERC Project No. 2232–331.

c. Date Filed: August 9, 1996, and supplemented on May 29, 1997.

d. Applicant: Duke Power Company.

e. Location: Mecklenburg, North Carolina Overlook Subdivision on Mountain Island Lake near Charlotte.

f. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. Applicant Contact: Mr. E.M. Oakley, Duke Power Company, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

h. FERC Contact: Brian Romanek, (202) 219–3076.

i. Comment Date: September 18, 1997.

j. Description of the filing: Duke Power Company proposes to grant an easement of 5 acres of project land to Overlook Properties, Inc. to construct a private residential marina consisting of 180 boat slips. The proposed marina would provide access to the reservoir for residents of the Overlook Subdivision. The proposed marina facility would consist of an access ramp and floating slips. The slips would be anchored by using self-driving piles. In addition, an area 0.86 acre in size would be excavated to improve the water depth for boat access. About 8,800 cubic yards of material would be removed.

k. This notice also consists of the following standard paragraphs: B, C1, 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, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–20123 Filed 7–30–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5866–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request for the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR) Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following continuing Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Information Collection Request for 40 CFR part 51 and 52 Prevention of Significant Deterioration and Nonattainment New Source Review: OMB No. 2060–0003, Exp. September 30, 1997. The ICR describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before September 2, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260-2740, and refer to EPA ICR No.1230.09.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which must submit an application for a permit to construct a new source or to modify an existing source of air pollution, permitting agencies which review the permit applications, and members of the public who are due the opportunity to comment on permitting actions.

Title: Information Collection Request for 40 CFR parts 51 and 52 Prevention of Significant Deterioration and Nonattainment New Source Review: OMB No. 2060–0003, Exp. September 30, 1997. This is a request for extension of a currently approved collection.

Abstract: Part C of the Clean Air Act (Act)—''Prevention of Significant Deterioration,'' and Part D—''Plan Requirements for Nonattainment Areas,'' require all States to adopt preconstruction review programs for new or modified stationary sources of air pollution. Implementing regulations for State adoption of these two New Source Review (NSR) programs into a State Implementation Plan (SIP) are promulgated at 40 CFR 51.160 through 51.166 and appendix S to part 51. Federal permitting regulations are promulgated at 40 CFR 52.21 for PSD areas that are not covered by a SIP program.

In order to receive a construction permit for a major new source or major modification, the applicant must conduct the necessary research, perform the appropriate analyses and prepare the permit application with documentation to demonstrate that their project meets all applicable statutory and regulatory NSR requirements. Specific activities and requirements are listed and described in the Supporting Statement for the ICR.

Permitting agencies, either State, local or Federal, review the permit application to affirm the proposed source or modification will comply with the Act and applicable regulations. The permitting Agency then provides for public review of the proposed project and issues the permit based on its consideration of all technical factors and public input. The EPA, more broadly, reviews a fraction of the total applications and audits the State and local programs for their effectiveness. Consequently, information prepared and submitted by the source is essential for the source to receive a permit, and for Federal, State and local environmental agencies to adequately review the permit application and thereby properly administer and manage the NSR programs.

To facilitate adequate public participation, information that is submitted by sources as a part of their permit application, should generally be a matter of public record. See sections 165(a)(2) and 110(a)(2) (C), (D), and (F) of the Act. Notwithstanding, to the extent that the information required for the completeness of a permit is proprietary, confidential, or of a nature that it could impair the ability of the source to compete in the marketplace, that information is collected and handled according to EPA's policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2). See also section 114(c) of the Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 31, 1996 (61 FR 69090). The comments received are summarized in Appendix H to the Supporting Statement for the ICR, and are responded to in the appropriate sections of the Supporting Statement for the ICR. The Agency also notes that, in order to respond effectively to the comments received, the original expiration date for the existing ICR was extended from March 31, 1997 to September 30, 1997.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is broken down as follows:

Type of permit action	Major PSD	Major part D	Minor
Number of sources	320	590	56,500
Burden Hours per Response:			
Industry	839	577	40
Permitting agency	272	109	30

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Industrial plants, State and Local permitting agencies.

Estimated Number of Respondents: (114,820).

Frequency of Response: (1 per respondent).

Estimated Total Annual Hour Burden: (4,715, 260) hours.

Estimated Total Annualized Cost Burden: $(0).

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses.

Please refer to EPA ICR No.1230.09 and OMB Control No. 2060–0003 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460 and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503

Dated: July 25, 1997.

Joseph Retzer, Director,

Regulatory Information Division.

[FR Doc. 97–20176 Filed 7–30–97; 8:45 am]

BILLING CODE: 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5867–1]

Change in Minimum Oxygen Content Requirement for Reformulated Gasoline

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA's reformulated gasoline (RFG) program contains various standards for RFG, including an oxygen content standard. The current per-gallon minimum standard for oxygen content in RFG is 1.5% by weight. Pursuant to the RFG regulations, EPA is increasing this standard to 1.6% by weight for several of the RFG covered areas, because those areas failed a series of compliance surveys for oxygen content in 1996. This notice announces the increased standard, and describes the covered areas and parties that are subject to the increased standard. The increased standard will help ensure that all covered areas receive the full benefit of the oxygen content requirement in the RFG program.

FOR FURTHER INFORMATION CONTACT: Stuart Romanow, Fuels and Energy Division, Office of Mobile Sources, Environmental Protection Agency, Washington DC (6406J) 202–233–9296.

SUPPLEMENTARY INFORMATION:

I. Regulatory Entities

Regulatory categories and entities potentially affected by this action include:

Category	Examples of affected entities
Industry	Refiners, importers, oxygenate blenders of reformulated gasoline.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could be potentially affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your entity is affected by this action, you should carefully examine the existing provisions at 40 CFR 80.41. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

Section 211(k) of the Clean Air Act requires that EPA establish standards for reformulated gasoline (RFG) to be used in specified ozone nonattainment areas (covered areas). The RFG requirements contain performance standards for reductions of emissions from motor vehicles of ozone forming volatile organic compounds and toxic pollutants.

Standards for RFG are contained in 40 CFR 80.41. Refiners and other parties subject to the standards can choose to comply on either a per-gallon basis or to comply on average. The standards for compliance on average (''averaged standards'') are numerically more stringent than the per-gallon standards. The averaged standards for RFG that apply in 1996 are contained in § 80.41(b). These averaged standards include a per-gallon minimum requirement of 1.5 weight percent oxygen. This per-gallon minimum requirement is in addition to the requirement for 2.1 weight percent oxygen, on average. The average standard for oxygen must be met by a refiner or oxygenate blender for all of the RFG it produced at a refinery or blending facility, or for RFG imported by an importer, but these parties are not required to meet this standard for the RFG supplied to each covered area separately.

Any refiner, importer or oxygenate blender has the option of meeting the RFG standards on average or per gallon. If a party is subject to the averaged standards, then the requirement to conduct surveys, as specified in § 80.68, must be satisfied. In these surveys, RFG samples are collected at retail gasoline stations within covered areas and analyzed to determine if the RFG supplied to each covered area meets certain survey pass/fail criteria specified in § 80.68. An oxygen survey series failure occurs in a covered area if the annual average oxygen content for all of the samples is less than 2.00 weight percent. The purpose of the surveys and the tightened standards which result if a survey is failed is to ensure that averaging over a refiner's entire production as compared to separate averaging for each covered area does not lead to the reduced quality of RFG in any covered area.

Since the implementation of the RFG program in 1995, these surveys have been conducted by the RFG Survey Association, a not-for-profit association of refiners, importers and blenders, using an EPA-approved survey design plan as required in the regulations. By letter dated January 16, 1997, the RFG Survey Association reported to EPA the results of its surveys for 1996, indicating that several survey areas failed to meet the annual average requirements of 2.00% oxygen by weight.[1] After reviewing the data EPA determined that 8 areas did fail the survey series for oxygen content.[2]

The following covered areas failed the oxygen survey series:

1. Philadelphia-Wilmington-Trenton area [§ 80.70(e)]
2. Baltimore, MD area [§ 80.70(g)]

[1] Letter dated January 16, 1997 from Frank C. Lenski, President, RFG Survey Association, to Charles Freed, Director, Fuels and Energy Division, EPA.

[2] Letter dated January 31, 1997 from Charles Freed, EPA, to Frank Lenski, RFG Survey Association. Also see Memorandum dated April 29, 1997 from Stuart Romanow, Mechanical Engineer, Fuels and Energy Division to Charles Freed.

3. Houston-Galveston-Brazoria, TX area [§ 80.70(h)]
4. The Atlantic City, NJ area comprised of [§ 80.70(j)(9):]
   Atlantic County
   Cape May County
5. The Dallas-Fort Worth, TX area comprised of [§ 80.70(j)(13):]
   Collin County
   Dallas County
   Denton County
   Tarrant County
6. Norfolk-Virginia Beach-Newport News (Hampton Roads), VA area comprised of [§ 80.70(j)(14):]
   Chesapeake
   Hampton
   James City County
   Newport News
   Norfolk
   Poquoson
   Portsmouth
   Suffolk
   Virginia Beach
   Williamsburg
   York County
7. Richmond, VA area comprised of [§ 80.70(j)(14):]
   Charles City County
   Chesterfield County
   Colonial Heights
   Hanover County
   Henrico County
   Hopewell
   Richmond
8. Washington D.C. area comprised of [§ 80.70(j)(2),(j)(6),(j)(14):]
   The District of Columbia
   Calvert County, MD
   Charles County, MD
   Frederick County, MD
   Montgomery County, MD
   Prince Georges County, MD
   Alexandria, VA
   Arlington County, VA
   Fairfax, VA
   Fairfax County, VA
   Falls Church, VA
   Loudon County, VA
   Manassas, VA
   Manassas Park, VA
   Prince William County, VA
   Stafford County, VA

The boundaries of the covered areas are described in detail in § 80.70.

Under § 80.41(o), when a covered area fails an oxygen content survey series, the minimum oxygen content requirement for that covered area is made more stringent by increasing the per gallon minimum oxygen content standard for affected RFG subject to the averaging standard by 0.1% . This more stringent requirement applies beginning the year following the year of the failure. Therefore, in this case, the minimum per gallon oxygen content requirement for the above covered areas is increased from 1.5% to 1.6% by weight.

The criteria identifying the refineries, importers and oxygenate blenders subject to adjusted standards are stated in § 80.41(q). In general, adjusted standards apply to RFG that is subject to an averaging standard (''averaged RFG'') that is produced at a refinery or oxygenate blending facility if any averaged RFG from that refinery or facility supplied a failed covered area during 1996, or supplies the covered area during any year that the more stringent standards are in effect. The regulation provides for an exception based on certain volume limits [see 40 CFR § 80.41(q)(1)(iii).]

Thus, if a refiner has elected for a refinery to be subject to the average oxygen standard, and if even a small portion of the RFG produced at the refinery is used in an area subject to an oxygen ratchet, the entire volume of RFG produced at the refinery is subject to the more stringent oxygen standard regardless of which area receives the RFG. This result is true regardless of whether the refinery's gasoline was supplied to the city in question during 1996 or during a year when the more stringent oxygen standard applies.

Under § 80.41(q)(2), the applicability of adjusted standards to imported averaged RFG is specified by the Petroleum Administration for Defense District (PADD) in which the covered area is located and the PADD where the gasoline is imported. The covered areas that had oxygen survey series failures are located in PADDs I and III. Therefore, all RFG imported at facilities located in PADDs I, II, III or IV is subject to the adjusted oxygen standard. The states included in each PADD are identified in § 80.41(r). In addition, if any RFG imported into any other PADD supplies any of the covered areas with oxygen survey failures, the adjusted standard applies to that RFG, as well.

Under § 80.41(q)(3), any gasoline that is transported in a fungible manner by a pipeline, barge or vessel is considered to have supplied each covered area that is supplied with any gasoline by that pipeline, barge or vessel shipment unless the refiner or importer is able to establish that the gasoline it produced or imported was supplied only to a smaller number of covered areas.

Consider, for example, gasoline transported on the Colonial Pipeline, which supplies RFG to several cities that failed the oxygen survey in 1996. If a refinery's RFG was transported by the Colonial Pipeline any time during 1996, or any time during any year when the more stringent oxygen standard applies, the more stringent oxygen standard applies to all RFG produced at the refinery regardless of the market. In addition, there is a presumption that, due to fungible mixing, each refinery's RFG that is transported by the Colonial Pipeline is in part supplied to each city supplied by the Colonial Pipeline. This presumption is rebuttable, but the rebuttal normally would require a refiner to have transported its RFG in a non-fungible manner. Thus, the more stringent standard applies to a refinery whose gasoline is transported on the Colonial Pipeline regardless of whether the refiner takes delivery of RFG in the specific cities that failed the oxygen survey.

The adjusted oxygen standard applies to all averaged RFG produced by a refinery or imported by an importer identified in § 80.41(q). In accordance with § 80.41(p), the effective date of this change is October 29, 1997.

Thus, under § 80.41(p) the more stringent oxygen standard applies at all points of the distribution system beginning on October 29, 1997, including terminals supplying the affected covered areas and retail outlets in the covered areas. If a downstream facility fails to meet the new standard by October 29, 1997, the party who operates the facility would be in violation, as well as each upstream party who supplied that facility. An upstream party who failed to supply RFG meeting the new oxygen standard sufficiently in advance of October 29, 1997 will have caused the violation.

As a result, EPA believes that refiners, importers and oxygenate blenders must begin producing or importing RFG meeting the new oxygen standard sufficiently in advance of October 29, 1997 to ensure all downstream parties have time to transition storage tanks to meet the new standard.

However, EPA believes it may be difficult for all regulated parties to transition to the new oxygen standard by October 29, 1997. As a result, EPA intends to enforce the new oxygen standard in a manner that gives parties additional time. Refiners, importers, and oxygenate blenders will be required to meet the new oxygen standard beginning September 29, 1997. EPA believes this revised date for refinery-level compliance reflects a later date than would be necessary if all parties had to comply by October 29, 1997. In the case of parties other than refiners, importers, oxygenate blenders, retailers and wholesale purchaser-consumers, (e.g., pipelines and terminals supplying gasoline to affected covered areas) EPA will enforce the new oxygen standard

beginning November 28, 1997[3]. In the case of retail outlets and wholesale purchaser-consumer facilities located in the affected covered areas EPA will enforce the new oxygen standard beginning December 29, 1997. EPA intends to initiate a rulemaking to revise § 80.41(p) to reflect the need for additional downstream transition time when a standard is changed.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

Sylvia K. Lowrance,

Assistant Administrator for Enforcement and Compliance Assurance.

[FR Doc. 97–20220 Filed 7–30–97; 8:45 am]

BILLING CODE 6560–50–P

[3] This supersedes the downstream enforcement timing discussed in ''RFG/Anti-Dumping Questions and Answers, November 12, 1996''.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5866–5]

Safe Drinking Water Act State Primary Enforcement Program Revision Approval: New York State

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This Notice announces EPA's approval of a state primary enforcement program revision application from New York State to include the Surface Water Treatment Rule.

DATES: EPA's approval is effective June 3, 1997, except as noted below.

FOR FURTHER INFORMATION CONTACT: Copies of EPA's final determination and response to comments are available for public distribution by writing to USEPA Region II, Division of Environmental Planning and Protection, 290 Broadway, 28th Floor, New York, New York, 10007–1866, ATTN: NYC Watershed Team or by calling (212) 637–3519.

SUPPLEMENTARY INFORMATION: On June 29, 1989, EPA promulgated the Surface Water Treatment Rule (SWTR), 40 CFR part 141, subpart H under authority of the Safe Drinking Water Act. As prescribed under 40 CFR 142.12, Revision of State Program, states with primary enforcement responsibility (primacy) for the Safe Drinking Water Act (SDWA) must adopt all new and revised national primary drinking water regulations (NPDWRs). States must submit primacy program revision application packages to EPA regions for approval of the program revision. The package must sufficiently demonstrate that the state's revised regulations are no less stringent than the federal regulations and that they are enforceable by the state. If the application meets the requirements of 40 CFR 142.12, it is to be approved by EPA.

On March 11, 1992, the New York State Department of Health (NYSDOH) promulgated its own surface water treatment regulations as part of the State Sanitary Code and, thereafter, applied to EPA for primacy program revision to include these regulations. EPA reviewed the NYSDOH's request to revise its Public Water System Supervision Primacy Program regulations. Based on this review EPA found that the regulations, when compared to the federal SWTR regulations (40 CFR part 141, subpart H), met the standards for approval of primacy program revision set out in 40 CFR part 142, subpart B. The NYSDOH was notified of EPA's initial determination to approve its application in a letter dated July 22, 1993.

In accordance with 40 CFR 142.13 a notice of EPA's initial decision to approve NYSDOH's application was published in the **Federal Register** on July 30, 1993 and in several newspapers of general circulation throughout the State shortly thereafter. The Notices included an opportunity to request a public hearing. A public hearing was requested by The Coalition of Watershed Towns and Putnam County within the allowed 30 day request period. Accordingly, EPA held a public hearing on December 7, 1993. EPA received written and oral comments at the hearing and thereafter. Subsequent to the public hearing, EPA must either affirm or rescind its initial determination by order pursuant to 40 CFR 142.13(f).

A final decision was delayed due to challenges to New York City's proposed promulgation of revised watershed regulations and critical watershed protection programs set forth in EPA's 1993 Filtration Avoidance Determination (FAD) for New York City's Catskill/Delaware water supply system. This led to negotiations between EPA, New York City, New York State, the Coalition of Watershed Towns, several counties and environmental groups over the next two years, causing further delays. The negotiations resulted in the New York City Watershed Memorandum of Agreement (MOA), executed January 21, 1997.

As part of the New York City Watershed Memorandum of Agreement (MOA) signed on January 21, 1997, the State and EPA agreed that EPA will retain SWTR primacy for New York City's Catskill/Delaware water supply system until May 15, 2007. Therefore, EPA's approval of the State's application for SWTR primacy with respect to this system will become effective on May 15, 2007. The reason for EPA retaining primacy during this period is to provide the appropriate oversight of New York City's implementation of the conditions of a Filtration Avoidance Determination which EPA issued on May 6, 1997. This period will allow EPA to continue its work with the City to ensure the City meets the conditions of EPA's Filtration Avoidance Determination. It will also allow time for NYSDOH to strengthen its oversight program for New York City's Catskill/Delaware system. As provided in the Watershed MOA, during this period of EPA retained primacy, EPA and the NYSDOH will work jointly and cooperatively with respect to decisions concerning enforcement of the SWTR as it applies to the Catskill/Delaware system.

Dated: July 14, 1997.

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 97–20175 Filed 7–30–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1181–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–1181-DR), dated July 11, 1997, and related determinations.

EFFECTIVE DATE: July 22, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Michigan, 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 11, 1997:

Genesee County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–20231 Filed 7–30–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1179–DR]

Texas; 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 Texas, (FEMA–1179–DR), dated July 7, 1997, and related determinations.

EFFECTIVE DATE: July 18, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, 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 7, 1997:

Blanco and Hays Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Catherine H. Light,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97–20232 Filed 7–30–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1180–DR]

Wisconsin; 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 Wisconsin (FEMA–1180–DR), dated July 7, 1997, and related determinations.

EFFECTIVE DATE: July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

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 Steve Adukaitis of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Gary Pierson as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–20234 Filed 7–30–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 224–200043–002

Title: Long Beach/Forest Terminals Corporation Terminal Agreement

Parties:

City of Long Beach

Forest Terminals Corporation (''Forest Terminals'')

Synopsis: The amendment covers relinquishment of a portion of the assigned premises and renegotiation of the compensation paid by Forest Terminals.

Agreement No.: 224–201030

Title: Port of New Orleans/Gateway Terminal Services and I.T.O. Corp.

Parties:

Board of Commissioners of the Port of New Orleans (''Port'')

Gateway Terminal Services, L.L.C. (''Gateway'')

I.T.O. Corporation (''I.T.O.'')

Synopsis: The Agreement would authorize Gateway and I.T.O. to jointly lease from the Port 22 acres plus improvements at its Milan Street and Napoleon Ave. ''C'' Wharves for use as a public maritime cargo terminal until June 30, 2000.

Dated: July 25, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–20084 Filed 7–30–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Asian Pacific Logistics, 23202 Audrey Avenue, Torrance, CA 90505, Paul Yoon, Sole Proprietor

Monfrieght, 425 Medford Street, Charlestown, MA 02129, Officers: Peter E. Awezec, President, Frank Lidano, Vice President

Unlimited Express Corporation, 149–15 177th Street, 2nd Floor, Jamaica, NY 11434, Officer: Danny Chi-Shiung Yin

Dated: July 25, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–20113 Filed 7–30–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 97–14]

Notice of Filing of Petition for Declaration Order

In the matter of Surety Bond coverage of non-vessel operating common carrier activities.

Notice is given that a petition for declaratory order has been filed by Intercargo Insurance Company, Inc., seeking that the Federal Maritime Commission terminate a controversy and remove any uncertainty which may exist with respect to: (a) Whether a non-vessel-operating common carrier (''NVOCC'') surety bond covers claims for unpaid freight charges on a shipment when the NVOCC principal to an NVOCC bond acts as a forwarding agent on behalf of a disclosed shipper, and not a as a shipper or common carrier, and (b) whether a surety is entitled to review

a default judgment—or any judgment not defended by the NVOCC or its surety—to determine whether a claim is within the scope of the bond.

Interested persons may inspect and obtain a copy of the petition at the Office of the Secretary, Room 1046, Federal Maritime Commission, 800 North Capital Street, NW., Washington, DC 20573–0001. Interested persons may reply to the petition by submitting an original and 15 copies of the reply to the Secretary, at the above address, on or before August 25, 1997. A copy of the reply also shall be served on petitioner's attorney, Henry P. Gonzalez, Esq., Carlos Rodriguez & Associates, 1710 Rhode Island Ave., NW., Tenth Floor, Washington, DC 20036, and on counsel for Wilhelmsen Lines A/S, Alan Nakazawa, Esq., Williams Wooley Cogswell Nakazawa & Russell, 111 West Ocean Boulevard, Suite 2000, Long Beach, California 90802–4614. Replies shall contain the complete factual and legal presentation of the replying party as to the desired resolution of the petition (See 46 CFR 502.68(d)).

Joseph C. Polking,

Secretary.

[FR Doc. 97–20112 Filed 7–30–97; 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

Editorial Note.—FR document 97–19206 was originally published beginning on page 39242, in the issue of Tuesday, July 22, 1997, it was inadvertently published with incorrect text. The correct text appears below.

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. The notices also will 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 August 6, 1997.

A. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Richard A. Lagomarsino, and Robert J. Lagomarsino, both of Ventura, California, and Catherine S. Wood, Carpinteria, California; acting in concert to acquire an additional .05 percent, for a total of 19.06 percent, of the voting shares of Americorp, Ventura, California, and thereby indirectly acquire American Commercial Bank, Ventura, California.

Board of Governors of the Federal Reserve System, July 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–19206 Filed 7-30-97; 8:45 am]

BILLING CODE 1505-01-F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EDT) August 11, 1997.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, NW., Washington DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the July 14, 1997, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Review of investment policy.

4. Review of Arthur Andersen semiannual financial review.

5. Review of KPMG Peat Marwick audit report: ''Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Withdrawal and Inactive Accounts Operations at the United States Department of Agriculture, National Finance Center.''

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 97–20354 Filed 7–29–97; 12:20 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 761]

Replication and Dissemination of Effective Breast and Cervical Cancer Health Education Interventions

Amendment

A notice announcing the availability of fiscal year (FY) 1997 funds for cooperative agreements for the Replication and Dissemination of Effective Breast and Cervical Cancer Health Education Interventions was published in the **Federal Register** on July 8, 1997, (62 FR 36522). The notice is amended as follows:

On page 36523, first column, under the heading ''Availability of Funds,'' the first two sentences are changed to read: ''Approximately $4.5 million will be available in FY 1997 to fund approximately 10 awards. It is expected that the average award will be approximately $350,000, ranging from $350,000 to $500,000.''

On page 36528, first column, under the heading ''Application Submission and Deadline,'' the date on lines nine and ten is changed to read ''on or before August 20, 1997.''

All other information and requirements of the July 8, 1997, **Federal Register** notice remain the same.

Dated: July 25, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–20137 Filed 7–30–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 789]

Research and Demonstration Programs in Surveillance, Prevention, and Control of Healthcare-Associated Infections and Antimicrobial Resistant Infections

Amendment

A notice announcing the availability of fiscal year (FY) 1997 funds for cooperative agreements for Research and Demonstration Programs in Surveillance, Prevention, and Control of Healthcare-Associated Infections and

Antimicrobial Resistant Infections was published in the **Federal Register** on July 8, 1997, (62 FR 36541). The notice is amended as follows:

On page 36543, under the heading ''Specific Instructions,'' second column, 4. Objectives and Technical Approach, lines three and four have been changed and should read: ''Recipient Activities (A.1.a., A.1.b., A.2., A.3., and A.4.). . . .''

On page 36544, second column, third paragraph, c., line six should read ''Activities A.4.). . . .''

All other information and requirements of the July 8, 1997, **Federal Register** notice remain the same.

Dated: July 25, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–20136 Filed 7–30–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Members on Public Advisory Committees; Blood Products Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations to fill upcoming vacancies on the Blood Products Advisory Committee.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or disabled candidates.

DATES: Nominations should be received on or before August 15, 1997.

ADDRESSES: All nominations for membership should be sent to the appropriate contact person (address below).

FOR FURTHER INFORMATION CONTACT:

All nominations and curricula vitae except for consumer representatives should be submitted in writing to Linda A. Smallwood, Office of Blood Research and Review (HFM–350), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3514.

All nominations and curricula vitae for consumer representatives should be submitted in writing to Annette J. Funn, Office of Consumer Affairs (HFE–88), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations to fill upcoming vacancies on the Blood Products Advisory Committee. The function of the committee is to review and evaluate available data concerning the safety, effectiveness, appropriate use of blood products derived from blood and serum or biotechnology which are intended for use in the diagnosis, prevention, or treatment of human diseases, and, as required, any other product for which FDA has regulatory responsibility. Persons nominated for membership should be among authorities knowledgeable in the fields of clinical and administrative medicine, infectious disease, hematology, immunology, transfusion medicine, surgery, internal medicine, biochemistry, biostatistics, epidemiology, biological and physical sciences, biotechnology, computer technology, sociology/ethics, and other related professions. The membership will also include representatives of consumer organizations, product recipients, and health care providers. The committee will function at times as a medical device panel under the Federal Food, Drug, and Cosmetic Act Medical Device Amendments of 1976.

Nonvoting Consumer and Industry Representation

Section 520(f)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(f)(3)), as amended by the Medical Device Amendments of 1976, provides that each medical device panel include as members one nonvoting representative of consumer interests and one nonvoting representative of interests of the manufacturing industry.

Nomination Procedures

Interested persons may nominate one or more qualified persons for membership on the committee. Self nominations are also accepted. A current curriculum vitae of each nominee should accompany the letter of nomination and include the following information: Full name and title, business address and phone number, home address and phone number, date and place of birth. Nominations shall state that the nominee is willing to serve as a member of the committee and appears to have no conflict of interest that would preclude advisory committee membership. The Commissioner of Food and Drugs will ask the potential candidates to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest. The term of office may not exceed 4 years, depending on the appointment date.

The nomination procedures for the nonvoting consumer representative and industry representative are the same as stated previously with the following exceptions:

Consumer Representatives

To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed. The term of office is up to 4 years.

Industry Representatives

Any organization representing industry interests wishing to participate in the selection of representatives may nominate one or more qualified persons to represent industry interests. Persons who nominate themselves as industry representatives will not participate in the selection process. It is, therefore, recommended that all nominations be made by someone with an organization, trade association, or firm who is willing to participate in the selection process. Nominees shall be full-time employees of firms that manufacture products that would come before the committee, or consulting firms that represent manufacturers. The term of office is up to 4 years.

Selection Procedures

Consumer Representatives

Selection of members representing consumers interests is conducted through procedures which include use of a consortium of consumer organizations which has the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

Industry Representatives

Regarding nominations for members representing the interests of industry, a letter will be sent to each person that has made a nomination, and to those organizations indicating an interest in participating in the selection process, together with a complete list of all such organizations and the nominees. This letter will state that it is the responsibility of each nominator or

organization indicating an interest in participating in the selection process to consult with the others in selecting a single member representing industry interests for the committee within 60 days after receipt of the letter. If no individual is selected within 60 days, the agency will select the nonvoting member representing industry interests.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2), relating to advisory committees.

Dated: July 24, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–20080 Filed 7-30-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Members on Public Advisory Committees; Science Board to the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Science Board to the Food and Drug Administration (the board) administered from FDA's Office of Science. Nominations will be accepted for upcoming vacancies that may or will occur on the board during the next 24 months.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees, and therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or physically disabled candidates. Final selections from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: All nominations must be received by September 2, 1997.

ADDRESSES: All nominations for membership and curricula vitae from academia, industry, and government, except for general public representatives (consumer-nominated members), should be sent to Susan K. Meadows (address below). All nominations for general public representatives (consumer-nominated members) should be sent to Annette J. Funn (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding all nominations for membership, except for general public representatives: Susan K. Meadows, Office of Science (HF–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4591.

Regarding all nominations for general public representatives: Annette J. Funn, Office of Consumer Affairs (HFE–88), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members to serve on the board for upcoming vacancies that may or will occur on the board during the next 24 months.

Function

The function of the board is to provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner of Food and Drugs and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in academia and industry. Additionally, the board provides advice to the agency on keeping pace with technical and scientific evolutions in the field of regulatory science, on formulating an appropriate research agenda and on upgrading its scientific and research facilities to keep pace with these changes. The board also provides the means for critical review of agency-sponsored intramural and extramural scientific research programs.

Criteria for Members

Persons nominated for membership shall have exceptional accomplishments and expertise in science, or executive level experience in scientific programmatic or laboratory management involving scientific endeavors appropriate to the work of the board and the interests of FDA. Disciplines or expertise of particular interest include biomedical technology with application to medical devices, biologics and vaccine development and research, and genetics. The term of office is 4 years.

General Public Representatives (Consumer-nominated Members)

FDA currently attempts to place members on advisory committees who are nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations that has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is up to 4 years, depending on the appointment date. Nominations are invited for consideration for membership as openings become available.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the board. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the board, and appears to have no conflict of interest that would preclude board membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 24, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–20082 Filed 7-30-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F-0305]

Goldschmidt Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Goldschmidt Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of siloxanes and silicones; cetylmethyl, dimethyl, methyl 11-methoxy-11-oxoundecyl as a pigment dispersant in all pigmented polymers intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by September 2, 1997.

ADDRESSES: Submit written comments 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: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4550) has been filed by Goldschmidt Chemical Corp., c/o Keller and Heckman, 1001 G St., NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.3725 *Pigment dispersants* (21 CFR 178.3725) to provide for the expanded safe use of siloxanes and silicones; cetylmethyl, dimethyl, methyl 11-methoxy-11-oxoundecyl as a pigment dispersant in all pigmented polymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 2, 1997, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 11, 1997.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–20079 Filed 7-30-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0299]

International Conference on Harmonisation; Draft Guideline on Ethnic Factors in the Acceptability of Foreign Clinical Data; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline entitled ''Ethnic Factors in the Acceptability of Foreign Clinical Data.'' The 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 provides guidance on regulatory and development strategies to permit clinical data collected in one region to be used for the support of drug and biologic registrations in another region while allowing for the influence of ethnic factors.

DATES: Written comments by October 29, 1997.

ADDRESSES: Submit written comments on the draft guideline 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, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573. Single copies of the guideline may be obtained by mail from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Barbara G. Matthews, Center for Biologics Evaluation and Research (HFM–570), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5094.

Regarding the 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 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.

In March 1997, the ICH Steering Committee agreed that a draft guideline entitled ''Ethnic Factors in the Acceptability of Foreign Clinical Data'' should be made available for public comment. The draft guideline is the product of the Efficacy Expert Working Group of the ICH. Comments about this

draft will be considered by FDA and the Efficacy Expert Working Group.

The draft guideline is intended to facilitate the registration of drugs and biologics among the ICH regions by recommending a framework for evaluating the impact of ethnic factors on a drug's effect, i.e., its efficacy and safety at a particular dosage and dose regimen. The draft guideline provides guidance on regulatory and development strategies that will permit adequate evaluation of the influence of ethnic factors while minimizing duplication of clinical studies, and expediting the drug approval process.

This draft guideline represents the agency's current thinking on ethnic factors in the acceptability of foreign clinical data for approval of both drugs and biologics. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before Ocotber 29, 1997, submit to the Dockets Management Branch (address above) written comments on the draft guideline. 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. An electronic version of this guideline is available via Internet using the World Wide Web (WWW) at ''http://www.fda.gov/cder/guidance.htm''. To connect to CBER's WWW site, type ''http://www.fda.gov/cber/cberftp.html''.

The text of the draft guideline follows:

Ethnic Factors in the Acceptability of Foreign Clinical Data

1.0 Introduction
1.1 Objectives
1.2 Background
1.3 Scope
2.0 Assessment of the Clinical Data Package Including Foreign Clinical Data for Its Fulfillment of Regulatory Requirements in the New Region
2.1 Additional Studies to Meet the New Region's Regulatory Requirements
3.0 Assessment of the Foreign Clinical Data Package for Extrapolation to the New Region
3.1 Characterization of the Drug's Sensitivity to Ethnic Factors
3.2 Bridging Data Package
3.2.1 Definition of Bridging Study and Bridging Data Package
3.2.2 Nature and Extent of the Bridging Study
3.2.3 Bridging Studies for Efficacy
3.2.4 Bridging Studies for Safety
4.0 Developmental Strategies for Global Development
5.0 Summary

Glossary

Appendix A: Classification of Intrinsic and Extrinsic Ethnic Factors

Appendix B: Assessment of the Clinical Data Package (CDP) for Acceptability

Appendix C: Pharmacokinetic, Pharmacodynamic, and Dose-Response Considerations

Appendix D: A Drug's Sensitivity to Ethnic Factors

(Italicized words and terms in the text of the guideline are defined or explained in the glossary.)

1.0 Introduction

The purpose of this guidance is to facilitate the registration of medicines among *ICH regions* by recommending a framework for evaluating the impact of *ethnic factors* on a drug's effect, i.e., its efficacy and safety at a particular *dosage* and *dose regimen*. It provides guidance with respect to regulatory and development strategies that will permit adequate evaluation of the influence of ethnic factors while minimizing duplication of clinical studies and supplying medicines expeditiously to patients for their benefit. For the purposes of this document, ethnic factors are defined as those factors relating to the genetic and physiologic (*intrinsic*) and the cultural and environmental (*extrinsic*) characteristics of a population (Appendix A).

1.1 Objectives

- To describe the characteristics of foreign clinical data that will facilitate their extrapolation to different populations and support their acceptance as a basis for drug registration in a *new region*.
- To describe regulatory strategies that minimize duplication of clinical data and facilitate acceptance of foreign clinical data in the new region.
- To describe the use of *bridging studies*, when necessary, to allow extrapolation of foreign clinical data to a new region.
- To describe development strategies capable of characterizing ethnic factor influences on safety, efficacy, dosage, and dose regimen.

1.2 Background

All regions acknowledge the desirability of utilizing foreign clinical data that meet the regulatory standards and clinical trial practices acceptable to the region considering the application for registration.

However, concern that ethnic differences may affect the medication's safety, efficacy, dosage, and dose regimen in the new region has limited the willingness to rely on foreign clinical data. Historically, therefore, this has been one of the reasons the regulatory authority in the new region has often requested that all, or much, of the foreign clinical data in support of registration be duplicated in the new region. Although ethnic differences among populations may cause differences in a drug's safety, efficacy, dosage, or dose regimen, many drugs have comparable characteristics and effects across regions. Requirements for extensive duplication of clinical evaluation for every compound can delay the availability of new therapies and unnecessarily waste valuable drug development resources.

1.3 Scope

This guidance is based on the premise that it is not necessary to repeat the entire clinical drug development program in the new region and is intended to recommend strategies for accepting foreign clinical data as full or partial support for approval of an application in a new region. It is critical to appreciate that this guidance is not intended to alter the data requirements in the new region; it does seek to recommend when these data requirements may be satisfied with foreign clinical data. All data in the clinical data package, including foreign data, should meet the standards of the new region with respect to its study design and conduct, and the available data should be *complete* to the satisfaction of the new region. Additional studies conducted in any region may be required by the new region to complete the clinical data package.

Once a clinical data package is complete in its fulfillment of the regulatory requirements of the new region, the only remaining issue with respect to the acceptance of the foreign clinical data is its ability to be extrapolated to the population of the new region. When the regulatory authority or the sponsor is concerned that differences in ethnic factors could alter the efficacy or safety of the drug in the population in the new region, the sponsor may need to generate a limited amount of clinical data in the new region in order to extrapolate or ''bridge'' the clinical data between the two regions.

If a sponsor needs to obtain additional clinical data to fulfill the regulatory requirements of the new region, it is possible that these clinical trials can be designed to also serve as the bridging studies. Thus, the sponsor and the regional regulatory authority of the new region would assess an application for:

(1) Completeness with respect to the regulatory requirements of the new region, and

(2) The ability to extrapolate to the new region those parts of the application (which could be most or all of the application) based on studies from the foreign region (Appendix B).

2.0 Assessment of the Clinical Data Package Including Foreign Clinical Data for Its Fulfillment of Regulatory Requirements in the New Region

The regional regulatory authority would assess the clinical data package, including the foreign data, as to whether or not it meets all of the regulatory standards regarding the nature and quality of the data, irrespective of its geographic origin. A data package that meets all of these regional regulatory requirements would be considered complete for submission and potential approval. The acceptability of the foreign clinical data component of the complete data package depends then upon whether it can be extrapolated to the population of the new region.

Before extrapolation can be considered, the clinical data package, including foreign clinical data, submitted to the new region should contain:

- Adequate characterization of *pharmacokinetics, pharmacodynamics,* dose response, efficacy, and safety in the population of the foreign region(s).
- Characterization of pharmacokinetics, and where possible, pharmacodynamics and dose response for pharmacodynamic endpoints in a population relevant to the new region of interest. This characterization need not be performed in the new region but could be performed in the foreign region in a population representative of the new region.
- Clinical trials establishing dose response, efficacy and safety. These trials should:

—Be designed and conducted according to regulatory standards in the new region, e.g., choice of controls, and should be conducted according to good clinical practice (GCP),

—Be adequate and well-controlled,

—Utilize endpoints that are considered appropriate for assessment of treatment,

—Evaluate clinical disorders using medical and diagnostic definitions that are acceptable to the new region.

Several ICH guidelines address aspects with respect to: GCP's (E6), evaluation of dose response (E4), adequacy of safety data (E1 and E2), conduct of studies in the elderly (E7), reporting of study results (E3), general considerations for clinical trials (E8), and statistical considerations (E9). A guideline on the clinical study design question of choice of control group (E10) is under development.

2.1 Additional Studies to Meet the New Region's Regulatory Requirements

When the foreign clinical data do not meet the new region's regulatory requirements, the regulatory authority may require additional clinical trials, such as:

- Clinical trials in different subsets of the population,
- Clinical trials using different comparators at the new region's approved dosage and dose regimen,
- Drug-drug interaction studies,
- Pharmacokinetic studies in a population representative of the new region.

3.0 Assessment of the Foreign Clinical Data Package for Extrapolation to the New Region

3.1 Characterization of the Drug's Sensitivity to Ethnic Factors

To assess a drug's sensitivity to ethnic factors, it is important that there be knowledge of its pharmacokinetic and pharmacodynamic properties and the translation of those properties to clinical effectiveness and safety. A reasonable evaluation is described in Appendix C. Some properties of a drug (chemical class, metabolic pathway, pharmacologic class) make it more or less likely to be affected by ethnic factors (Appendix D). Characterization of a drug as ''ethnically insensitive,'' i.e., unlikely to behave differently in different populations, usually would make it easier to extrapolate data from one region to another and need less bridging data.

Factors that make a drug ethnically sensitive or insensitive will become better understood and documented as effects in different regions are compared. It is clear at present, however, that such characteristics as clearance by an enzyme showing genetic polymorphism and a steep dose-response curve will make ethnic differences more likely. Conversely, a lack of metabolism or active excretion, a wide *therapeutic dose range*, and a flat dose-response curve will make ethnic differences less likely. The clinical experience with other members of the drug class in the new region will also contribute to the assessment of the drug's sensitivity to ethnic factors. It may be easier to conclude that the pharmacodynamic and clinical behavior of a drug will be similar in the foreign and new regions if other members of the pharmacologic class have been studied and approved in the new region with dosing regimens similar to those used in the foreign region.

3.2 Bridging Data Package

3.2.1 Definition of Bridging Study and Bridging Data Package

A *bridging study* is defined as a study performed in the new region to provide pharmacodynamic or clinical data on efficacy, safety, dosage, and dose regimen in the new region that will allow extrapolation of the foreign clinical data package to the population in the new region. Such studies could include further pharmacokinetic information.

A *bridging data package* consists of: (1) Information from the foreign clinical data package that is relevant to the population of the new region, including pharmacokinetic data, and any preliminary pharmacodynamic and dose-response data and, if needed, (2) a bridging study to extrapolate the foreign efficacy data and/or safety data to the new region.

3.2.2 Nature and Extent of the Bridging Study

This guidance proposes that when the regulatory authority of the new region is presented with a clinical data package that fulfills its regulatory requirements, the authority should request only those additional data necessary to assess the ability to extrapolate data from the package to the new region. The sensitivity of the medicine to ethnic factors will help determine the amount of such data. In most cases, a single trial that successfully provides these data in the new region and confirms the ability to extrapolate data from the original region should suffice and should not need further replication. Note that even though a single study should be sufficient to ''bridge'' efficacy data, a sponsor may find it practical to obtain the necessary data by conducting more than one study. For example, a single clinical endpoint, fixed dose, dose-response study may be the only one needed to bridge the foreign data, but a short-term pharmacologic endpoint study might help choose the doses for the large study.

When the regulatory authority requests, or the sponsor decides to conduct, a bridging study, discussion between the regional regulatory authority and sponsor is encouraged, when possible, to determine what kind of bridging study will be needed. The relative ethnic sensitivity will help determine the need for and the nature of the bridging study. For regions with little experience with registration based on foreign clinical data, the regulatory authorities may still request a bridging study for approval, even for compounds insensitive to ethnic factors. As experience with interregional acceptance increases, there will be a better understanding of situations in which bridging studies are needed. It is hoped that with experience, the need for bridging data will lessen.

The following is general guidance about the ability to extrapolate data generated from a bridging study:

- If the bridging study shows that dose response, safety, and efficacy in the new region are similar, the study is readily interpreted as capable of ''bridging'' the foreign data.
- If a bridging study, properly executed, indicates that a different dose in the new region results in a safety and efficacy profile that is not substantially different from that derived in the foreign region, it will often be possible to extrapolate the foreign data to the new region, with appropriate dose adjustment, if this can be adequately justified (e.g., by pharmacokinetic and/or pharmacodynamic data).
- If the bridging study designed to extrapolate the foreign data is not of sufficient size to confirm adequately the extrapolation of the adverse event profile to the new population, additional safety data may be necessary (section 3.2.4).
- If the bridging study fails to verify safety and efficacy, additional clinical data (e.g., confirmatory clinical trials) would be necessary.

3.2.3 Bridging Studies for Efficacy

Generally, for drugs characterized as insensitive to ethnic factors, the type of bridging study needed (if needed) will depend upon the likelihood that extrinsic ethnic factors (including design and conduct of clinical trials) could affect the drug's safety, efficacy, and dose response and upon experience with the drug class. For drugs that are ethnically sensitive, a bridging study may often be needed if the patient populations in the two regions are different. The following examples illustrate types of bridging studies for consideration in different situations:

- No bridging study

In some situations, extrapolation of clinical data may be feasible without a bridging study:

(1) If the drug is ethnically insensitive and extrinsic factors such as medical practice and conduct of clinical trials in the two regions are generally similar.

(2) If the drug is ethnically sensitive but the two regions are ethnically similar and there is sufficient clinical experience with pharmacologically related compounds to provide reassurance that the class behaves similarly in patients in the two regions with respect to efficacy, safety, dosage, and dose regimen. This might be the case for well-established classes of drugs known to be administered similarly, but not necessarily identically, in the two regions.

- Bridging studies using pharmacologic endpoints

If the regions are ethnically dissimilar and the drug is ethnically sensitive but extrinsic factors are generally similar (e.g., medical

practice, design and conduct of clinical trials) and the drug class is a familiar one in the new region, a controlled pharmacodynamic study in the new region, using a pharmacologic endpoint that is thought to reflect relevant drug activity (which could be a well-established surrogate endpoint) could provide assurance that the efficacy, safety, dose, and dose regimen data developed in the foreign region are applicable to the new region. Simultaneous pharmacokinetic (i.e., blood concentration) measurements may make such studies more interpretable.

- Controlled clinical trials

It will usually be necessary to carry out a controlled clinical trial, often a randomized, fixed dose, dose-response study, in the new region when:

(1) There are doubts about the choice of dose,

(2) There is little or no experience with acceptance of controlled clinical trials carried out in the foreign region,

(3) Medical practice (e.g., use of concomitant medications and design and/or conduct of clinical trials) are different, or

(4) The drug class is not a familiar one in the new region.

Depending on the situation, the trial could replicate the foreign study or could utilize a standard clinical endpoint in a study of shorter duration than the foreign studies or utilize a validated surrogate endpoint, e.g., blood pressure or cholesterol (longer studies and other endpoints may have been used in the foreign phase III clinical trials).

If pharmacodynamic data suggest that there are interregional differences in response, it will generally be necessary to carry out a controlled trial with clinical endpoints in the new region. Pharmacokinetic differences may not always create that necessity, as dosage adjustments in some cases might be made without new trials. However, any substantial difference in metabolic pattern may often indicate a need for a controlled clinical trial.

When the practice of medicine differs significantly in the use of concomitant medications, or adjunct therapy could alter the drug's efficacy or safety, the bridging study should be a controlled clinical trial.

3.2.4 Bridging Studies for Safety

Even though the foreign clinical data package demonstrates efficacy and safety in the foreign region, there may occasionally remain a safety concern in the new region. Safety concerns could include the accurate determination of the rates of relatively common adverse events in the new region and the detection of serious adverse events (in the 1 percent range and generally needing about 300 patients to assess). Depending upon the nature of the safety concern, safety data could be obtained in the following situations:

- A bridging study to assess efficacy, such as a dose-response study, could be powered to address the rates of common adverse events and could also allow identification of serious adverse events that occur more commonly in the new region. Close monitoring of such a trial would allow recognition of such serious events before an unnecessarily large number of patients in the new region is exposed. Alternatively, a small safety study could precede the bridging study to provide assurance that serious adverse effects were not occurring at a high rate.
- If there is no efficacy bridging study needed or if the efficacy bridging study is too small or of insufficient duration to provide adequate safety information, a separate safety study may be needed. This could occur where there is:

—A known index case of a serious adverse event in a foreign clinical data package,

—A concern about differences in reporting adverse events in the foreign region,

—Only limited safety data in the new region arising from an efficacy bridging study, inadequate to extrapolate important aspects of the safety profile, such as rates of common adverse events or of more serious adverse events.

4.0 Developmental Strategies for Global Development

Definition of not only pharmacokinetics but also of pharmacodynamics and dose response early in the development program may facilitate the determination of the need for, and nature of, any requisite bridging data. Any candidate drug for global development should be characterized as ethnically sensitive or insensitive (Appendix D). Ideally, this characterization should be conducted during the early clinical phases of drug development, i.e., human pharmacology and therapeutic exploratory studies. For global development, studies should include populations representative of the regions where the drug is to be registered and should be conducted according to ICH guidelines.

A sponsor may wish to leave the assessment of pharmacokinetics, pharmacodynamics, dosage, and dose regimens in populations relevant to the new region until later in the drug development program. Pharmacokinetic assessment could be accomplished by formal pharmacokinetic studies or a *pharmacokinetic screen* conducted either in a population relevant to the new region or in the new region.

5.0 Summary

This guidance describes how a sponsor developing a drug for a new region can deal with the possibility that ethnic factors could influence the effects (safety and efficacy) of drugs and the risk/benefit assessment in different populations. Results from the foreign clinical trials could comprise most, or in some cases, all of the clinical data package for approval in the new region, so long as they are carried out according to the requirements of the new region. Acceptance in the new region of such a foreign clinical data package may be achieved by generating ''bridging'' data to link the safety and effectiveness data in the foreign region(s) to the population in the new region.

Glossary

Bridging data package: Information from the foreign clinical data package that is relevant to the population of the new region, including pharmacokinetic data, and any preliminary pharmacodynamic and dose-response data and, if needed, supplemental data obtained in the new region that will allow extrapolation of the safety and efficacy data in the foreign clinical data package to the population of the new region.

Bridging study: A bridging study is defined as a supplemental study performed in the new region to provide pharmacodynamic or clinical data on efficacy, safety, dosage, and dose regimen in the new region that will allow extrapolation of the foreign clinical data package to the new region. Such studies could include further pharmacokinetic information.

Complete clinical data package: A clinical data package intended for registration containing clinical data that fulfill the regulatory requirements of the new region.

Compound insensitive to ethnic factors: A compound whose characteristics suggest minimal potential for clinically significant impact by ethnic factors on safety, efficacy, or dose response.

Compound sensitive to ethnic factors: A compound whose pharmacokinetic, pharmacodynamic, or other characteristics suggest the potential for clinically significant impact by intrinsic and/or extrinsic ethnic factors on safety, efficacy, or dose response.

Dosage: The quantity of a medicine given per administration, or per day.

Dose regimen: The route, frequency, and duration of administration of the dose of a medicine over a period of time.

Ethnic factors: The word ethnicity is derived from the Greek word ''ethnos,'' meaning nation or people. Ethnic factors are factors relating to races or large groups of people classed according to common traits and customs. Note that this definition gives ethnicity, by virtue of its cultural as well as genetic implications, a broader meaning than racial. Ethnic factors may be classified as either intrinsic or extrinsic.

- *Extrinsic ethnic factors*: Extrinsic ethnic factors are factors associated with the environment and culture in which the patient resides. Extrinsic factors tend to be less genetically and more culturally and behaviorally determined. Examples of extrinsic factors include the social and cultural aspects of a region, such as medical practice, diet, use of tobacco, use of alcohol, exposure to pollution and sunshine, socioeconomic status, compliance with prescribed medications, and, particularly important to the reliance on studies in a new region, practices in clinical trial design and conduct.
- *Intrinsic ethnic factors*: Intrinsic ethnic factors are characteristics associated with the drug recipient. These are factors that help to define and identify a subpopulation and may influence the ability to extrapolate clinical data between regions. Examples of intrinsic factors include genetic polymorphism, age, gender, height, weight, lean body mass, body composition, and organ dysfunction.

Extrapolation of foreign clinical data: The ability to apply the safety, efficacy, and dose-response data from the foreign clinical data package to the population of the new region.

Foreign clinical data: Foreign clinical data is defined as clinical data generated outside the new region (i.e., in the foreign region).

ICH regions: The European Union, Japan, the United States of America.

New region: The region where product registration is sought.

Pharmacokinetic screen: A pharmacokinetic screen is a population-based evaluation of measurements of systemic drug concentrations, usually two or more per patient under steady state conditions, from all, or a defined subset of, patients who participate in clinical trials. In order for these data to be useful in the evaluation of the relationships between pharmacokinetics and intrinsic ethnic and other factors, it is important that there be a prospective protocol for the collection of samples for drug concentration measurements and that the timing of samples relative to dosing be known precisely. While these analyses may be less precise than those from formal pharmacokinetic studies, the numbers of patients studied is greater and a much greater variety of factors that could influence pharmacokinetics, including unexpected influences, can be evaluated. Moreover, small variations which might be missed in the clinical setting are likely unimportant. Large differences detected by the screen may be definitive or may suggest the need for further evaluation for safety and efficacy in the new population.

Pharmacokinetic study: A study of how a drug is handled by the body, usually involving measurement of blood concentrations (sometimes concentrations in urine or tissues) over time of the drug and its metabolism. Pharmacokinetic studies are used to characterize absorption, distribution, metabolism, and excretion of a drug, either in blood or in other pertinent locations. When combined with pharmacodynamic measures (a PK/PD study), it can characterize the relation of blood concentrations to the extent and timing of pharmacodynamic effects.

Pharmacodynamic study: A study of an effect of the drug on individuals. The effect measured can be any pharmacologic or clinical effect of the drug and it is usual to seek to describe the relation of the effect to dose or drug concentration. A pharmacodynamic effect can be a potentially adverse effect (anticholinergic effect with a tricyclic); a measure of activity thought related to clinical benefit (various measures of beta-blockade, effect on ECG (electrocardiogram) intervals, inhibition of ACE (angiotensin converting enzyme) or of angiotensin I or II response); a short-term desired effect, often a surrogate endpoint (blood pressure, cholesterol); or the ultimate intended clinical benefit (effects on pain, depression, sudden death).

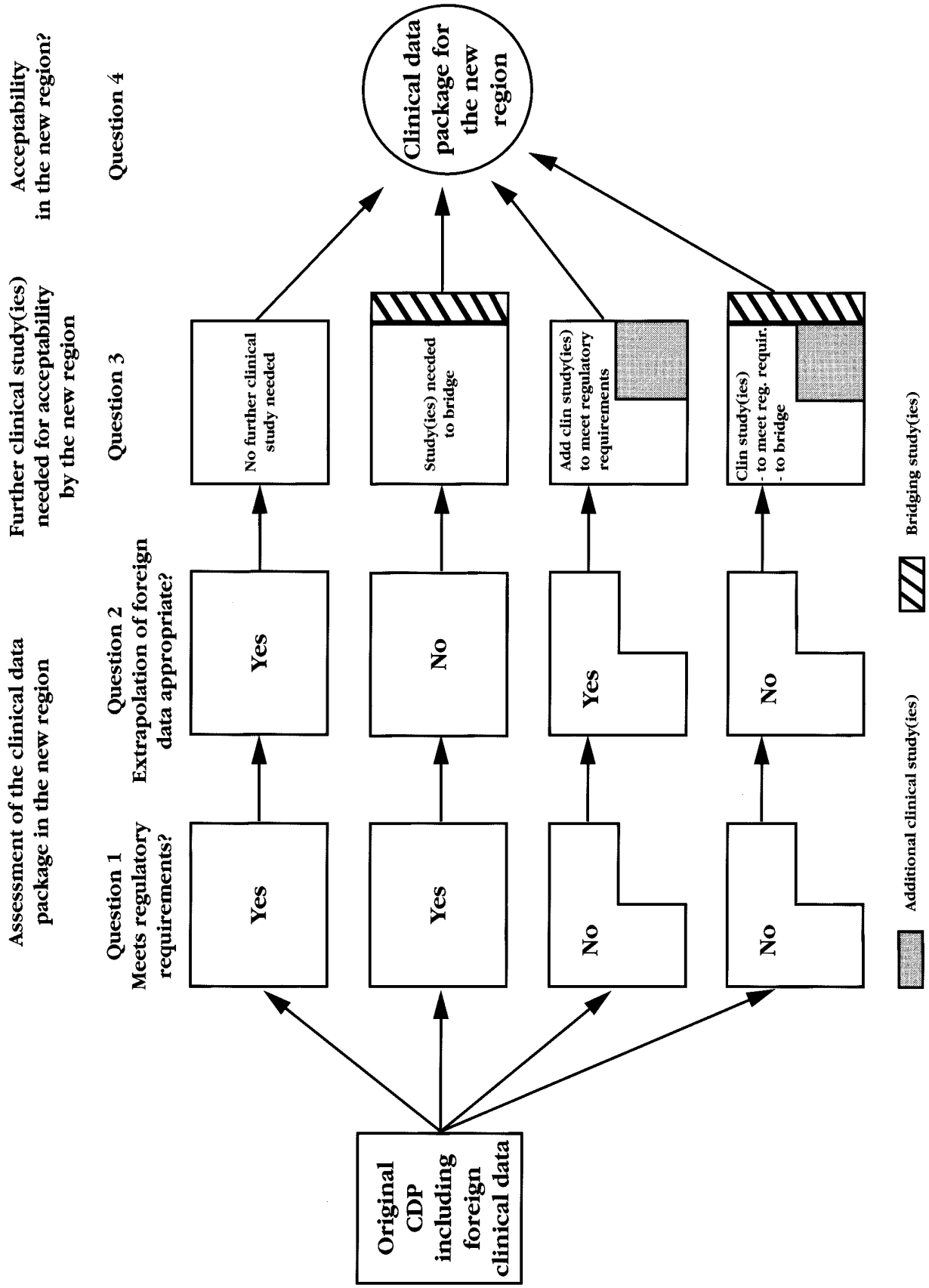
Therapeutic dose range: The difference between the lowest useful dose and the highest dose that gives further benefit.

BILLING CODE 4160–01–F

Appendix A: Classification of Intrinsic and Extrinsic Ethnic Factors

INTRINSIC		EXTRINSIC
Genetic	Physiological and pathological conditions	Environmental
Gender	Age (children-elderly)	Climate Sunlight Pollution
Height Bodyweight		
	Liver Kidney Cardiovascular functions	Culture Socioeconomic factors Educational status Language
ADME Receptor sensitivity		
Race		Medical practice Disease definition/Diagnostic Therapeutic approach Drug compliance
Genetic polymorphism of the drug metabolism		
	Smoking Alcohol	
	Food habits Stress	
Genetic diseases	Diseases	
		Regulatory practice/GCP Methodology/Endpoints

Appendix B: Assessment of the Clinical Data Package (CDP) for Acceptability



BILLING CODE 4160–01–C

Appendix C: Pharmacokinetic, Pharmacodynamic, and Dose-Response Considerations

Evaluation of the pharmacokinetics and pharmacodynamics, and their comparability, in the three major racial groups (Asian, Black, and Caucasian) is critical to the registration of drugs in the ICH regions. Basic pharmacokinetic evaluation should characterize absorption, distribution, metabolism, excretion (ADME), and where appropriate, food-drug and drug-drug interactions.

A sound pharmacokinetic comparison in the foreign and new regions allows rational consideration of what kinds of further pharmacodynamic and clinical studies (bridging studies) are needed in the new region. In contrast to a medicine's pharmacokinetics, where differences between populations may be attributed primarily to intrinsic ethnic factors and are readily identified, a medicine's pharmacodynamic response (clinical effectiveness, safety, and dose response) may be influenced by both intrinsic and extrinsic ethnic factors and this may be difficult to identify except by conducting clinical studies in the new region.

The ICH E4 guideline describes various approaches to dose-response evaluation. In general, dose response (or concentration response) should be evaluated for both pharmacologic effect (where one is considered pertinent) and clinical endpoints in the foreign region. The pharmacologic effect, including dose response, may also be evaluated in the foreign region in a population representative of the new region. Depending on the situation, data on clinical efficacy and dose response in the new region may or may not be needed, e.g., if the drug class is familiar and the pharmacologic effect is closely linked to clinical effectiveness and dose response, these foreign pharmacodynamic data may be a sufficient basis for approval and clinical endpoint and dose-response data may not be needed in the new region. The pharmacodynamic evaluation, and possible clinical evaluation (including dose response) is important because of the possibility that the response curve may be shifted in a new population. Examples of this are well-documented, e.g., the decreased response in blood pressure of blacks to angiotensin-converting enzyme inhibitors.

Appendix D: A Drug's Sensitivity to Ethnic Factors

Characterization of a drug according to the potential impact of ethnic factors upon its pharmacokinetics, pharmacodynamics, and therapeutic effects may be useful in determining what sort of bridging study is needed in the new region. The impact of ethnic factors upon a drug's effect will vary depending upon the drug's pharmacologic class and indication and the age and gender of the patient. No one property of the drug is predictive of the compound's relative sensitivity to ethnic factors. The type of bridging study needed is ultimately a matter of judgment, but assessment of sensitivity to ethnic factors may help in that judgment.

The following properties of a compound make it less likely to be sensitive to ethnic factors:

- Linear pharmacokinetics (PK).
- A flat pharmacodynamic (PD) (effect-concentration) curve for both efficacy and safety in the range of the recommended dosage and dose regimen (this may mean that the drug is well-tolerated).
- A wide *therapeutic dose range* (again, possibly an indicator of good tolerability).
- Minimal metabolism or metabolism distributed among multiple pathways.
- High bioavailability, thus less susceptibility to dietary absorption effects.
- Low potential for protein binding.
- Little potential for drug-drug, drug-diet, and drug-disease interactions.
- Nonsystemic mode of action.
- Little potential for abuse.

The following properties of a compound make it more likely to be sensitive to ethnic factors:

- Nonlinear pharmacokinetics.
- A steep pharmacodynamic curve for both efficacy and safety (a small change in dose results in a large change in effect) in the range of the recommended dosage and dose regimen.
- A narrow therapeutic dose range.
- Highly metabolized, especially through a single pathway, thereby increasing the potential for drug-drug interaction.
- Metabolism by enzymes known to show genetic polymorphism.
- Administration as a prodrug, with the potential for ethnically variable enzymatic conversion.
- High intersubject variation in bioavailability.
- Low bioavailability, thus more susceptible to dietary absorption effects.
- High likelihood of use in a setting of multiple co-medications.
- High potential for abuse.

Dated: July 25, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–20246 Filed 7–30–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0289]

Content and Format of Labeling for Human Prescription Drugs; Pregnancy Labeling; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing regarding requirements for the content and format of the pregnancy subsection of labeling for human prescription drugs. The public hearing will focus on the requirement that each drug product be classified in one of five pregnancy categories intended to aid clinicians and patients with decisions about drug therapy. Public comments and FDA's preliminary review of the pregnancy category designations for marketed drugs suggest that the categories may be misleading and confusing, may not accurately reflect reproductive and developmental risk, and may be used inappropriately by clinicians in making decisions about drug therapy in pregnant women and women of childbearing potential and also in making decisions about how to respond to inadvertent fetal exposure. The hearing is intended to elicit comments on the practical utility, effects, and limitations of the current pregnancy labeling categories in order to help the agency identify the range of problems associated with the categories and to identify and evaluate options that might address identified problems, and to hear the views of groups most affected.

DATES: The public hearing will be held on Friday, September 12, 1997, from 9 a.m. to 5 p.m. Submit written notices of participation and comments for consideration at the hearing by August 28, 1997. Written comments will be accepted after the hearing until November 12, 1997.

ADDRESSES: The hearing will be held at the Holiday Inn Bethesda, 8120 Wisconsin Ave.,Versailles I and II, Bethesda, MD 20814. Submit written notices of participation and comments to the Advisors and Consultants Staff, Center for Drug Evaluation and Research (HFD–21), ATTN: Pregnancy Labeling Hearing—Robin M. Spencer or Kimberly L. Topper, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, FAX 301–443–0699. Federal Express deliveries need to use the following street address: 1901 Chapman Ave., rm. 200, Rockville, MD 20852.

Transcripts of the hearing will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, FAX 301–443–1726, approximately 15 business days after the hearing at a cost of 10 cents per page. Requests can also be made for microfiche or computer disk copies in place of paper copies.

FOR FURTHER INFORMATION CONTACT: Rose E. Cunningham, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6779, or FAX 301–594–5493; or Kimberly L. Topper, Advisors and

Consultants Staff (address above), 301–443–5455, or FAX 301–443–0699.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Federal Food, Drug, and Cosmetic Act (the act), FDA has responsibility for ensuring that prescription drug and biological products are accompanied by labeling (prescribing information) that summarizes essential scientific information needed for their safe and effective use. Unless a drug is not absorbed systemically and is not known to have a potential for indirect harm to a fetus, its labeling must include a ''Pregnancy subsection'' containing narrative information on the drug's teratogenic effects and other effects on reproduction and pregnancy, and, when relevant, effects on later growth, development, and functional maturation of the child (21 CFR 201.57(f)(6)). The regulation also requires that each product be classified under one of five pregnancy categories (A, B, C, D, or X) on the basis of risk of reproductive and developmental adverse effects or, for certain categories, on the basis of such risk weighed against potential benefit. A drug's pregnancy category is identified at the beginning of its pregnancy labeling subsection.

Clinicians who treat pregnant women and women of childbearing potential, academic and specialty medical organizations, women's health organizations and others have expressed to FDA concern that the information contained in the typical pregnancy labeling subsection, and the manner in which such information is presented, are not sufficient to adequately inform decisions about drug therapy in pregnant women and women of childbearing potential, or decisions about how to respond to inadvertent fetal drug exposure.

In response to these concerns and FDA's growing awareness of the limitations of the pregnancy subsection of the labeling, FDA is currently engaged in a comprehensive evaluation of the way the agency assesses reproductive and developmental toxicities associated with human drugs and biologics, and the way the agency communicates this information to clinicians and patients. This evaluation is focused on assessing the adequacy of animal and human exposure data currently developed or maintained, developing consistency in interpretation of reproductive and developmental risk from animal and human exposure data, and identifying means to optimize communication of this risk information.

FDA has created a multidisciplinary task force to explore these issues. This group intends to develop, for use by FDA reviewers and industry, a guidance document on interpretation of reproductive and developmental toxicity data from animals and a guidance document on interpretation of human exposure data. The task force will also consider other possible actions that may be necessary to make pregnancy labeling content more consistent, informative, and accessible including: (1) Changing, or creating alternatives to, the pregnancy labeling categories; (2) clearly distinguishing in labeling between information that addresses whether to prescribe a therapeutic option during pregnancy, whether to prescribe a therapeutic option in a woman of childbearing potential, and the potential consequences of inadvertent fetal exposure; and (3) attempting to better delineate the different types of reproductive and developmental risks associated with a product. This hearing is intended to gather information to inform future task force recommendations.

II. The Pregnancy Categories

FDA's information gathering and evaluation to date have identified the pregnancy categories as a source of concern for those who use or are affected by pregnancy labeling. The categories have been criticized for being confusing and misleading because they convey the impression that there is a gradation of reproductive risk from drug exposure across categories (i.e., that risk increases from A to B to C to D to X) and that there is similar risk within any given category, but the criteria for designating drugs in particular categories are not consistent with these impressions.

The confusion concerning gradation of risk across categories is believed to be due, in part, to the fact that the criteria for inclusion in categories A, B, and to a certain extent C, are based primarily on risk with risk increasing from A to C, while criteria for inclusion in categories D, X, and to a certain extent C, are based on risk weighed against potential benefit. Thus, while it is intended that there be gradation of risk for categories A through C, drugs designated D, X, and in some cases C, may pose a very similar risk, but be categorized differently on the basis of potential benefit.

The impression that there is similar risk for drugs within the same category is undercut by inclusion criteria that permit a broad range of risk within certain categories. For example, category C (the largest category) is intended to include both drugs with demonstrated adverse reproductive effects in animals and drugs for which there are no animal studies at all, situations that may be quite different in terms of risk. For the category C drugs that were tested in animals, moreover, there is a wide range of severity of adverse effects and often no distinction between teratogenic and other toxic effects.

The confusion inherent in the current category designations may be exacerbated by inconsistent application of category classifications in certain instances, such that drugs with similar risk, or with similar risk-benefit assessments, may be found in different categories.

Some who expressed concern to the agency about pregnancy labeling argue that failure of the category designations to accurately reflect reproductive and developmental risk, either across categories or within a category, presents potentially serious public health consequences. They maintain that many clinicians assume the categories reflect gradation of risk from category A through X, that any given category is homogenous in terms of risk, and based on those assumptions make decisions based largely or entirely on category designation rather than on careful evaluation of the available data. They also argue that, in addition to the potential for category designations to be misleading, the mere presence of category designations affords an overly simplistic evaluation of a complex problem that can deter the clinician from seeking additional information that could lead to a better informed decision. They maintain that clinicians making decisions based on category designation alone are more likely to overestimate risk, with potentially profound consequences. For example, decisions based on an overestimation of teratogenic risk may result in unnecessary withholding of beneficial therapy or in termination of wanted pregnancies.

III. Scope of the Hearing

Because of the breadth and complexity of issues involved in assessing, interpreting, and communicating information that bears on therapeutic use and exposure to drugs in pregnancy and in women of childbearing potential, this part 15 (21 CFR part 15) hearing will focus on the pregnancy categories. To guide its future decision making, the agency is seeking public comment and data on the practical utility and effects of the pregnancy categories, problems associated with the categories, and the

means to address problems associated with the categories, including possible alternatives to the categories for communicating information on reproductive and developmental toxicity. The agency is specifically seeking comment and data on the following:

(1) The extent to which the category designations are relied upon in making decisions about drug therapy in pregnant women and women of childbearing potential and decisions about inadvertent fetal exposure, the extent to which such reliance may be misplaced, and the extent to which such reliance may have untoward public health consequences;

(2) The extent to which current pregnancy labeling (category designation and accompanying narrative text) is effective in communicating risk of reproductive and developmental toxicity;

(3) The extent to which current pregnancy labeling may not adequately address the range of issues that may bear on decisions about drug therapy in pregnant women and women of childbearing potential and decisions about inadvertent fetal exposure (e.g., indication-specific concerns, pregnancy status, magnitude of exposure, incidental exposure, chronic exposure, timing of exposure);

(4) Additional information (data or interpretation of data) that could be included in pregnancy labeling to better address the range of issues that bear on decisions about drug therapy in pregnant women and women of childbearing potential and decisions about inadvertent fetal exposure; and

(5) Options to improve communication of reproductive and developmental risk in labeling, which could include alternatives to the categories (both content and format options) or efforts to make the current category scheme and accompanying narrative text more consistent and informative.

The agency encourages individuals, industry, consumer groups, health care professionals, and researchers with particular expertise in this area, as well as other interested persons, to respond to this notice. The agency strongly encourages persons who cannot attend the hearing to send information relevant to the topics and questions listed above to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with Docket No. 97N–0289. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IV. Notice Of Hearing Under Part 15

The Commissioner of Food and Drugs (the Commissioner) is announcing that the public hearing will be held in accordance with part 15. The presiding officer will be the Commissioner or his designee. The presiding officer will be accompanied by a panel of Public Health Service employees with relevant expertise.

Persons who wish to participate in the part 15 hearing must file a written or facsimile notice of participation with the Advisors and Consultants Staff by August 28, 1997. To ensure timely handling, the outer envelope or facsimile cover sheet should be clearly marked with Docket No. 97N–0289 and the statement ''Pregnancy Labeling Hearing.'' Groups should submit two copies. The notice of participation should contain the speaker's name, address, telephone number, FAX number, title, business affiliation, if any, a brief summary of the presentation, and approximate amount of time requested for the presentation.

The agency requests that persons or groups having similar interests consolidate their presentations and present them through a single representative. FDA will allocate the time available for the hearing among the persons who properly file notices of participation. If time permits, FDA may allow participation at the conclusion of the hearing from interested persons attending the hearing who did not submit a written notice of participation.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by mail, telephone, or FAX, of the time allotted to the person and the approximate time the person's presentation is scheduled to begin. The hearing schedule will be available at the hearing. After the hearing the schedule will be placed on file in the Dockets Management Branch (address above) under Docket Number 97N–0289.

Under § 15.30(f), the hearing is informal and the rules of evidence do not apply. The presiding officer and any panel members may question any person during or at the conclusion of their presentation. No other person attending the hearing may question a person making a presentation or interrupt the presentation of a participant.

Public hearings under part 15 are subject to FDA's guideline (part 10, subpart C (21 CFR part 10, subpart C)) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. Under § 10.205, representatives of the electronic media may be permitted, subject, to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. Representatives of the electronic media are urged to provide advance notice of their planned attendance, to the identified contact person for the hearing, so that their needs for space and technical assistance can be anticipated and accommodated. The hearing will be transcribed as required in § 15.30(b). Orders for copies of the transcript can be placed through the Dockets Management Branch (address above).

Any disabled persons requiring special accommodations in order to attend the hearing should direct those needs to the contact person listed above.

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

To permit time for all interested persons to submit data, information, or views on this subject, the administrative record will remain open following the hearing until November 12, 1997.

Dated: July 23, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–20247 Filed 7-30-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Form #HCFA–R–200]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), has submitted to the Office of Management and Budget (OMB) the following request for Emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at

5 CFR Part 1320. The collection of HEDIS 3.0 performance measures, including the Health of Seniors and Consumer Assessment of Health Plans Study surveys is necessary for HCFA to obtain the information necessary for the proper oversight and administration of the Medicare Managed Care Program. The Agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result due to the delay in reporting of health care quality measures. If emergency clearance is not provided HCFA will be forced to postpone the collection of this data due to the timing of contracts and their respective cycles.

HCFA is requesting OMB review and approval of this collection by 08/15/97, with a 180-day approval period. During this 180-day period HCFA will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. Then HCFA will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: Revision of a currently approved collection; *Title of Information Collection:* HEDIS 3.0 (Health Plan Data and Information Set), including the Health of Seniors and Consumer Assessment of Health Plans Study (CAHPS) surveys and supporting regulations 42 CFR 417.470, and 42 CFR 417.126; *Form Number:* HCFA-R–200 (OMB #0938–0701); Use: HEDIS and CAHPS will be used for 3 purposes: (1) to provide summary comparative data to the Medicare beneficiary to assist them in choosing among health plans; (2) to provide information to health plans for internal quality improvement activity; and (3) to provide HCFA, as purchaser, information useful for monitoring quality of and access to care provided by the plans; *Frequency:* Annually; *Affected Public:* Individuals or Households, non-profit and for profit HMOs which contract with HCFA to provide managed health care to Medicare beneficiaries; *Number of Respondents:* 293,834; *Total Annual Responses:* 293,834, *Total Annual Hours Requested:* 181,520. To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1324. Written comments and recommendations for the proposed information collections should be sent by 08/11/97 directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 23, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–20089 Filed 7–30–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: June 1997

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of June 1997, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
Program-Related Convictions	
ABRAMS, GARY, LA MIRADA, CA	07/07/97
ALCARE RESPIRATORY SERVICES, TAPPAN, NY	07/08/97
AMICO, MICHAEL A, STATEN ISLAND, NY	07/08/97
ARNDT, SOU KWEI, GREENSBURG, PA	07/10/97
BAILEY, ROBYN KAMILYAH, MAGNOLIA, AR	07/06/97
BATES, ROBERT E, SILVER SPRING, MD	07/07/97
BIXBY, ANGELA M, DOUGLASVILLE, GA	07/10/97
BIXBY, HOWARD A, DOUGLASVILLE, GA	07/10/97
CAMPBELL, JAMES A, VALLEY, AL	07/03/97
CARTER, STEPHEN, DALLAS, TX	07/06/97
CHATMAN, SABRINA D, LITHONIA, GA	07/07/97
CHERRY-HAMMOND, CAPPRECCIA Y, ATLANTA, GA	07/02/97
COLLINS, STACEY BERNARD, TEXARKANA, TX	07/02/97
DAHDAH, CHARLES J, MIAMI, FL	07/02/97
DECIUTIIS, CHARLES E, BRONX, NY	07/10/97
DIAZ, GEORGE, MIAMI, FL	07/01/97
DISMOND, MICHAEL L, ALBUQUERQUE, NM	06/25/97
DODD, JUDY L, DAINGERFIELD, TX	07/03/97
DOMINY, HERBERT K, JESUP, GA	07/10/97
DUHON, LESHIA A, LAFAYETTE, LA	07/07/97
ELIKWU, PATRICK NGOZI, AUSTELL, GA	07/01/97
ETIENNE, JEAN JOSEPH, RIVIERA BEACH, FL	07/10/97
FALEK, ALEXIS BROWN, PITTSBURGH, PA	07/10/97
FRANKEL, STUART M, N MIAMI BEACH, FL	07/10/97
GALES, BERNARD, ATLANTA, GA	07/10/97
GELIN, GUERRIER, LANTANA, FL	07/08/97
GENE KUTSCH, D.M.D., P.C., ALBANY, OR	06/26/97

Subject, city, state	Effective date
GETZ, EILEEN R, HUNTERS, WA	07/03/97
GUINN, SHANNON LEE, THORNTON, CO	06/30/97
HAND, JANET DOROTHY, COSTA MESA, CA	07/07/97
JEWELL, KENNETH, MCALLEN, TX	07/06/97
JEWELL, DONALD, SAN ANTONIO, TX	07/02/97
JOSEPH, ASHLAND JR, RACELAND, KY	07/10/97
JOSEPH, HARRY DAYTON, RACELAND, KY	07/10/97
LEWIS, PATRICIA, TAPPAN, NY	07/08/97
MASSARO, LORNA, NORTH SALEM, NY	07/08/97
MCDANIEL, DONNIE EARL, SAVANNAH, TN	07/03/97
MEDI–KARE AMBULANCE SERVICE, RACELAND, KY	07/10/97
MESADIEU, MARC CHARLES, CAROL CITY, FL	07/08/97
MOORE, JERRY JAN, JACKSON, GA	07/01/97
MUNOZ, RAFAEL A, JACKSON HEIGHTS, NY	07/08/97
OGANESIAN, NOUNE, GLENDALE, CA	07/07/97
OPA LOCKA DRUGSTORE, N MIAMI BEACH, FL	07/10/97
PENA, HELEN FLOYD, DADE CITY, FL	07/01/97
PERRY, BRADLEY, EAST MEADOW, NY	07/08/97
PICKERING, BRYANT I, PHOENIX, AZ	07/03/97
PICKETT, WALLACE JAMES III, EGLIN AFB, FL	07/03/97
PRINGLEY, ANTONIO J, AMERICUS, GA	07/07/97
PROSKUROVSKY, BORIS, NEWARK, NJ	06/26/97
RENSHAW, ROGER DEAN, GORDONVILLE, VA	07/01/97
RISINGER, CAROL, MESQUITE, TX	07/06/97
Program-Related Convictions	
SCHMIDT, WANDA FISHER, RIVER RIDGE, LA	07/02/97
SENAPE, SAVERIO JOSEPH, NEW YORK, NY	07/08/97
SHELTON, DEBORAH ADAMS, BROWNWOOD, TX	07/02/97
SOU KWEI WONG, INC., GREENBERG, PA	07/10/97
STEVENS, MARILYN, LULING, TX	07/02/97
TITUS, ALLENE COSTELLO, HIGH POINT, NC	07/02/97
TRASK, DONALD F, KENNER, LA	07/06/97
WATSON, TODD EDWARD, COOPER CITY, FL	07/02/97
WILLETTE, ANTHONY LON, N LITTLE ROCK, AR	06/25/97
WOLF, WALTER, COLLINS, NY	06/26/97
YOUNG, KAREN, BUCHANAN, NY	06/26/97
Patient Abuse/Neglect Convictions	
ALAM, JASON PAUL, CHELSEA, OK	07/03/97
ANTRIM, RUTHIE DOREEN, BLACKWELL, OK	07/03/97
BAIRD, CORAL N, OKLAHOMA CITY, OK	07/03/97
BENDER, ANGELA, ELLISVILLE, MS	07/03/97
BRADLEY, LULTISSUE, MARSHALL, TX	07/03/97
CAMPBELL, GAINIE, WYANDANCH, NY	07/07/97
COLLINS, MARGIE R, LEWISVILLE, AR	07/03/97
DUNCAN, DYNA LYNN, LAKE ARTHUR, LA	06/25/97
ELLIS, PATRICIA, UNION, SC	07/03/97
FERNANDEZ, DOMINGA GUTIERREZ, SAN ANTONIO, TX	07/06/97
FINE, ANNIE S, LAHOMA, OK	07/02/97
GIBSON, GALENA RENEE, FORT SMITH, AR	07/06/97
HANCOCK, DINENE, BATAVIA, NY	07/07/97
HARRIS, GEORGIA M, ST FRANCISVILLE, LA	06/25/97
HAWKINS, RICHARD I, FORT WORTH, TX	06/25/97
HOLLINS, DENISE, GRANTTOWN, WV	07/01/97
HOWARD, LESLIE ANN, DETROIT, MI	06/30/97
JAMES, JOHNNY LEE, PORTER, OK	06/25/97
JARRETT, MARY E, TYRONZA, AR	06/25/97
JOHNSON, TAMMY JO, FAIRLAND, OK	07/06/97
KETNER, KEVIN LOUIS, MOORE, OK	07/06/97
KIGHT, KAREN M, CORNING, AR	07/06/97
KLEPPER, ROGER K, MOGADORE, OH	06/30/97
LEWIS, MILDRED C, EUSTIS, FL	07/01/97
MANDUJANO, MONOLO, ANADARKO, OK	06/25/97
MCGEE, JIMMY C JR, LAUREL, MS	07/06/97
MILLER, NANCY NELDA (NIOLA), COLUMBUS, TX	07/02/97
MILLSAP, VICTOR, LAUREL, MS	07/06/97
PEOPLES, BARBARA, SYRACUSE, MO	06/30/97
RICO, LAURA FRANCIS, CLIFTON, TX	07/06/97
ROE, JEAN K, BROOKSVILLE, FL	07/03/97
WAUDDY, DELSIREE ANN, SPENCER, OK	07/06/97
WESPISER, KENDRA ELLEN, VENICE, FL	07/01/97

Subject, city, state	Effective date
WILLIAMS, HERTA ANN, ALEXANDRIA, LA	07/06/97
WILLIAMS, BRENDA KAYE, ARKADELPHIA, AR	07/07/97
WRIGHT, BENJI, IUKA, MS	07/02/97
Conviction for Health Care Fraud	
AUGUSTINE, DAVID, MUSCATINE, IA	07/08/97
FITTER, RICHARD J, MIAMI, FL	07/03/97
FITZGERALD, BARBARA M, BENSALEM, PA	06/30/97
GROSSMAN, STEVE C, DALLAS, TX	07/07/97
Program-Related Convictions	
HERNANDEZ, JIMMIE, DENVER, CO	07/03/97
JOYNER, ELEANOR BRENDA, AUGUSTA, GA	07/02/97
LIPTON, SONIA, PHILADELPHIA, PA	07/01/97
LOPEZ, PATRICIA BELEN, ANAHEIM, CA	07/03/97
MALABANAN, BEN CARPIO, TEXARKANA, TX	07/06/97
NELSON, THEODORE, HARVEY, LA	06/25/97
NELSON, JIMMIE M, HARVEY, LA	06/25/97
ROBY, WILLIE MARIE, WEST POINT, MS	07/02/97
STEVENS, AUDLEY, CONNEAUTVILLE, PA	06/26/97
License Revocation/Suspension/Surrender	
ACAMPORA, GREGORY, MIDDLETOWN, CT	07/03/97
ALEXIS, GREGG, HASTINGS, NY	06/26/97
ASPINWALL, CHARLES, DERBY, CT	07/03/97
BEZAR, SHAFI, SCARSDALE, NY	07/07/97
CAKNIPE, JOHN WILLIAM, JACKSON, MI	07/02/97
CAPOTE, WILLIAM, BRONX, NY	07/07/97
COLBY, CHERYL, LYNN, MA	06/26/97
CUCCO, LUIGI, STANDISH, ME	06/26/97
DAVIS, CYNTHIA G, SIDNEY, ME	06/26/97
DEMARINIS, J WILLIAM, YONKERS, NY	07/08/97
DOSS, ANTHONY, BRISTOL, TN	07/02/97
DOUST, ROBIN FARR, VIRGINIA BEACH, VA	07/01/97
FRANIESCONI, RITA A, PHILADELPHIA, PA	06/30/97
GITZY, JOHN A, CEDAR RAPIDS, IA	07/06/97
GRIGSBY, MICHAEL VERNE, LITTLETON, CO	07/08/97
HAHN, CHEUN, OZONE PARK, NY	06/26/97
HALL, HEIDE, PORTSMOUTH, NH	06/26/97
HAMILTON, TIMOTHY JOHN, CENTRAL ISLIP, NY	07/08/97
HANSCOMB-KNAPP, HOLLY, WETHERSFIELD, CT	06/26/97
HART, THOMAS JAY, WATERVILLE, ME	06/26/97
HAYES, SHEILA, RAYMOND, NH	06/26/97
HEMMANN, LANAE MAXFIELD, YORK, PA	06/26/97
HYSLOP, MARY P, FORT FAIRFIELD, ME	06/26/97
ITARO, GABRIEL O, STONE MOUNTAIN, GA	07/03/97
JIHAYEL, AYAD K, WAYNE, NJ	07/08/97
JOHNSTON, LAURA E, PORTSMOUTH, NH	06/26/97
KANEGAWA, JON M, READING, PA	06/26/97
KENNEDY, ELAINE, WINCHESTER, TN	07/01/97
KEPPLER, JOHN PAUL, GRIFFIN, GA	07/03/97
LYE, ELLEN, HAMDEN, CT	07/03/97
LYNCH, BRIAN, OLD SAYBROOK, CT	06/26/97
MACCALL, AMY E, PALMYRA, VA	07/01/97
MARCOUX, JAMES P, MINOT, ME	06/26/97
MARQUEZ, MANUEL S, MT LAUREL, NJ	07/10/97
MIDDLETON, DAVID H, ANN ARBOR, MI	07/01/97
MILLS, MYRA B, SPRINGFIELD, IL	07/01/97
MILNER, JACQUELINE, CHICAGO, IL	07/01/97
MIRILASHVILLI, MOSHE, SYOSSET, NY	07/07/97
NEEL, JUANITA HOPE, KEGLEY, WV	06/30/97
PELLICANO, PAUL J, MILLBURN, NJ	07/07/97
REILLY, PHILOMENA, OXFORD, CT	06/26/97
RITCH, JUDITH K, LAPEER, MI	07/06/97
ROBERTSON, DOUGLAS C, LAWRENCEBURG, TN	07/01/97
ROKAS, CYNTHIA, NAUGATUCK, CT	07/03/97
Program-Related Convictions	
SAWYERS, CHRISTINA WOODALL, BANDY, VA	07/01/97
SCOTT, CRAIG H, ARCATA, CA	06/30/97
SINGH, LOKENDRA K, SCHENECTADY, NY	07/07/97

Subject, city, state	Effective date
SNIDE, JOSEPH EDWARD, YORKTOWN, VA	06/30/97
STEINER, JEROME, NEW YORK, NY	07/08/97
STUDYVIN, BOBBIE, WINDSOR, VA	07/01/97
TALSKY, RICHARD J, CHICAGO, IL	07/06/97
VAN ORDEN, TERESA M, GREENE, IA	06/26/97
WELLS, DARRELL K, HENDERSONVILLE, TN	07/02/97
WESTON, DON L, AUGUSTA, ME	06/26/97
YOON, TOL UNG, BRIDGETON, NJ	07/10/97
YOUNGER, DAVID L, CHARLESTON, SC	07/01/97
Federal/State Exclusion/Suspension	
BELGRAVE, CLAUDE, HAMPTON, VA	07/03/97
CHAM, WILLIAM C, CHESTER TOWNSHIP, NJ	07/08/97
RADIATION ONCOLOGY GROUP, DENVILLE, NJ	07/08/97
Owned/Controlled by Convicted Excluded	
A-BELL TRANSPORTATION, ATLANTA, GA	07/02/97
ACTION NON-EMERGENCY TRANS. CO, DOUGLASVILLE, GA	07/10/97
ATLANTIC TAXI, CAROL CITY, FL	07/08/97
CENTRAL FLORIDA RADIOLOGY, EGLIN AFB, FL	07/03/97
COLORADO REGISTERED NURSES INC., DENVER, CO	07/08/97
CUSTOM SHOE SERVICE, NEWARK, NJ	06/26/97
PAS RADIOLOGY ASSOCIATES, EGLIN AFB, FL	07/03/97
PRESTIGE TAXI, LANTANA, FL	07/08/97
SANFORD DIAGNOSTICS ASSOC, EGLIN AFB, FL	07/03/97
SOUTH FLORIDA ULTRASOUND, INC., COOPER CITY, FL	07/02/97
THREE STAR TAXI, RIVIERA BEACH, FL	07/10/97
Default on Heal Loan	
ANDRONICO, KENNETH CHARLES, FORT MYERS, FL	07/10/97
BECK, MARK L, WASHINGTON, DC	06/30/97
BIRT, CAROL M, SOUTH FORT MYERS, FL	07/02/97
BOWERS-PHILLIPS, DONNA M, SAVANNAH, GA	07/03/97
BROWN, PAUL W, PHILADELPHIA, PA	07/07/97
CAMPBELL, LARRY WALLACE, MUSCLE SHOALS, AL	07/02/97
CARTHEN, MICHAEL, BROOKLYN, NY	06/26/97
COZOLINO, CLIFFORD J, PELHAM, NY	07/07/97
D'AMICO, JAMES M, NEW PORT RICHEY, FL	07/07/97
DAYANZADEH, MEHARAN, FLUSHING, NY	07/08/97
GUERRIERO, LU ANN M, MORGANVILLE, NJ	07/08/97
HOGAN, DENNIS P, MANASSAS, VA	06/26/97
HOLLANDER-WEESE, ROXANNE, SANDPOINT, ID	07/03/97
JACOBS, VIRGINIA L, SILVER SPRING, MD	07/07/97
JONES, EDWARD O JR., ROANOKE, VA	06/30/97
KUSTICH, SUSAN K, NEW YORK, NY	07/10/97
LEE, GEORGE W, BROOKLYN, NY	06/26/97
LIMA, RUTH O, NASHVILLE, TN	07/07/97
MANCINI, JAMES D, MCKEES ROCKS, PA	07/10/97
MCALLISTER, AMAZAIR, WASHINGTON, DC	07/10/97
MILES, ETHEL M, CHARLOTTESVILLE, VA	06/30/97
PAVEZA, GREGORY J, TAMPA, FL	07/03/97
PFAB, MARY, ATLANTA, GA	07/08/97
PORTER, JACQUELINE R, BROOKLYN, NY	06/26/97
RICHARDSON, NEIL J, CEDAR SPRINGS, MI	07/06/97
SINGH, RAVINDRA, ALLENTOWN, PA	06/30/97

Dated: July 17, 1997.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Enforcement and Compliance.

[FR Doc. 97–20088 Filed 7–30–97; 8:45 am]

BILLING CODE 4150–04–P

NATIONAL INSTITUTES OF HEALTH

National Cancer Institute

Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Review of R25 (Education Grants) Applications.

Date: August 14, 1997.

Time: 2:00 to Adjournment.

Place: Teleconference, National Cancer Institute, Executive Plaza North, Room 611A, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Mary Bell, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 611A, 6130 Executive Boulevard, MSC 7410,

Bethesda, MD 20892–7410, Telephone: 301/496–7978.

Purpose/Agenda: To evaluate and review responses to request for proposal.

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.

Name of SEP: Preclinical Evaluation of Intermediate Endpoints and their Modulation by Chemopreventive Agents.

Date: September 11–12, 1997.

Time: 9:00 p.m. to 5:00 p.m.

Place: Ramada Inn-Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Lalita Palekar, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 622, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7410, Telephone: 301/496–7575.

Purpose/Agenda: To evaluate and review responses to request for proposal.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: July 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–20160 Filed 7–30–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Notice is hereby given of the NIDCD Working Group on Early Identification of Hearing Impairment's Workshop on Universal Newborn Hearing Screening on September 4–5, 1997 at the Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase MD 20815. The meeting is being held to identify acceptable protocols for newborn hearing screening and will be held from 8 am to 5 pm on September 4, and from 8 am to 12 pm on September 5.

The entire meeting is open to the public. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Lynn Huerta, Ph.D., Division of Human Communication, NIDCD, EPS Room 400C, Bethesda MD 20892, 301–402–3458 in advance of the meeting.

Dated: July 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–20152 Filed 7–30–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Services, Notice of Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Services, National Institutes of Health, on September 11–12, 1997, Natcher Building 45, Conference Rooms E1 and E2, Bethesda, Maryland.

This meeting will be open to the public from 11 a.m. to 6 p.m. on September 11, for the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 11, from 8:30 a.m. to 11:00 a.m., and also closed on September 12, (8:30 a.m. to adjournment), for the review, discussion, and evaluation of individual grant applications. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Services, National Institutes of Health, Natcher Building, Room 3AS–43H, Bethesda, Maryland 20892, telephone: 301–496–7301, fax 301–402–0224, will provide a summary of the meeting, and a roster of Council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Dieffenbach in advance of the meeting. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Natcher Building, Room 2AN–32C, Bethesda, Maryland 20892, telephone: 301–594–4499 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS]; Special Programs, 93.960)

Dated: July 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–20153 Filed 7–30–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: NICHD Small Grant and Conference Grant Review (Teleconference).

Date: August 18, 1997.

Time: 10 a.m.–adjournment.

Place: 6100 Executive Boulevard, 6100 Building—Room 5E01, Rockville, Maryland 20852.

Contact Person: Edgar E. Hanna, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building-Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1696.

Purpose/Agenda: To evaluate and review grant applications.

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. The discussions of the applications 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.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research Mothers and Children], National Institutes of Health)

Dated: July 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–20154 Filed 7–30–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Family Decision Making and Demographic Change.

Date: July 31–August 1, 1997.

Time: July 31—7:00 p.m.–10:00 p.m.; August 1—9:30 a.m.–adjournment.

Place: Natcher Conference Center, Building 45/NIH Campus, 9000 Rockville Pike, Bethesda, Maryland 20892.

Contact Person: Edgar E. Hanna, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building—Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1696.

Purpose/Agenda: To evaluate and review a 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. The discussions of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is published less than 15 days prior to the meeting due to the urgent need to meeting timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research Mothers and Children], National Institutes of Health)

Dated: July 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–20155 Filed 7–30–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1–GRB–C–03–S.

Date: August 20, 1997.

Time: 2:00 p.m.

Place: Room 6as-37E, Natcher Building, NIH, (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, Ph.D., Scientific Review Administrator, Review Branch, NIDDK, Natcher Building, Room 6as-37E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8894.

Purpose/Agenda: To review and evaluate grant applications.

This 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.

(Catalog of Federal Domestic Assistance Program No. 93–847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: July 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–20156 Filed 7–30–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting.

Name of SEP: ZDK1–GRB5–02S.

Date: August 19, 1997.

Time: 10:00 a.m.

Place: Room 6as–37E, Natcher Building, NIH, (Telephone Conference Call).

Contact Person: Francisco O. Calvo, Ph.D., Scientific Review Administrator, Review Branch, NIDDK, Natcher Building, Room 6as–37E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8897.

Purpose/Agenda: To review and evaluate grant applications.

This 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.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: July 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–20157 Filed 7–30–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDKI–GRB8–03S.

Date: August 6, 1997.

Time: 2:00 p.m.

Place: Room 6as–25N, Natcher Building, NIH, (Telephone Conference Call).

Contact Person: Roberta Haber, Ph.D., Scientific Review Administrator, Review Branch, NIDDK, Natcher Building, Room 6as–25N, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8898.

Purpose/Agenda: To review and evaluate grant applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information

concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: July 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–20158 Filed 7–30–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: August 8, 1997.

Time: 8:30 a.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Michael D. Hirsch, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: August 11, 1997.

Time: 9 a.m.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

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.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: July 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–20159 Filed 7–30–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4228–C–02]

Notice of Funding Availability for HOPE VI Public Housing Demolition for Fiscal Year 1997; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability; correction.

SUMMARY: This notice corrects and clarifies information that was provided in the notice of funding availability (NOFA) for fiscal year (FY) 1997 for Public Housing Agencies (PHAs) under the HOPE VI funding for the demolition of obsolete Public Housing units without revitalization, where the demolition would otherwise not occur due to lack of available resources. Specifically, this notice (1) clarifies the meaning of the phrase ''capital reserves'' and removes reference to the operating reserves in the description of the threshold factor III. C., Need for Demolition Funding, and in the rating factor IV. A., Extent of PHA Need for Funding for the Demolition; (2) corrects the references to the modernization indicator in the PHMAP regulation and the rating for factor IV. D., Extent of PHA's Capability and Readiness to Perform the Demolition; and (3) clarifies that there are two 10 point elements in rating factor IV.B., Extent of Impact of Demolition of Building on PHA and Surrounding Neighborhood.

DATES: This notice does not affect the deadline date provided in the June 3, 1997 NOFA. Applications must still be received in Headquarters on or before August 4, 1997, by 4 p.m. eastern time. Applicants that have already submitted applications before the publication of this notice may, however, submit changes to the amount used for ''capital reserves'' in factors III C and IV A (now ''leftover CIAP funds'') to respond to the clarification provided in this notice, within 14 days of the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Milan Ozdinec, Director, Office of Urban Revitalization, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4142, Washington, DC 20410; telephone (202) 401–8812 (this is not a toll free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–TDDY, which is a toll-free number. The NOFA and this correction are also available on the HUD Home Page, at the World Wide Web at http://www.hud.gov. HUD also will post frequently-asked questions and answers on the Home Page throughout the application preparation period.

SUPPLEMENTARY INFORMATION: On June 3, 1997, (62 FR 30402), HUD published in the **Federal Register** the Notice of Funding Availability for Fiscal Year 1997 for HOPE VI funding for the demolition of obsolete public housing units. The NOFA announced the availability of up to $30 million in HOPE VI for funding the demolition only. This notice amends the June 3, 1997 NOFA for the following reasons:

(1) The Department wants to clarify what was intended by the term ''capital reserves'', which was used in the description of the threshold and rating factors, since it is not a defined term used in either the regulations or handbooks for the Comprehensive Improvement Assistance Program (CIAP) or the Comprehensive Grant program (CGP). This correction uses a different term—''leftover CIAP funds''—which it defines.

(2) The chart published in the NOFA for factor IV. D., Extent of PHA's Capability and Readiness to Perform the Demolition, on how the Department would rate the PHMAP score for timeliness of modernization, a subindicator of the modernization indicator, was ambiguous. In PHMAP, the subindicator timeliness of modernization can only be rated A for pass, or F for fail. However, the chart published in the NOFA assigned points based on range of ratings—A, B, C or D. Subsequently, the Department has decided to use the complete PHMAP indicator for modernization, which more accurately measures all aspects of a PHA's capability to manage its modernization program. In PHMAP, the modernization indicator can be scored A, B, C, D, E or F. This wider range of ratings will provide a larger number of PHAs the opportunity to receive points for the factor in the NOFA and will correspond to the range of ratings published in the NOFA chart. (For the purposes of this NOFA, only PHAs with scores of A, B, C, or D will be given points.)

In addition, we have eliminated references to rating the PHA's management of its public housing development funds. The chart

published in the NOFA for this factor only referenced the PHMAP indicator for modernization; it did not include any measurement of a PHA's development capability. Furthermore, many PHAs no longer have public housing development funds and it would be necessary to forgo measuring development capability in some PHAs and while measuring it in others. Therefore, it has been determined that the Department will use a PHA's demonstrated capability in modernization alone to score this factor.

(3) Factor IV.B., Extent of Impact of Demolition of Building on PHA and Surrounding Neighborhood, was specific with respect to 10 points of a 20 point factor, but the NOFA needed to be explicit about the remaining 10 points being awarded for impact on the PHA.

Accordingly, FR Doc. 97–14384, the Notice of Funding Availability for HOPE VI Public Housing Demolition—Fiscal Year 1997, published in the **Federal Register** on June 3, 1997 (62 FR 30402), is amended as follows:

1. On page 30404, first column, under Section III, paragraph C., Need for Demolition Funding, the second paragraph is removed and the following paragraph is added in its place, to read as follows:

''A non-CGP PHA must demonstrate that it does not have adequate leftover CIAP funds (for the purpose of this NOFA, the phrase leftover CIAP funds means funds remaining from previous modernization programs that are subject to reprogramming after completion of all approved work items in the program) to perform the demolition without affecting current emergency or critical needs that it currently has. The PHA must enumerate any current leftover CIAP funds and then describe the amount of these funds that it anticipates will be used for emergency and/or critical needs in FY 1997. A PHA must provide the specific dollar amount of the leftover CIAP funds, an itemized list of the emergency and/or critical needs work items, and the individual and total cost of these work items accompanied by a narrative demonstrating the gravity of the critical needs that it is going to use its funds to correct.''

2. On Page 30404, third column, Section IV, paragraph A., Extent of PHA Need for Funding for the Demolition, is amended by removing the third, fourth and fifth paragraphs and adding, in their place, the following:

''*Element 1.* CGP PHAs will be rated depending on the amount of CGP funds remaining after taking into consideration grant funds used for emergency and/or critical needs. A non-CGP PHA will be rated depending on the amount of leftover CIAP funds remaining after taking into consideration leftover CIAP funds used for emergency and/or critical needs.

A CGP PHA must provide a comparison of the total cost of demolition of the targeted development, with the amount remaining in the FY 1997 annual comprehensive grant award after funding emergency and/or critical needs for FY 1997. Even though the PHA has work items approved in the annual statement, the Department expects a PHA to expend any dollars remaining in the CGP grant after it funds any emergency and/or critical needs to partially or fully fund the proposed demolition before undertaking other non-emergency or non-critical needs work items.

A CIAP PHA is to use the amount of leftover CIAP funds at the time of the HOPE VI application as the basis of the computation for this element. That is, a CIAP PHA is to compare the total cost of demolition of the targeted development with the amount of leftover CIAP funds remaining after funding emergency and/or critical needs for FY 1997 as described previously.

A CGP PHA that cannot fund the total cost of the demolition with the remaining CGP funds and a non-CGP PHA that cannot fund the total cost of the demolition with its leftover CIAP funds or those PHAs that can only fund a small percentage (i.e., 0 percent to 25 percent) of the cost of demolition will receive between 16–25 points.''

Percent of proposed demolition cost able to be funded with CGP funds or lefover CIAP funds	Points awarded
76–100	0–5
51–75	6–10
26–50	11–15
25–0	16–25

3. On Page 30405, first column, Section IV, paragraph B., Extent of Impact of Demolition of Building on PHA and Surrounding Neighborhood, is amended by adding the following sentence after the heading:

''This is a two part rating factor: extent of impact of demolition on the development and/or the PHA; and the extent of impact of the demolition on the surrounding neighborhood. Each of the elements will receive a score of 10 points.''

4. On Page 30405, third column, Section IV, paragraph D., Extent of PHA's Capability and Readiness to Perform the Demolition, is amended by removing the entire paragraph and adding a new paragraph D, to read as follows:

''D. *Extent of PHA's Capability and Readiness to Perform the Demolition.* [10 points]

Based on the latest HUD records (including the PHA's PHMAP modernization score) the PHA will be scored on the extent of the PHA's ability to begin immediately after approval and to effectively carry out the proposed demolition (e.g., the PHA has a request for proposal (RFP) prepared and ready to issue).

This criterion is divided into two factors—*capability,* which has a maximum of 8 points, and *readiness* to perform the demolition, which has a maximum of 2 points.

HUD will consider the extent to which the PHA with any active capital funding under CIAP or CGP programs has shown its capability to adequately manage the program. The PHA's capability will be judged by the immediate past performance in the expenditure and obligation of funds, contract administration, quality of physical work and budget controls for the modernization (CIAP or CGP) program. For this criterion the capability of the PHA will be measured by the latest PHMAP score for the modernization indicator, as follows:

Points awarded	Capability
8	Latest Modernization PHMAP score of A.
6	Latest Modernization PHMAP score of B.
4	Latest Modernization PHMAP score of C.
2	Latest Modernization PHMAP score of D.

The readiness of the PHA will be determined by whether the PHA has a draft RFP that is in compliance with § 85.36 for the demolition contract prepared at the time of its response to this NOFA. The PHA must have included in its application a copy of the draft RFP to document its contention. A PHA with a draft RFP will receive the maximum score for this element, 2 points. A PHA without a draft RFP will receive 0 points. The PHA's score on readiness is to be combined with its score on modernization capability to give the total score on the rating factor.''

Dated: July 28, 1997.

Kevin Emanuel Marchman,

Acting, Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–20317 Filed 7–30–97; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–832333

Applicant: Zoological Society of San Diego, CA.

The applicant requests a permit to import four captive-born Black-footed cats (*Felis nigripes*) from John Visser, Durbanville, Republic of South Africa for the purpose of enhancement of the species through captive propagation.

PRT–832495

Applicant: Larry Reynolds, Arlington, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus 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.

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.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18).

PRT–831644

Applicant: Lisbon Aquarium, Lisbon, Portugal.

Type of Permit: Take for public display.

Name and Number of Animals: Northern sea otters (Enhydra lutris lutris), up to 24.

Summary of Activity To Be Authorized: The applicant has requested a permit to collect and export 4 otters for the purpose of public display at the Lisbon Aquarium. Up to 24 otters may be captured in the course of collection activities in order to obtain the 4 most suitable otters for export and public display. Any otter not selected for export and public display will be immediately released.

Source of Marine Mammals for Public Display: Kodiak Islands, AK.

Period of Activity: Five years from issuance date of the permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

The following applicants have each requested a permit to import a sport-hunted polar bear (*Ursus maritimus*) from the Northwest Territories, Canada for personal use.

Applicant/address	Population	PRT
Robert Keeler, Douglas, WY	Gulf of Boothia	832324
Bruce Shoenweis, Alton, IL	McClintock Channel	831928
Harry Nicholson, Corsicana, TX	Lancaster Sound	832095

Written data or comments, requests for copies of the complete applications, or requests for a public hearing on any of these applications for marine mammal permits should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with all of the applications listed in this notice 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 within 30 days of the date of publication of this notice at the above address.

Dated: July 25, 1997.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–20134 Filed 7–30–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits for Marine Mammals

On March 26, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 58, Page 14438, that an application had been filed with the Fish and Wildlife Service by the following individual for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Applicant/address	Population	PRT-
Lee Adam, Hamburg, PA.	Lancaster Sound	826757

On April 9, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 68, Page 17200, that an application had been filed with the Fish and Wildlife Service by the following individual for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Applicant/address	Population	PRT-
David Anaman, Hemlock, MI.	Northern Beaufort	826910

On April 30, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 83, Page 23478, that an application had been filed with the Fish and Wildlife Service by the following individual for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Applicant/address	Population	PRT-
Robert Zingula, Central City, IA.	Northern Beaufort.	828355

On May 23, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 100, Page 28493, that an application had been filed with the Fish

and Wildlife Service by the following individuals for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Applicant/address	Population	PRT-
Jerome Eckrich, Aberdeen, SD.	Lancaster Sound	828883
Roger L. Baber, Jr., Churchville, VA.	Northern .. Beaufort	829415

On June 5, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 108, Page 28493, that an application had been filed with the Fish and Wildlife Service by the following individuals for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Applicant/address	Population	PRT-
Daniel Peyerk, Shelby Township, MI.	Northern .. Beaufort	829283
Tom Winn, Corpus Christi, TX.	Northern .. Beaufort	829418
Stewart Shaft, Northfield, MN.	McClintock Channel	829932
Greg Bond, Irving, TX.	McClintock Channel	829684
Loubert Suddaby, Orchard Park, NY.	Southern .. Beaufort	829687
Jan Bax, Appleton, WI.	McClintock Channel	829887

Notice is hereby given that between July 7 through 21, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permits subject to certain conditions set forth therein.

On June 13, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 114, Page 32364, that an application had been filed with the Fish and Wildlife Service by the Alaska Science Center, Anchorage, AK for amendment of the permit (PRT–801652) for the purposes of scientific research of walrus (*Odobenus rosmarus*).

Notice is hereby given that on July 17, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 430, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: July 25, 1997.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–20135 Filed 7–30–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Existing Information Collection Submitted to OMB for Review Under the Paperwork Reduction Act

The existing information collection described below has been submitted to the Office of Management and Budget for emergency approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)). Copies of the proposed collection may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Public comments on the proposal should be made within 15 days directly to: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; and the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: North American Reporting Center for Amphibian Malformations.

Summary: The collection of information referred herein applies to a World-Wide Web site that permits individuals who observed malformed amphibians or who inspect substantial numbers of normal or malformed amphibians to report those observations and related information. The Web site is termed the North American Reporting Center for Amphibian Malformations. Information will be used by scientists and federal, state, and local agencies to identify areas where malformed amphibians occur and the rates of occurrence.

Estimated Completion Time: 20 minutes.

Estimated Annual Number of Respondents: 900.

Frequency: Once.

Estimated Annual Burden Hours: 300 hours.

Affected Public: Primarily U.S. and Canadian residents.

Emergency Approval Requested by: Fifteen days from publication of this notice.

For Further Information Contact: To obtain copies of the survey, contact the Bureau's clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone (703) 648–7313, or go to the Website (http://www.npsc.nbs.gov./narcam).

Dated: July 14, 1997.

Don Minnich,

Acting Chief Biologist.

[FR Doc. 97–20083 Filed 7–30–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–054–1210–00]

Closure of Public Lands to Motorized Vehicles, Shoshone Resource Area

AGENCY: Bureau of Land Management, Interior

ACTION: Closure of public land to motorized vehicles.

SUMMARY: Notice is given that a way and surrounding adjacent public land in the Little City of Rocks Wilderness Study Area (WSA) (ID–54–5, Shoshone/Sun Valley Environmental Impact Statement, 1986), in Gooding County, Idaho is closed to motorized use year round. The closed area includes all public land in Township 3 South, Range 15 East, Section 33 except for a signed parking area south of the historic stone and earthen dam in the Little City of Rocks WSA. Motorized cross country travel has caused significant surface disturbance in the described area. The purpose of the closure is to prevent unacceptable impacts to soils and vegetation in compliance with the Interim Management Policy Guidance for WSAs. All public land administered by the Bureau of Land Management within the above described area is closed to motorized vehicle use indefinitely from the date of this notice.

Exemptions from this closure may be approved by the Authorized Officer. Exemptions may be approved for federal, state, and local government personnel on official duty, emergency service personnel including medical, search and rescue, and other licensed or permitted individuals.

The authority for this closure is 43 CFR 8364–1.

FOR MORE INFORMATION CONTACT: Paula Perletti, Outdoor Recreation Planner, Shoshone Resource Area, P.O. Box 2–B, Shoshone Idaho 83352, telephone (208) 886–2206.

Dated: July 7, 1997.

Bill A. Baker,

Area Manager.

[FR Doc. 97–20087 Filed 7–30–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–1020]

Notice of Public Involvement and Scoping Opportunities for the Grand Staircase-Escalante National Monument Management Plan and Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: The Utah Bureau of Land Management, Grand Staircase-Escalante National Monument (GSENM) is seeking public, agency and tribal involvement in the preparation of the GSENM Management Plan, through a series of public planning workshops/scoping meetings.

SUMMARY: Pursuant to the Federal Land Management Act (FLMPA), National Environmental Policy Act, Presidential Proclamation 6920 and Part 43, Section 1600 of Code of Federal Regulations, the Bureau of Land Management Grand Staircase-Escalante National Monument is seeking public involvement through various means including the hosting of a series of planning workshops in order to inform the public of Monument values and to understand public views, concerns and ideas regarding possibilities for management and the future of the GSENM.

ADDRESSES: Questions or concerns regarding the planning workshops/scoping meetings and schedules should be addressed to Pete Wilkins, Planning Coordinator, Grand Staircase-Escalante National Monument Planning Office, Bureau of Land Management, 337 South Main Street, Suite 010, Cedar City, Utah 84720.

FOR FURTHER INFORMATION CONTACT: Pete Wilkins, Planning Coordinator at the above address or by phone at (801) 865–5100, E-Mail at p1wilkin@ut.blm.gov., or fax to (801) 865–5170.

SUPPLEMENTARY INFORMATION: The Grand Staircase-Escalante National Monument was established on September 18, 1996 by Presidential Proclamation 6920. As stated in the Proclamation, a management plan would be prepared pursuant to existing authorities, mainly FLPMA and the National Environmental Policy Act. In accordance with these authorities, the Bureau of Land Management is seeking the comments, concerns and views of all individuals, groups, organizations, agencies and American Indian Tribal Governments that may have an interest in the GSENM. As such, the GSENM, is announcing a series of planning workshops/scoping meetings through out Utah and other western states as well as in Washington D.C.

The purpose of these meetings is to inform the public of some of the important values within the Monument as well as some of directives and guidelines that were established within Proclamation 6920. These workshops are also designed to gather ideas, concerns and opportunities regarding possible management of the GSENM. Additionally, these workshops will help the monument staff identify appropriate issues and alternatives to be addressed within the associated GSENM Management Plan/Environmental Impact Statement.

The schedule and location of these Workshop Events is as follows:

All workshops will begin at 7:00 p.m.

Big Water, UT, Big Water Town Hall, August 12, 1997

Escalante, UT, Community Center, August 14, 1997

Orderville, UT, Valley High School Little Theater, August 19, 1997

Kanab, UT, Kanab High School, August 21, 1997

Cedar City, UT, SUU Sharwan Smith Center, August 26, 1997

Tropic, UT, Bryce Valley High School Auditorium, August 27, 1997

Panguitch, UT, Panguitch High School, August 28, 1997

Salt Lake City, UT, Division of Natural Resources Auditorium, 1594 W. North Temple, September 2, 1997

Las Vegas, NV, Cashman Field Center, 850 Las Vegas Blvd. N. @ Washington Ave., September 4, 1997

Flagstaff, AZ, Woodlands Plaza Hotel, 1175 W. Route 66, September 16, 1997

Lakewood, CO, Sheraton West, 360 Union Blvd., September 30, 1997

Santa Fe, NM, Santa Fe Community College, 6401 South Richards Ave, October 2, 1997

San Francisco, CA, San Francisco Marriott, 55 Fourth Street, October 9, 1997

Moab, UT, Moab Valley Inn, 711 S. Main, October 14, 1997

Washington, D.C., Location to be announced, October 16, 1997

Dated: July 7, 1997.

A. J. Meredith,

Monument Manager.

[FR Doc. 97–20228 Filed 7–30–97; 8:45 am]

BILLING CODE 4310–DQ–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Amended Notice

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) and the County of Kem, State of California have extended the comment period for the Draft Environmental Impact Statement/Environmental Impact Report for the Soledad Mountain Project, a proposed gold mining operation on public and private lands in Kem County, California.

DATES: Comments on the Draft Environmental Impact Report/Environmental Impact Statement must be postmarked no later than August 11, 1997.

ADDRESSES: Written comments should be addressed to Bureau of Land Management, Ridgecrest Resource Area, 300 S. Richmond Road, Ridgecrest, California, 93555, Attention: Ahmed Mohsen, EIS Coordinator.

FOR FURTHER INFORMATION CONTACT: Ahmed Mohsen—EIS Coordinator (760) 384–5421.

PUBLIC MEETINGS: Public meetings were held on: Tues. June 24, 1997 and Wed. June 25, 1997.

SUPPLEMENTARY INFORMATION: The purpose of the Draft EIR/EIS is to present BLM and Kem County's comparative analysis of the impacts of the Proposed Action and Alternatives on the physical, biological, social and economic resources of the area. The Proposed Action is a mining proposal to extract minerals from the subsurface, process the ore using chemical leaching methods and place the waste rock adjacent to the processing and mining areas. Alternatives to the Proposed Action include variations on the duration of operations and placement of waste rock. After careful consideration

of the impacts of the Proposed Action and all the alternatives, BLM has identified a Preferred Action in response to regulatory requirements, issues raised, resources present, impact analysis results and the effectiveness of mitigation and reclamation measures.

A public scoping process was initiated by the BLM and Kem County to identify issues and concerns relating to the proposed mining operation and assist the lead agencies in formulating alternatives to the Proposed Action. The scoping process was designed to provide an opportunity for receipt of verbal and written comments from the public, organizations and government agencies. This was achieved through two public meetings, newspaper publications, **Federal Register** notice and notice of preparation of an EIR/EIS. Project description, resource inventories and public meeting proceedings were made available on the world wide web. Site can be reached with the following address: htt:www.ca.blm.gov/GoldenQueen.

The project area includes approximately 1,690 acres of which 1,219 acres are privately owned land and 471 acres are unpatented mining claims on public lands administered by the BLM. The proposed surface disturbance is 930 acres of which 735 acres are on private land and 195 acres are on public land

A **Federal Register** notice was published on June 2, 1997 (Volume 62, Number 105) Page 29736 to announce the public meeting dates and comment period schedules.

Dated: July 25, 1997.

Lee Delaney,

Area Manager.

[FR Doc. 97–20139 Filed 7–30–97; 8:45 am]

BILLING CODE 1990–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Soledad Mountain Project, CA

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) and the County of Kern, State of California are extending the comment period for the Draft Environmental Impact Statement/Environmental Impact Report for the Soledad Mountain Project, a proposed gold mining operation on public and private lands in Kern County, California.

DATES: Comments on the Draft Environmental Impact Report/Environmental Impact Statement must be postmarked no later than August 4, 1997.

ADDRESSES: Written comments should be addressed to Bureau of Land Management, Ridgecrest Resource Area, 300 S. Richmond Road, Ridgecrest, California, 93555, Attention: Ahmed Mohsen—EIS Coordinator.

FOR FURTHER INFORMATION CONTACT: Ahmed Mohsen-EIS Coordinator (760) 385–5421.

PUBLIC MEETINGS: Public meetings were held on: June 24 and June 25 at Rosamond and Mojave, California.

SUPPLEMENTARY INFORMATION: The purpose of the Draft EIR/EIS is to present BLM and Kern County's comparative analysis of the impacts of the Proposed Action and Alternatives on the physical, biological, social and economic resources of the area. The Proposed Action is a mining proposal to extract minerals from the subsurface, process the ore using chemical leaching methods and place the waste rock adjacent to the processing and mining areas. Alternatives to the Proposed Action include variations on the duration of operations and placement of waste rock. After careful consideration of the impacts of the Proposed Action and all the alternatives, BLM has identified a Preferred Action in response to regulatory requirements, issued raised, resources present, impact analysis results and the effectiveness of mitigation and reclamation measures.

A public scoping process was initiated by the BLM and Kern County to identify issues and concerns relating to the proposed mining operation and assist the lead agencies in formulating alternatives to the Proposed Action. The scoping process was designed to provide an opportunity for receipt of verbal and written comments from the public, organizations and government agencies. This was achieved through two public meetings, newspaper publications, federal register notice and notice of preparation of an EIR/EIS. Project description, resource inventories and public meeting proceedings were made available on the world wide web. Site can be reached with the following address: http:www.ca.blm.gov/GoldenQueen.

The project area includes approximately 1,690 acres of which 1,219 acres are privately owned land and 471 acres are unpatented mining claims on public lands administered by the BLM. The proposed surface disturbance is 930 acres of which 735 acres are on private land and 195 acres are on public land.

Five alternatives to the Proposed Action are analyzed in detail: (1) No Action, (2) Increased Mining and Processing Rate, (3) Decreased Mining and Processing Rate, (4) Reduced Project Size, and (5) Partial Backfilling.

Five alternatives to the Proposed Action are analyzed in detail: (1) No Action, (2) Increased Mining and Processing Rate, (3) Decreased Mining and Processing Rate, (4) Reduced Project Size, and (5) Partial Backfilling.

A **Federal Register** notice was published on June 2, 1997 (Volume 62, Number 105) Page 29736 to announce the public meeting dates and comment period schedules.

Lee Delaney,

Resource Area Manager.

[FR Doc. 97–20201 Filed 7–30–97; 8:45 am]

BILLING CODE 1990–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–1220–00]

Meeting of the Bakersfield Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Meeting of the Bakersfield Resource Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bureau of Land Management Resource Advisory Council for the Bakersfield District will meet in Bridgeport, California.

DATES: August 15–16, 1997.

ADDRESSES: Bridgeport Elementary School, 205 Kingsley Street.

SUPPLEMENTARY INFORMATION: The 12 member Bakersfield Resource Advisory Council is appointed by the Secretary of the Interior to advise the Bureau of Land Management on public land issues. The Council will meet on Friday and Saturday, August 15–16, 1997, beginning at 8:00 a.m. both days. Agenda items include election of officers, a plan to set priorities for the expenditure of range improvement funds, an update on the proposal to trade federal oil leases for the Headwaters forest, a discussion of RS–2477 rights of way, reports on the role of fire in native plant and deer herd management, an update on the draft Environmental Impact Statement for the Healthy Rangelands initiative, and an update on the status of proposed recreation fees for BLM lands. There will be a field trip Friday afternoon to Bodie State Historic Park. A public

comment period begins at 1 p.m., Saturday, August 16, at which time the public may discuss any public land issue. Written comments will be accepted during the meeting or at the address below. The entire meeting is open to the pubic. Anyone wishing to take part in the field trip must provide their own transportation.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 805–391–6010.

Dated: July 23, 1997.

John Skibinski,

Acting District Manager.

[FR Doc. 97–20204 Filed 7–30–97; 8:45 am]

BILLING CODE 4310–400–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–97–1420–00]

Colorado: Filing of Plats of Survey

July 22, 1997.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., July 22, 1997. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

The plat (in 11 sheets) representing the dependent resurvey of certain mineral claims in section 3 and the survey of a portion of the Hayes Building Lot, and the Metes-and-Bounds survey of Irregular Lot Lines in section 3, T. 4 S., R. 73 W., Sixth Principal Meridian, Group 690, Colorado, was accepted June 25, 1997.

The plat (in 10 sheets) representing the dependent resurvey of certain mineral surveys, or portions there of, in sections 17, 21, 22, 27, 28, and 29, T. 36 N., R. 11 W., New Mexico Principal Meridian, Group 862, Colorado, was accepted July 10, 1997.

These surveys were requested by the Forest Service for administrative purposes.

The plat representing the remeander of a portion of the Sangre De Cristo Grant boundary, the dependent resurvey of a portion of the Eighth Standard Parallel North (north boundary), and a portion of the subdivisional lines, the metes and bounds survey of the upper rim of the right bank of the Rio Grande River, and the subdivision of fractional section 4, Township 32 N., R. 11 E., New Mexico Principal Meridian, Group 1106, Colorado, was accepted June 24, 1997.

The plat representing the entire record of the investigative retracement and metes-and-bounds survey in section 15, T. 49 N., R. 2 W., New Mexico Principal Meridian, Group 1157, Colorado, was accepted July 16, 1997.

The plat representing the entire survey record of the dependent resurvey of Mineral Survey Number 5303, New Fisherman Placer, and the metes-and-bounds survey of a parcel of land within the boundaries of M.S. 5303, New Fisherman Placer, described as Parcel A., New Mexico Principal Meridian, Group 1165, Colorado, was accepted July 14, 1997.

The supplemental plat, correcting the acreage of Tract 48, which excludes that portion of H.E.S. 117, contained in the right-of-way of U.S. Highway No. 40, in unsurveyed T. 2 S., R. 75 W., Sixth Principal Meridian, Colorado, was accepted June 25, 1997.

These surveys were requested by BLM for administrative purposes.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 97–20203 Filed 7–30–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–01; WYW 141567]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), proposes to withdraw 1,430.92 acres of public land in Fremont County, to protect and preserve capital investments associated with critical bighorn sheep winter range which have been acquired by exchange or are in the process of being acquired through exchange. The winter range is located in northwestern Wyoming. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a meeting should be received on or before October 29, 1997.

ADDRESSEES: Comments and meeting requests should be sent to the Wyoming State Director, BLM, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307–775–6115, or Bill Bartlett, Lander Resource Area, 307–332-8402.

SUPPLEMENTARY INFORMATION: On July 2, 1997, a petition was approved allowing the BLM to file an application to withdraw the following described public land from settlement, sale, location, or entry (except for disposal by exchange), under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian, Wyoming

T. 40 N., R. 105 W.,
Sec. 17, NE¼NE¼, S½N½, NE¼SW¼, SE¼;
Sec. 18, NE¼NE¼;
Sec. 20, E½NE¼;
Sec. 21, NW¼NW¼, S½NW¼, N½SW¼, SE¼SW¼.
T. 41 N., R. 106 W.,
Sec. 17, NW¼SW¼, S½SW¼, S½S½SE¼;
Sec. 18, NE¼NE¼ (except for 8.88 acres), W½NE¼, SE¼NW¼, NE¼SW¼, SE¼;
Sec. 19, lot 1, N½NE¼, NE¼NW¼.

The area described contains 1,430.92 acres in Fremont County.

The purpose of the proposed withdrawal is to protect and preserve significant capital investments associated with the Whiskey Mountain bighorn sheep winter range that have been acquired through exchange, or are in the process of being acquired through exchange, pending further study and development of appropriate, and possibly longer-term, actions to protect and manage the resources.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that

date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact the bighorn sheep winter range or impair the existing values of the area may be allowed with the approval of an authorized officer of the BLM during the segregative period.

Dated: July 25, 1997.

Alan R. Pierson,

State Director.

[FR Doc. 97–20138 Filed 7–30–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1998, as Amended

In accordance with Departmental policy, 28 CFR 50.7 and pursuant to section 122 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9622, notice is hereby given that a proposed Consent Decree in *United States* v. *Akzo Nobel Coatings Inc., et al.*, Civil Action No. 97–1564–CIV–T–99A, was lodged on June 20, 1997, with the United States District Court for the Middle District of Florida, Tampa Division.

This case concerns the Peak Oil and Bay Drums Superfund Sites, located in north central Hillsborough County, on State Road 574, in Tampa, Florida (the ''Site''). In 1986, the Peak Oil and Bay Drums Superfund Sites were jointly placed on the National Priorities List as a result of the release or threatened release of hazardous substances. Pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, the Complaint in this action seeks recovery of past and future costs incurred and to be incurred by the United States at the Site, and injunctive relief with respect to the Site, namely, implementation of remedies selected by EPA in Records of Decision (''ROD'') for the Peak Oil/Bay Drums Operable Unit (''OU'') Two, dated August 9, 1993, which addresses the area-wide ground water in the Southern Surficial and Floridian Aquifers underlying the Site, and OU Four, dated June 28, 1994, which requires monitoring and sampling of the North Wetland. The Settling Defendants and the Settling Federal Agencies have agreed in the proposed Consent Decree to implement the remedies selected by EPA for OUs Two and Four.

The Consent Decree includes a covenant not to sue by the United States under Sections 106 and 107 of CERCLA and under section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Akzo Nobel Coatings, Inc., et al., DOJ Ref.* #90–11–2–897(H). Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA.

The proposed Consent Decree may be examined at the office of the United States Attorney, Middle District of Florida, 500 Zack St. Room 410, Tampa, Florida 33602; the Office of the United States Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia, 30303; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $84.00 (25 cents per page reproduction costs), payable to the Consent Decree Library for a copy of the Consent Decree with attachments or a check in the amount of $54.75, for a copy of the proposed Consent Decree without those attachments.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–20198 Filed 7–30–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In accordance with Departmental policy, 28 CFR 50.7 and pursuant to section 122 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9622, notice is hereby given that a proposed Consent Decree in *United States* v. *Akzo Nobel Coatings, Inc., et al*, Civil Action No. 97–1565–CIV–T–24E, was lodged on June 20, 1997, with the United States District Court for the Middle District of Florida, Tampa Division.

This case concerns the Bay Drums Superfund Site, located in north central Hillsborough County, on State Road 574, in Tampa, Florida (the ''Site''). In 1986, the Peak Oil and Bay Drums Superfund Sites were jointly placed on the national Priorities List as a result of the release or threatened release of hazardous substances. Pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, the Complaint in this action seeks recovery of past and future costs incurred and to be incurred by the United States with respect to the Site, and injunctive relief for the Site, namely, implementation of the source control remedy selected by EPA in Record of Decision (''ROD'') for the Peak Oil/Bay Drums Operable Unit (''OU'') Three, dated March 31, 1993. The ROD provides for excavation of approximately 16,500 cubic yards of contaminated soils and sediments at the Site, backfilling of those excavated areas with clean fill, solidification and stabilization of contaminated soils and sediments, disposal of the solidified material above the water table, installation of a low permeability cap over the solidified material, disposal of shingle debris. The Settling Defendants and Settling Federal Agencies have agreed in the proposed Consent Decree to perform the remedy selected by EPA for OU Three. Settling Defendants have also agreed to pay the United States $3,275,522.02 for past response costs incurred with respect to the Site, and to reimburse future costs associated with implementation of the Consent Decree.

The Consent Decree includes a covenant not to sue by the United States under sections 106 and 107 of CERCLA and under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Akzo Nobel Coatings, Inc, et al.*, DOJ Ref. #90–11–2–897(D). Commenters may request an opportunity for a public meeting in

the affected area, in accordance with Section 7003(d) RCRA.

The proposed Consent Decree may be examined at the office of the United States Attorney, Middle District of Florida, 500 Zack St. Room 410, Tampa, Florida 33602; the Office of the United States Environmental Protection Agency, Region 4, 100 Alabama Street, S.W., Atlanta, Georgia, 30303; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $57.75 (25 cents per page reproduction costs), payable to the Consent Decree Library for a copy of the Consent Decree with attachments or a check in the amount of $43.00, for a copy of the proposed Consent Decree without those attachments.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–20197 Filed 7–30–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In accordance with Departmental policy, 28 CFR 50.7 and pursuant to section 122 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9622, notice is hereby given that a proposed Consent Decree in *United States* versus Bill Currie Ford, Inc., et al, Civil Action No. 97–1566–CIV–T–23C, was lodged on June 20, 1997, with the United States District Court for the Middle District of Florida, Tampa Division.

This case concerns the Peak Oil Superfund Site, located in north central Hillsborough County, on State Road 574, in Tampa, Florida (the ''Site''). In 1986, the Peak Oil and Bay Drums Superfund Sites were jointly placed on the National Priorities List as a result of the release or threatened release of hazardous substances. Pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, the Complaint in this action seeks recovery of past and future response costs incurred and to be incurred by the United States with respect to the Site, and injunctive relief for the Site, namely, implementation of the source control remedy selected by EPA in Record of Decision (''ROD'') for the Peak Oil/Bay Drums Operable Unit (''OU'') One, dated June 21, 1993. The ROD provides for the installation of a slurry wall around the Site, excavation, solidification and stabilization and on-site disposal of lead-impacted soils/sediments, solidification and stabilization and on-site disposal of an ash pile, dewatering of the surficial aquifer, treatment of surficial groundwater, in-situ soil flushing/bioremediation, capping of the Site, and institutional controls. The Settling Defendants and Settling Federal Agencies have agreed in the proposed Consent Decree to perform the remedy selected by EPA for OU One. Settling Defendants have also agreed to reimburse the United States for certain response costs with respect to the Site.

The Consent Decree includes a covenant not to sue by the United States under sections 106 and 107 of CERCLA and under section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* versus *Bill Currie Ford, Inc., et al.,* DOJ Ref. #90–11–2–897. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA.

The proposed Consent Decree may be examined at the office of the United States Attorney, Middle District of Florida, 500 Zack St. Room 410, Tampa, Florida 33602; the Office of the United States Environmental Protection Agency, Region 4, 100 Alabama Street, S.W., Atlanta, Georgia, 30303; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $56.25 (25 cents per page reproduction costs), payable to the Consent Decree Library for a copy of the Consent Decree with attachments or a check in the amount of $33.25, for a copy of the proposed Consent Decree without those attachments.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–20199 Filed 7–30–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Recovery Act (''CERCLA'')

In accordance with Departmental policy, 28 CFR 50.7, and section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed Consent Decree in *United States* versus *Cosmo Iacavazzi, et al.,* Civil Action No. CV–89–0164(M.D. PA), was lodged on July 8, 1997 with the United States District Court for the Middle District of Pennsylvania. This Consent Decree resolves a cost recovery action brought by the United States against Celotex Corporation, pursuant to Section 107(a), 42 U.S.C. 9607(a). The settling defendant arranged for the disposal of hazardous substances at the Lackawanna Refuse Site (''the Site'') located in Old Forge, Pennsylvania. The Consent Decree provides that Celotex will pay $300,000 to the Hazardous Substance Superfund for response costs incurred by the United States at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* versus *Cosmo Iacavazzi, et al.,* and *In re Celotex Corporation,* DOJ #90–5–1–1–3712.

The proposed Consent Decree may be examined at the office of the United States Attorney, Suite 309, Federal Building, Washington and Linden Street, Scranton, PA 18501; the Region III office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in

the amount of $5.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–20208 Filed 7–30–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 21, 1997, a proposed Consent Decree in *United States* v. *New Hampshire Ball Bearings, Inc.*, Civil No. 97–357 JD (D.N.H.), was lodged with the United States District Court for the District of New Hampshire. The proposed Consent Decree concerns the response to the existence of hazardous substances at the South Municipal Water Supply Well Superfund Site (''Site'') located in Peterborough, New Hampshire pursuant to the Comprehensive Environmental Response, Compensation and Liability Act.

Under the terms of the Consent Decree, New Hampshire Ball Bearings, Inc. (''NHBB''), the owner and operator of a portion of the Site, will reimburse the United States $1,125,000, plus interest, for costs incurred and to be incurred in connection with the Site. In addition, NHBB will pay $93,000 for natural resource damages for resources under the trusteeship of the United States Department of the Interior. NHBB has been performing the remedial action for the Site pursuant to a Unilateral Administrative Order.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *New Hampshire Ball Bearings, Inc.* (D.N.H.), D.J. Ref. 90–11–2–551A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 55 Pleasant St., Rm. 312, Concord, New Hampshire, and the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts. Copies of the Consent Decree also may be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $11.50 (46 pages at 25 cents per page reproduction cost) made payable to Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Division.

[FR Doc. 97–20207 Filed 7–30–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on July 24, 1997, a proposed consent decree in *United States* versus *City of Palmetto, Florida, et al.*, Civil Action No. 96–613–CIV–T–25E, was lodged with the United States District Court for the Middle District of Florida, Tampa Division.

In this action, the United States sought civil penalties and injunctive relief under sections 301(a) and 309 (b) and (d) of the Clean Water Act (the ''Act''), 33 U.S.C. 1311(a) and 1319 (b) and (d), for violations of effluent limits set forth in the NPDES permit issued to the City of Palmetto, Florida, and for unpermitted discharges from the City's wastewater treatment plant to Terra Ceia Bay. Under the proposed consent decree, the City will implement a sewage collection system maintenance program to prevent future violations of the Act and will pay a civil penalty of $65,000. In addition, the City will perform a Supplemental Environmental Project (''SEP'') valued at approximately $535,000, which consists of the expansion and acceleration of a project that will divert treated wastewater to beneficial reuse.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *City of Palmetto, Florida, et al.*, D.J. Ref. No. 90–5–1–1–4210.

The proposed consent decree may be examined at the Office of the United States Attorney, Middle District of Florida, Robert Timberlake Bldg., 500 Zack Street, Room 400, Tampa, Florida 33602; the Region IV Office of the Environmental Protection Agency, Atlanta Federal Center, 61 Forsythe St., S.W. Atlanta, Georgia 30303–3104; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the proposed decree and attachments, please refer to the referenced case and enclose a check in the amount of $8.50 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–20196 Filed 7–30–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 140–97]

Prvacy Act of 1974, As Amended by The Computer Matching and Privacy Protection Act of 1988

This notice is published in the **Federal Register** in accordance with the requirements of the Privacy Act, as amended by the Computer Matching and Privacy Protection Act of 1988 (CMPPA) (5 U.S.C. 552a(e)(12)). The Immigration and Naturalization Service (INS), Department of Justice (the source agency), is participating in computer matching programs with the District of Columbia and agencies of five states (all designated as recipient agencies). These matching activities will permit the recipient agencies to confirm the immigration status of alien applicants for, or recipients of, Federal benefits assistance under the ''Systematic Alien Verification for Entitlements (SAVE)'' program as required by the Immigration Reform and Control Act (IRCA) of 1986 (Pub. L. 99–603).[1]

Specifically, the matching activities will permit the following eligibility determinations:

[1] Effective July 1, 1997, IRCA was amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Pub. L. 104–193, 110 Stat. 2168 (1996). The PRWORA amends IRCA by replacing the reference to ''Aid to Families with Dependent Children'' (AFDC), with a reference to its successor program, ''Temporary Assistance for Needy Families'' (TANF). As was the case with AFDC, states are required to verify through SAVE that an applicant or recipient is in an eligible alien status for TANF benefits. In addition, Section 840 of the PRWORA makes verification for eligibility under the Food Stamps Program voluntary on the part of the State agency rather than mandatory.

(1) The District of Columbia Department of Employment Services, the New York Department of Labor, the New Jersey Department of Labor, and the Texas Workforce Commission will be able to determine eligibility for unemployment compensation;

(2) The California State Department of Social Services will be able to determine eligibility status for the TANF program and the Food Stamps program;

(3) The California State Department of Health Services will be able to determine eligibility status for the Medicaid Program; and

(4) The Colorado Department of Human Services [2] will be able to determine the eligibility status for the Medicaid, TANF, and Food Stamps Programs.

Section 121(c) of IRCA amends Section 1137 of the Social Security and other statutes to require agencies which administer the Federal Benefits programs designated within IRCA to use the INS verification system to determine eligibility. Accordingly, through the use of user identification codes and passwords, authorized persons from these agencies may electronically access the database of an INS system of records entitled ''Alien Status Verification Index, Justice/INS–009.'' From its automated records system, any agency (named above) participating in these matching programs may enter electronically into the INS database the alien registration number of the applicant or recipient. This action will initiate a search of the INS database for a corresponding alien registration number. Where such number is located, the agency will receive electronically from the INS database the following data upon which to determine eligibility: alien registration number, last name, first name, date of birth, country of birth, social security number (if available), date of entry, immigration status data, and employment eligibility data. In accordance with 5 U.S.C. 552a(p), such agencies will provide the alien applicant with 30 days notice and an opportunity to contest any adverse finding before final action is taken against that alien because of ineligible immigration status as established through the computer match.

The original effective date of the matching programs was January 19, 1990, for which notice was published in the **Federal Register** on December 28, 1989 (54 FR 53382). The programs have continued to date under the authority of a series of new approvals as required by the CMPPA. The CMPPA provides that based upon approval by agency Data Integrity Boards of a new computer matching agreement, computer matching activities may be conducted for 18 months and, contingent upon specific conditions, may be similarly extended by the Board for an additional year without the necessity of a new agreement. The most recent one-year extension for those programs listed in items (1) through (4) above will expire on August 27, 1997. Therefore, with the exception of the California Department of Social Services matching program for which approval for the full 18-month period is contingent upon a favorable cost-benefit showing within 6 months from the effective date of the new agreement, the Department's Data Integrity Board has approved new agreements to permit the above-named computer matching programs to continue for another 18-month period from the effective date (described below).

Matching activities under the new agreements will be effective 30 days after publication of this computer matching notice in the **Federal Register**, or 40 days after a report concerning the computer matching program has been transmitted to the Office of Management and Budget, and transmitted to Congress along with a copy of the agreements, whichever is later. Except as noted above, the agreements (and matching activities) will continue for a period of 18 months from the effective date—unless, within 3 months prior to the expiration of the agreement, the Data Integrity Board approves a one-year extension pursuant to 5 U.S.C. 552a(o)(2)(D).

In accordance with 5 U.S.C. 552a(o)(2)(A) and (r), the required report is being provided to the Office of Management and Budget, and to the Congress together with a copy of the agreements. Inquiries may be addressed to Patricia E. Neely, Program Analyst, Information Resources Management, Justice Management Division, Information Management and Security Staff, Department of Justice, Washington, DC. 20530.

Dated: July 18, 1997.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 97–20063 Filed 7–30–97; 8:45 am]

BILLING CODE 4410–10–M

[2] Identified in previous computer matching notices as the Colorado Department of Social Services.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; arrival record.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register on March 21, 1997 at 62 FR 13707, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service. The purpose of this notice is to allow an additional 30 days for public comments until September 2, 1997. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Room 10235, Office of Management and Budget, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Arrival Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–94A OT. Office of Inspections, Examinations Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collection is captured electronically as part of a pilot program established by the Service in cooperation with U.S. Airways. The information collected will be used by the Service to document an alien's arrival and departure to and from the United States and may be evidence of registration under certain provisions of the INA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 responses at three minutes (0.05) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 500 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Dated: July 28, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–20252 Filed 7–30–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Extension of existing collection; application—checkpoint pre-enrolled access lane.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 2, 1997 at 62 FR 24131, allowing for a 60-day public comment period on this information collection. No comments were received by the Immigration and Naturalization Service. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for ''thirty days'' until September 2, 1997. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn.: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Room 10235, Office of Management and Budget, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285.

If you have additional comments, suggestions, nor need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through to use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application—Checkpoint Pre-enrolled Access Lane.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–866. Border Patrol Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collection will be used by the Service to determine eligibility for participation in the Checkpoint Pre-enrolled Access Lane (PAL) program for persons and vehicles at immigration checkpoints within the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,500 respondents at 32 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,625 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: July 28, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–20253 Filed 7–30–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; Comment Request

July 25, 1997.

The Department of Labor (DOL) has submitted the following public

information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ({202} 219–5096 ext. 143) or by E-Mail to OMally-Theresa@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call {202} 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**. The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Ionizing Radiation (1910.1096).

OMB Number: 1218–0103 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 15,859.

Estimated Time Per Respondent: Ranges from 5 minutes to maintain records to 10 minutes to collect and mail badges.

Total Burden Hours: 42,491.

Total Annualized Capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing service): $17,508.

Description: The purpose of this standard and its information collection is designed to provide protection for employees from the adverse health effects associated with occupational exposure to ionizing radiation. The standard requires employers to notify the Assistant Secretary for Occupational Safety and Health of incidents of overexposure; to send written reports of overexposure in excess of the PEL (permissible exposure limit) to the Assistant Secretary for Occupational Safety and Health and to the exposed employee; to maintain records of radiation exposure of all employees; to furnish reports of exposure to the employee at his/her request; and to provide employees with a copy of the standard and operating procedures.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–20239 Filed 7–30–97; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Announcement of Vacancies Request for Nominations

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an ''Advisory Council on Employee Welfare and Pension Benefit Plans'' (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire Friday, November 14, 1997. The groups or fields represented are as follows: employee organizations (multiemployer plans), investment counseling, actuarial counseling, employers and the general public (pensioners). In addition, this year nominations also are being sought for individuals interested in an appointment to fill one year of an unexpired three-year term of a council member who died while serving on the Council. That unexpired term calls for naming an employee organization (multiemployer) representative.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N–5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before October 1, 1997. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation should include a brief description of the candidate's qualifications, the group or field which he or she would represent for the purposes of section 512 of ERISA, the candidate's political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, D.C., this 24th day of July, 1977.

Olena Berg,

Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

[FR Doc. 97–20238 Filed 7–30–97; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Availability of Benefit Accuracy Measurement Annual Report Results

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of the Unemployment Insurance Benefit Accuracy Measurement Annual Report for Calendar Year 1996.

SUMMARY: The purpose of this notice is to announce the availability of the Unemployment Insurance (UI) Benefit Accuracy Measurement (BAM) 1996 Annual Report, which contains the results of each State's BAM program, and information on how copies may be obtained. The BAM Annual Report is one of three UI PERFORMS reports to be issued this year. UI PERFORMS is the name of the Department's closed-loop management system for promoting continuous improvement in UI performance.

DATES: The Report will be available after July 31, 1997.

ADDRESSES: Copies of the Report may be obtained by writing to Ms. Grace A. Kilbane, Director, Unemployment Insurance Service, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210. The Report and this notice contain a list of names and addresses of persons in each State who will provide additional information and clarifications regarding the individual State reports upon request.

FOR FURTHER INFORMATION CONTACT: Burman Skrable, Division of Performance Review, Data Analysis and Data Validation Team, 202–219–5223, extension 157. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Each week, staff in each State's Employment Security Agency investigate random samples of UI benefit payments and record information based on interviews with claimants, employers, and third parties to determine whether State law, policy, and procedure were followed correctly in processing the sampled payment.

The Department of Labor is publishing results from the investigations in a digest which includes information on the 52 jurisdictions participating in the UI BAM program. Five items are reported for each State: the amount of UI benefits paid to the population of claimants, the size of the BAM samples, and the percentages of proper payments, overpayments, and underpayments in the population estimated from the BAM investigations. Ninety-five percent confidence intervals are presented for each of the three percentages as measure of the precision of the estimates. States have been encouraged to provide narratives to further clarify the meaning of the data based on their specific situations.

Since States' laws, policies, and procedures vary considerably, the data cannot be used to draw comparisons among States.

Effective with the release of calendar year 1995 data, States were no longer required to publish their report data; however, persons wanting clarification or additional information concerning a specific State's report are encouraged to contact the individual identified in the following mailing list.

Signed at Washington, D.C., on July 23, 1997.

Raymond J. Uhalde,

Acting Assistant Secretary of Labor for Employment and Training.

State Contacts for 1996 Unemployment Insurance Benefit Accuracy Measurement Annual Report

Alabama

Bill Mauldin, QC Supervisor, Department of Industrial Relations, 649 Monroe Street, Room 321, Montgomery, AL 36131, (334) 242–8130

Alaska

Karen Van Dusseldorp, Q.C. Data Analyst, Alaska Department of Labor, P.O. Box 21149, Juneau, AK 99802–1149, (907) 465–3000

Arizona

Dave Berggren, Employment Security Administration, Technical Support Section, Department of Economic Security, P.O. Box 6123, Site 701B–4, Phoenix, AZ 85005, (602) 542–3771

Arkansas

Hugh Havens, UI Administrator, (501) 682–3200, or

Norma Madden, BAM Supervisor, (501) 682–3087

both at:

Arkansas Employment Security Dept., P.O. Box 2981, Little Rock, AR 72203–2981,

California

Suzanne Schroeder, Office of Constituent Affairs, Employment Development Department, P.O. Box 826880, Sacramento, CA 94280–0001,, (916) 654–9029

Colorado

Kay Gilbert, BQC Supervisor, Colorado Division Employment & Training, UI Division, 251 E 12th Ave, Denver, CO 80203, (303) 894–2272

Connecticut

Rie Roirier, Director of Marketing, State of Connecticut, Department of labor, 200 Folly Brook Boulevard, Wethersfield, CT 06109, (860) 566–2479

Delaware

W. Thomas MacPherson, Director, Division of Unemployment Insurance, Department of Labor, P.O. Box 9950, Wilmington, DE 19809, (302) 761–8350

District of Columbia

Roberta Bauer, Assistant Director, Compliance & Independent Monitoring, DC Department of Employment Services, 500 C Street, N.W., Room 511, Washington, DC 20001, (202) 724–7492

Florida

Kenneth E. Holmes, UC Director, Florida Dept., of Unemployment Compensation, Caldwell Building, Room 201, Tallahassee, FL 32399–0209, (904) 921–3889

Georgia

David Poythress, Commissioner, Georgia Department of Labor, 148 International Blvd., NE, Suite 600, Atlanta, GA 30303, (404) 656–3011

Hawaii

Douglas Odo, UI Administrator, Department of Labor & Industrial Relations, 830 Punchbowl Street, Honolulu, HI 96813, (808) 586–9069

Idaho

Jane Perez, QC Supervisory, Idaho Department of Employment , 317 Main Street, Boise, ID 83735, (208) 334–6285

Illinois

Charlene McLaughlin, Quality Control Supervisory, Illinois Department of Employment Security, 401 South State Street, Chicago, IL 60605, (312) 793–6231

Indiana

Sandy Jessee, QC Supervisor, Indiana Dept. of Workforce Development, 10 North Senate Avenue, Indianapolis, IN 46204, (317) 233–6676

Iowa

LeLoie Dutemple, Acting Supervisor, Iowa Workforce Development Unemployment Insurance Services Divisin, 1000 East Grand Avenue, Des Moines, IA 50319–0209, (515) 281–8386

Kansas

Joseph Ybarra, Department of Human Resources, 401 SW Topeka Bldg., Topeka, KS 66603, (913) 296–6313

Kentucky

Ron Holland, Director, Div. of Unemployment Insurance, 275 East Main Street, 2nd floor East, Frankfort, KY 40621, (502) 564–2900

Louisiana

Marianne Sullivan, Program Compliance Manager, Louisiana Department of Labor, P.O. Box 94094–9094, Baton Rouge, La 70804, (504) 342–7103

Maine

Gail Thayer, UI Director, Bureau of Employment Security, 20 Union Street, Augusta, ME 04330, (207) 287–2316

Maryland

Thomas S. Wendel, Exec. Director, Unemployment Insurance Division, Dept. of Labor, Licensing and Regulation, 1100 North Eutaw Street, Baltimore, MD 21201, (410) 767–2464

Massachusetts

Rena Kottcamp, Director of Research, Divisin of Employment Security, Charles F. Hurley ES Building, Boston, MA 02114, (617) 626–6556

Michigan

Manuel Mejia, Deputy Director, Bureau of Audits and Investigations, Michigan Employment Security Agency, 7310 Woodward Avenue, Detroit, MI48202, (313) 876–5906

Minnesota

Marti Hiras, QC Supervisor, Minnesota Department of Economic Security, 390 North Robert Street, St. Paul, MN 55101, (612) 296–5347

Mississippi

Merrill Merkle, Quality Control Unit, (601) 961–7764, or
Don Ware, UI Technical Services, (601) 961–7752
both at:
Mississippi Employment Security Comm., P.O. Box 1699, Jackson, MS 39205–1699

Missouri

Marilyn A. Hutcherson, Asst. Dir., Unemployment Insurance, Missouri Division of Employment Security, P.O. Box 59, Jefferson City, MO 65104, (314) 751–3670

Montana

Rod Sager, Administrator, Dept. of Labor and Industry Unemployment Insurance Division, P.O. Box 1728, Helena, MT 59624, (406) 444–2723

Nebraska

Will Sheehan, Administrator, UI Benefits, or
Don Gammill, Administrator, UI Program Evaluation
both at:
P.O. Box 94600, Lincoln, NE 68509–4600, (402) 471–9000

Nevada

Karen Rhodes, Public Information Officer, Department of Employment, Training, and Rehabilitation, 500 E. Third Street, Carson City, NV 897113, (702) 687–4620

New Hampshire

Carolyn Angle, QC Supervisor, Quality Control Unit, NH Department of Employment Security, 10 West Street, Concord, NH 03301, (603) 228–4073

New Jersey

Paulette Laubsch, Assistant Commissioner, New Jersey Department of Labor, CN 110, Trenton, NJ 08625–0110, (609) 984–5666

New Mexico

Betty Campbell, BQC Supervisor, Quality Control Section, New Mexico Department of Labor, 401 Broadway NE., P.O. Box 1928, Albuquerque, NM 87103, (505) 841–8499

New York

Ina Lawson, QC Manager, Division of Audit & Compliance, New York State Department of Labor, State Campus—Building 12, Albany, NY 12240, (518) 457–3638

North Carolina

W. Howard Phillips, Supervisor, UI Technical Support, Employment Security Commission of NC, P.O. Box 25903, Raleigh, NC 27611, (919) 733–4893

North Dakota

Leo Jablonski, BAM Supervisor, Job Service North Dakota, P.O. Box 5507, Bismarck, ND 58506–5507, (701) 328–3355

Ohio

Carolyn Clayton, QC Chief, Ohio Bureau of Employment Services, 145 South Front Street, P.O. Box 1618, Columbus, OH 43216, (614) 466–2681

Oklahoma

Terry W. McHale, QC Supervisor, OK Employment Security Commission, Will Rogers Memorial Office Bldg., 5th floor, Oklahoma City, OK 73105, (405) 557–7206

Oregon

James Mosley, QC Supervisor, Oregon Employment Department, 875 Union Street N.E., Salem, OR 97311, (503) 373–7963

Pennsylvania

Pete Cope, Director, Bureau of Unemployment Compensation, Benefits and Allowances Division, Department of Labor & Industry, 615 Labor and Industry Building, Harrisburg, PA 17121, (717) 787–3547

Puerto Rico

Carmen O. McCulloch, Assistant Secretary, PR Dept. of Labor and Human Resources, 505 Muñoz Rivera Avenue, Hato Rey, PR 00918, (787) 754–2130

Rhode Island

Lawrence Fitch, Director, Department of Employment Security, 24 Mason Street, Providence, RI 02903, (401) 277–3648

South Carolina

William H. Griffin, Deputy Exec. Dir. Unemployment Insurance, SC Employment Security Commission, P.O. Box 995, Columbia, SC 29202, (803) 737–2400

South Dakota

Dennis Angerhofer, Unemployment Insurance Division, Department of Labor, P.O. Box 4730, Aberdeen, SD 57402–4730, (605) 622–3089

Tennessee

Ann Ridings, BQC Supervisor, Quality Control Unit, TN Department of Employment Security, 10th Floor, Volunteer Plaza, 500 James Robertson Parkway, Nashville, TN 37245–0001, (615) 741–3190

Texas

Gerald Smart, UI QC Supervisor, Texas Workforce Commission, TWC Building, 101 E. 15th Street, Austin, TX 78778–0001, (512) 475–1719

Utah

Robert Comfort, QC Supervisor, Dept. of Employment Security, P.O. Box 778, Salt Lake City, UT 84110–0778, (801) 536–7605

Vermont

Robert Herbst, Quality Control Chief, Dept. of Employment & Training, P.O. Box 488, Montpelier, VT 05602, (802) 828–4382

Virginia

F.W. Tucker, IV; Chief of Benefits, Unemployment Insurance Services, Virginia Employment Commission, P.O. Box 1359, Richmond, VA 23211, (804) 786–3032

Washington

Teresa Morris, Director, WA Employment Security Dept., Office of Management Review, P.O. Box 90465, Olympia, WA 98507–9046, (206) 493–9511

West Virginia

Dennis D. Redden, Bureau of Employnment Programs, 112 California Avenue, Charleston, WV 25305, (304) 558–2256

Wisconsin

Chet Frederick, QC Director, WI Dept. of Workforce Development, 201 East Washington Avenue, P.O. Box 7905, Madison, WI 53707, (608) 266–8260

Wyoming

Beth Nelson, Administrator, U I Administration, P.O. Box 2760, Casper, WY 82602, (307) 235–3254

[FR Doc. 97–20105 Filed 7–30–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the

Employment Standards Administration is soliciting comments concerning a proposed extension information collection, the Uniform Health Insurance Claim Form.

Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 30, 1997. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Ms. Margaret Sherrill, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 219–7601. (This is not a toll-free number.) Fax 202–219–6592.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation has responsibility for administering the Federal Employees' Compensation Act (FECA—5 USC 8101 et. seq.) and the Federal Black Lung Benefits Act (FBLBA) provisions of the Federal Mine Safety and Health Act (30 USC 901 et. seq.). These statutes provide for payment to medical institutions for certain medical treatment and diagnostic services for employment-related injuries and illnesses. To determine appropriate payment of medical bills submitted by such provider(s), both FECA and FBLA programs require the billing institution(s) to identify the claimant/beneficiary and to specify (1) the type of injury/illness being treated, (2) the need for the medical services rendered, (3) the specific procedure(s) performed, and (4) the relationship to the accepted industrial injury/illness for FECA claimants and to coal mine workers' pneumoconiosis for Black Lung claimants.

II. Current Actions

The Department of Labor (DOL) seeks extension of approval to collect this information to carry out its responsibility to insure that providers of medical services to FECA and BLBA beneficiaries receive appropriate payment for injuries and illnesses covered under the Acts. Failure to request this information will prohibit the Department's ability to fulfill this mandate.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Uniform Health Insurance Claim Form.

OMB Number: 1215–0176.

Agency Numbers: UB–92.

Affected Public: Individuals or households, State or local governments, Businesses or other for profit, Federal agencies or employees, Not-for-profit institutions, Small businesses or organizations.

Total Repondents: 138,382.

Frequency: On occasion.

Total Responses: 138,382.

Average Time Per Response:

UB–92 FECA—17 minutes

UB–92 FBLBA—7 minutes

EOB FECA—7 minutes

Estimated Total Burden Hours: 31,889.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection requests; they will also become a matter of public record.

Dated: July 24, 1997.

Margaret J. Sherrill,

Management Analysis Officer, Division Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 97–20101 Filed 7–30–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Gamma Radiation Exposure Records

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed new/revision/extension/reinstatement of the information collection related to Gamma Radiation Exposure Records (pertains to metal and nonmetal underground mines). MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the For Further Information Contact section of this notice.

DATES: Submit comments on or before September 29, 1997.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mr. Fesak can be reached at gfesak@msha.gov (Internet E-mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Under section 103(c) of the Federal Mine Safety and Health Act of 1977, MSHA is required to ''* * * issue regulations requiring operators to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any applicable mandatory health or safety standard promulgated under this Act.''

Gamma radiation occurs anywhere that radioactive materials are present, and has been associated with lung cancer and other debilitating occupational diseases. Gamma radiation hazards may be found near radiation sources at surface operations using X-ray machines, weightometers, nuclear and diffraction units.

II. Current Actions

Annual gamma radiation surveys are required to be conducted in all underground mines where radioactive ores are mined. Where the average gamma radiation measurements are in excess of 2.0 milliroentgens per hour in the working place, all persons are to be provided with gamma radiation dosimeters and records of cumulative individual gamma radiation exposures been kept.

Records of cumulative occupational radiation exposures aid in the protection of workers and in control of subsequent radiation exposure, and are used by MSHA in the evaluation of the effectiveness of the protection program in demonstrating compliance with regulatory requirements.

Type of Review: Reinstatement without change.

Agency: Mine Safety and Health Administration.

Title: Gamma Radiation Exposure Records.

OMB Number: 1219–0039.

Affected Public: Business or other for-profit institutions.

Cite/Reference/Form/etc: 30 CFR 57.5047.

Total Respondents: 2.

Frequency: Annually.

Total Responses: 2.

Average Time per Response: 2 hours.

Estimated Total Burden Hours: 2.

Estimated Total Burden Cost: $73.

Total Burden Cost (capital/startup):

Total Burden Cost (operating/maintaining):

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 24, 1997.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 97–20106 Filed 7–30–97; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 80–83

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 80–83. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before September 29, 1997. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the number of respondents and the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: 202–219–4782 (this is not a toll-free number). Fax: 202–219–4745.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 80–83 permits, under certain conditions, purchases of securities by employee benefit plans when the proceeds from the sale of such securities may be used by the issuer to reduce or retire indebtedness to persons who are parties in interest with respect to such plans.

II. Current Actions

The Pension and Welfare Benefits Administration proposes to extend the currently approved information collection requirements of Prohibited Transaction Class Exemption 80–83. The recordkeeping requirements of the exemption are intended to protect the interests of plan participants and beneficiaries. This class exemption requires the plan to maintain for six years from the date of the transaction the records necessary to enable interested parties including the Department of Labor to determine whether the conditions of the exemption have been met. The exemption also requires that those records be make available to certain

persons on request. Without the recordkeeping requirement, the Department, which may only grant an exemption if it can find that participants and beneficiaries are protected, would be unable to effectively enforce the terms of the exemption and insure user compliance.

Type of Review: Extension.

Agency: Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 80–83.

OMB Number: 1210–0064.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals.

Frequency: On occasion.

Estimated Total Burden Hours: 1.

Respondents, proposed frequency of response, and annual hour burden: The number of respondents is estimated to be 25. The exemption contains a six year recordkeeping requirement for information related to the affected securities transactions. Most of the records required to be maintained by the exemption are normally maintained for purposes of completing the annual report required by ERISA (Form 5500 Series). Those records not maintained for purposes related to the annual report are maintained as a standard business practice or for purposes of complying with the Internal Revenue Code. The Department estimates one additional hour of burden for this exemption.

Total Burden Cost (capital/start-up): $0.00.

Total Burden Cost (operating/maintenance): $0.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 25, 1997.

Gerald B. Lindrew,

Director, Pension and Welfare Benefits Administration, Office of Policy and Legislative Analysis.

[FR Doc. 97–20102 Filed 7–30–97; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 75–1

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 75–1. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before September 29, 1997. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the number of respondents and the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: 202–219–4782 (this is not a toll-free number). Fax: 202–219–4745.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 75–1 permits banks, registered broker-dealers and reporting dealers in Government securities who are parties in interest to engage in certain kinds of securities transactions with plans. In the absence of this exemption, these transactions might be prohibited by section 406 of the Employee Retirement Income Security Act of 1974 (the Act).

II. Current Actions

The Pension and Welfare Benefits Administration proposes to extend the currently approved information collection requirements of Prohibited Transaction Class Exemption 75–1. The recordkeeping requirements of the class exemption are intended to protect the interests of plan participants and beneficiaries. The exemption has one basic information collection condition. The plan is to maintain for a period of six years from the date of a covered transaction such records as are necessary to enable the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by such plan to determine whether the conditions of the exemption have been met.

Type of Review: Extension.

Agency: Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 75–1.

OMB Number: 1210–0092.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals.

Frequency: On occasion.

Estimated Total Burden Hours: 1.

Respondents, proposed frequency of response, and annual hour burden: The number of respondents is estimated to be 750. The exemption contains a six year recordkeeping requirement for information related to the affected securities transactions. This information would normally be maintained in connection with required reporting for the annual financial report (Form 5500 and 5500–C). The Department estimates that the recordkeeping burden of this class exemption, in effect, has been incorporated in the burden for Form 5500 (and 5500–C). Since this information has been approved for the Form 5500 (and 5500–C), we estimate one additional hour of burden for this exemption.

Total Burden Cost (capital/start-up): $0.00.

Total Burden Cost (operating/maintenance): $0.00.

Comments submitted in response to this notice will be summarized and/or

included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 25, 1997.

Gerald B. Lindrew,

Director, Pension and Welfare Benefits Administration, Office of Policy and Legislative Analysis.

[FR Doc. 97–20103 Filed 7–30–97; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 88–59

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 88–59. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before September 29, 1997.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the number of respondents and the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: 202–219–4782 (this is not a toll-free number). Fax: 202–219–4745.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 88–59 exempts from certain prohibited transaction provisions of ERISA, certain transactions involving residential financing arrangements. In the absence of this exemption, these transactions might be prohibited by section 406 of the Employee Retirement Income Security Act of 1974 (the Act).

II. Current Actions

The Pension and Welfare Benefits Administration proposes to extend the currently approved information collection requirements of Prohibited Transaction Class Exemption 88–59. The recordkeeping requirements of the class exemption are intended to protect the interests of plan participants and beneficiaries. The exemption has one basic information collection condition. The plan is to maintain for a period of six years from the date of a covered transaction such records as are necessary to enable the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by such plan to determine whether the conditions of the exemption have been met.

Type of Review: Extension.

Agency: Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 88–59.

OMB Number: 1210–0095.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals.

Frequency: On occasion.

Estimated Total Burden Hours: 1.

Respondents, proposed frequency of response, and annual hour burden: The number of respondents is estimated to be 185. The exemption contains a six year recordkeeping requirement for information related to the affected securities transactions. Most of the records required to be maintained by the exemption are normally maintained for purposes of completing the annual report required by ERISA (Form 5500 Series). Those records not maintained for purposes related to the annual report are maintained as a standard business practice or for purposes of complying with the Internal Revenue Code. We estimate one additional hour of burden for this exemption.

Total Burden Cost (capital/start-up): $0.00.

Total Burden Cost (operating/maintenance): $0.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 25, 1997.

Gerald B. Lindrew,

Director, Pension and Welfare Benefits Administration, Office of Policy and Legislative Analysis.

[FR Doc. 97–20104 Filed 7–30–97; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 97–35; Exemption Application No. D–10192, et al.]

Grant of Individual Exemptions; ILGWU National Retirement Fund

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications

for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

ILGWU National Retirement Fund, et al. (collectively, the Plans), Located in New York, New York

[Prohibited Transaction Exemption 97–35; Exemption Application Nos. D–10192, L–10193 through L–10196]

Exemption

Section I—Transactions

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective July 1, 1995, to—

(A) the provision of banking services (Banking Services, as defined in section IV(C)) by the Amalgamated Bank of New York (the Bank) to certain employee benefit plans (the Plans, as defined in section IV(E)), which are maintained on behalf of members of the International Ladies Garment Workers Union;

(B) the purchase by the Plans of certificates of deposit (CDs) issued by the Bank; and

(C) the deposit of Plans' assets in money market or other deposit accounts established by the Bank;

provided that the applicable conditions of Section II and Section III are met:

Section II—Conditions

(A) The terms under which the Banking Services are provided by the Bank to the Plans, and those under which the Plans purchase CDs from the Bank or maintain deposit accounts with the Bank, are at least as favorable to the Plans as those which the Plans could obtain in arm's-length transactions with unrelated parties.

(B) The interests of each of the Plans with respect to the Bank's provision of Banking Services to the Plans, the purchase of CDs from the Bank by any of the Plans, and the deposit of Plan assets in deposit accounts established by the Bank, are represented by an Independent Fiduciary (as defined in section IV(D)).

(C) On a periodic basis, not less frequently than annually, an Authorizing Plan Fiduciary (as defined below in section IV(A)) with respect to each Plan authorizes the representation of the Plan's interests by the Independent Fiduciary and determines that the Banking Services and any CDs and depository accounts utilized by the Plan are necessary and appropriate for the establishment or operation of the Plan;

(D) With respect to the purchase by any of the Plans of certificates of deposit (CDs) issued by the Bank or the deposit of Plan assets in a money market account or other deposit account established at the Bank,: (1) Such transaction complies with the conditions of section 408(b)(4) of the Act; (2) Any CD offered to the Plans by the Bank is also offered by the Bank in the ordinary course of its business with unrelated customers; and (3) Each CD purchased from the Bank by a Plan pays the maximum rate of interest for CDs of the same size and maturity being offered by the Bank to unrelated customers at the time of the transaction;

(E) The compensation received by the Bank for the provision of Banking Services to the Plan is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act.

(F) Following the merger of the International Ladies Garment Workers Union with UNITE, the Independent Fiduciary made an initial written determination that (1) the Bank's provision of Banking Services to the Plans, (2) the deposit of Plan assets in depository accounts maintained by the Bank, and (3) the purchase by the Plans of CDs from the Bank, are in the best interests and protective of the participants and beneficiaries of each of the Plans.

(G) On a periodic basis, not less frequently than quarterly, the Bank provides the Independent Fiduciary with a written report (the Periodic Report) which includes the following items with respect to the period since the previous Periodic Report: (1) A listing of Banking Services provided to, all outstanding CDs purchased by, and deposit accounts maintained for each Plan; (2) a listing of all fees paid by the Plans to the Bank for the Banking Services, (3) the performance of the Bank with respect to all investment management services, (4) a description of any changes in the Banking Services, (5) an explanation of any problems experienced by the Bank in providing the Banking Services, (6) a description of any material adverse events affecting the Bank, and (7) any additional information requested by the Independent Fiduciary in the discharge of its obligations under this exemption.

(H) On a periodic basis, not less frequently than annually, the Independent Fiduciary reviews the Banking Services provided to each Plan by the Bank, the compensation received by the Bank for such services, any purchases by the Plan of CDs from the Bank, and any deposits of assets in deposit accounts maintained by the Bank, and makes the following written determinations:

(1) The continuation of the Bank's provision of Banking Services to the Plan for compensation is in the best interests and protective of the participants and beneficiaries of the Plan;

(2) The Bank is a solvent financial institution and has the capability to perform the services;

(3) The fees charged by the Bank are reasonable and appropriate;

(4) The services, the depository accounts, and the CDs are offered to the Plan on the same terms under which the Bank offers the services to unrelated Bank customers in the ordinary course of business; and

(5) Where the Banking Services include an investment management service, that the rate of return is not less favorable to the Plan than the rates on comparable investments involving unrelated parties.

(I) Copies of the Bank's periodic reports to the Independent Fiduciary are furnished to the Authorizing Plan Fiduciaries on a periodic basis, not less frequently than annually and not later than 90 days after the period to which they apply.

(J) The Independent Fiduciary is authorized to continue, amend, or

terminate, without any penalty to any Plan (other than the payment of penalties required under federal or state banking regulations upon premature redemption of a CD), any arrangement involving: (1) The provision of Banking Services by the Bank to any of the Plans, (2) the deposit of Plan assets in a deposit account maintained by the Bank, or (3) any purchases by a Plan of CDs from the Bank;

(K) The Authorizing Plan Fiduciary may terminate, without penalty to the Plan (other than the payment of penalties required under federal or state banking regulations upon premature redemption of a CD), the Plan's participation in any arrangement involving: (1) The representation of the Plan's interests by the Independent Fiduciary, (2) the provision of Banking Services by the Bank to the Plan, (3) the deposit of Plan assets in a deposit account maintained by the Bank, or (4) the purchase by the Plan of CDs from the Bank.

Section III—Recordkeeping

(A) For a period of six years, the Bank and the Independent Fiduciary will maintain or cause to be maintained all written reports and other memoranda evidencing analyses and determinations made in satisfaction of conditions of this exemption, except that: (a) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Independent Fiduciary and the Bank the records are lost or destroyed before the end of the six-year period; and (b) no party in interest other than the Bank and the Independent Fiduciary shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (2) below;

(B)(1) Except as provided in section (2) of this paragraph (B) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (A) of this Section III shall be unconditionally available at their customary location during normal business hours for inspection by: (a) Any duly authorized employee or representative of the U.S. Department of Labor or the Internal Revenue Service, (b) any employer participating in the Plans or any duly authorized employee or representative of such employer, and (c) any participant or beneficiary of the Plans or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in subsections (b) and (c) of subsection (1) above shall be authorized to examine trade secrets of the Independent Fiduciary or the Bank, or any of their affiliates, or any commercial, financial, or other information that is privileged or confidential.

Section IV—Definitions

(A) *Authorizing Plan Fiduciary* means, with respect to each Plan, the board of trustees of the Plan or other appropriate plan fiduciary with discretionary authority to make decisions with respect to the investment of Plan assets;

(B) *Bank* means the Amalgamated Bank of New York;

(C) *Banking Services* means (1) custodial, safekeeping, checking account, trustee services, and (2) investment management services involving (a) fixed income securities (either directly or through a collective investment fund maintained by the Bank), (b) the LongView Fund maintained by the Bank, and, (c) effective January 3, 1998, the LEI Fund maintained by the Bank.

(D) *Independent Fiduciary* means a person, within the meaning of section 3(9) of the Act, who (1) is not an affiliate of the Union of Needletrades, Industrial & Textile Employees (UNITE) and any successor organization thereto by merger, consolidation or otherwise, (2) is not an officer, director, employee or partner of UNITE, (3) is not an entity in which UNITE has an ownership interest, (4) has no relationship with the Bank other than as Independent Fiduciary under this exemption, and (5) has acknowledged in writing that it is acting as a fiduciary under the Act. No person may serve as an Independent Fiduciary for the Plans for any fiscal year in which the gross income (other than fixed, non-discretionary retirement income) received by such person (or any partnership or corporation of which such person is an officer, director, or ten percent or more partner or shareholder) from UNITE and the Plans for that fiscal year exceed five percent of such person's annual gross income from all sources for the prior fiscal year. An affiliate of a person is any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual. Initially, the Independent Fiduciary is U.S. Trust Company of California, N.A.

(E) *Plans* means any of the following employee benefit plans, and their successors by reason of merger, spin-off or otherwise:

International Ladies Garment Workers Union Nation Retirement Fund;
International Ladies Garment Workers Union Death Benefit Fund;
Health Fund of New York Coat, Suit, Dress, Rainwear & Allied Workers Union, ILGWU;
Health & Vacation Fund, Amalgamated Ladies Garment Cutters Union, Local 10;
ILGWU Eastern States Health & Welfare Fund;
ILGWU Office, Clerical & Misc. Employee Retirement Fund;
ILGWU Retirement Fund, Local 102;
Union Health Center Staff Retirement Fund;
Unity House 134 HREBIU Plan Fund;
Puerto Rican Health & Welfare Fund;
Health & Welfare Fund of Local 99, ILGWU;
Local 99 Exquisite Form Industries, Inc. Severance Fund;
Local 99 K-Mart Severance Fund;
Local 99 Kenwin Severance Fund;
Local 99 Lechters Severance Fund;
Local 99 Eleanor Shops Severance Fund;
Local 99 Monette Severance Fund;
Local 99 Moray, Inc. Severance Fund;
Local 99 Petri Stores, Inc. Severance Fund;
Local 99 Netco, Inc. Severance Fund;
Local 99 Misty Valley, Inc. Severance Fund; and
Local 99 Norstan Apparel Shops, Inc. Severance Fund.

(F) *UNITE* means the Union of Needletrades, Industrial & Textile Employees and any successor organization thereto by merger, consolidation or otherwise.

EFFECTIVE DATE: This exemption is effective as of July 1, 1995, except for Plan investments in the LEI Fund, for which the effective date is January 3, 1998.

Written Comments: The Department received no requests for a hearing and one written comment submitted by the Amalgamated Bank of New York (the Bank). The Bank's comment, and the Department's response thereto, is summarized as follows:

(1) The Bank notes that section II(H)(1) of the proposed exemption would require the Independent Fiduciary, U.S. Trust, to make a periodic determination with respect to each Plan that the Banking Services, CDs and depository accounts involving the Plan are necessary and appropriate for the establishment or operation of the Plan. The Bank maintains that this periodic determination is more appropriately made by the Authorizing Plan Fiduciary with respect to each Plan, as the parties have agreed under the terms of the appointment of the Independent Fiduciary. The Bank requests that the condition be modified to require the Independent Fiduciary to

receive such an annual determination from the Authorizing Plan Fiduciary with respect to each Plan. The Department has determined to modify the final exemption as requested. Accordingly, the Department has added a requirement to section II(C) of the final exemption that the Authorizing Plan Fiduciary make a periodic determination, at least annually, that the Banking Services, CDs and depository accounts are necessary or appropriate for the establishment or operation of the Plan, and communicate such determination to the Independent Fiduciary. The Department notes that the Independent Fiduciary is responsible under the final exemption for making the other determinations required under section II(H).

(2) The Bank notes that, in paragraph 8 of the Summary of Facts and Representations in the Notice of Proposed Exemption, the Department summarizes U.S. Trust's view of the Bank's financial condition using in some instances language from U.S. Trust's original Independent Fiduciary report. In the interest of complete accuracy of disclosure, the Bank wishes to note that the third sentence following the italicized heading, ''Financial condition of the Bank'', (commencing with ''U.S. Trust represents that the duration positioning * * *'') was deleted in the revised Independent Fiduciary report in favor of a more detailed explanation, in Appendix A of the revised report, of the effect of interest rate changes on the Bank. The Bank points out that this change did not alter U.S. Trust's conclusion that the Bank is operated conservatively and is well-capitalized and solvent.

(3) The Bank states that while the Department has accurately and completely identified the Plans and the Bank's products and services as they existed at the time of the filing of the exemption application, the Plans' investment needs are dynamic and one or more Plans might identify additional products offered by the Bank in the normal course of its business that would fit the Plan's investment needs. The Bank represents that this has occurred since the exemption application was filed, with respect to two of the Bank's collective funds:

The LongView Fund: A commingled, equity investment fund which invests proportionately in the securities that comprise the S&P 500 Index, designed to mirror the rate of return on the S&P 500 Index. The LongView Fund currently has approximately $1.2 billion in assets. The Bank has overall responsibility for the LongView Fund, acts as custodian, and oversees investment of the Fund, which is offered to the public in the ordinary course of the Bank's business. Although trustees of the Plans have tentatively approved investments in the LongView Fund, none of the Plans have yet invested in it.

The LEI Fund: A commingled, equity investment fund designed to ''outperform'' the S&P 500 Index by 100 basis points per annum, gross of fees. The LEI Fund opened in January 1997 and has approximately $38 million in assets. The Bank has overall responsibility for the Fund, acts as custodian and recordkeeper, and oversees the investment managers. None of the Plans have invested in the LEI Fund, although trustees of certain of the Plans have expressed an interest in such investment.

The Bank requests, in view of the pendency of the current exemption proposal, that the Department add these two funds to the exemption by amending the definition of ''Banking Services'' in Section IV(c) of the exemption specifically to include these funds. In support of this request, the Bank requested that the Independent Fiduciary, U.S. Trust, conduct the same type of review of the LongView and LEI Funds that it conducted with respect to the other banking services and products that are the subject of this exemption. The Independent Fiduciary's reports with respect to each fund was submitted to the Department with the Bank's comment. As with respect to the investment management services reviewed in its original report, the Independent Fiduciary requested that Towers Perrin prepare reports regarding these products, and the Towers Perrin reports were also submitted to the Department with the Bank's comment. The Bank states that inclusion of these funds in the exemption at this time would be in the interests of administrative convenience and feasibility for the Department and the parties to avoid a second exemption proceeding. The Bank notes that the two additional funds are fully described and analyzed in the reports of Towers Perrin and the Independent Fiduciary, which were submitted with the comment.

With respect to the LongView Fund, in a supplemental report dated January 14, 1997, the Independent Fiduciary summarizes its findings and conclusions regarding that fund. The Independent Fiduciary states that it considered information obtained from its own research as well as an extensive report prepared by Towers Perrin which analyzed the Bank's management structure regarding the LongView Fund, the investment process, key investment professionals, performance results, fees, style and risk characteristics, and clients. The Independent Fiduciary concludes that making the LongView Fund available for investments by the Plans would be reasonable, appropriate, and in the best interests of the Plans.

With respect to the LEI Fund, in a second supplemental report dated May 8, 1997, the Independent Fiduciary summarizes its findings and conclusions regarding that fund. As with the LongView Fund, the Independent Fiduciary states that it considered information obtained from its own research as well as an extensive report on the LEI Fund by Towers Perrin. On the basis of its review and evaluation, the Independent Fiduciary determined that it would be in the best interests of the Plans to make the LEI Fund available through inclusion in the exemption. However, in view of the relatively short performance history of the LEI Fund, the Independent Fiduciary intends to defer any Plan investments in the LEI Fund until it completes its annual review of the Bank's investment management services included under the exemption, such review to occur effective January 3, 1998. If at that time the Independent Fiduciary concludes that the LEI should continue to be made available under the exemption, the Independent Fiduciary proposes to authorize Plan investments in the LEI Fund.

The Bank represents that the inclusion of these two funds in the exemption would be protective of the interests of participants and beneficiaries of the Plans. In this regard, the Bank notes the independent review and analysis of the funds by the Independent Fiduciary and Towers Perrin, and the continuing oversight of the Independent Fiduciary of any Plan investments in either of the Funds.

On the basis of the information contained in the reports of the Independent Fiduciary reports and Towers Perrin, the Department has determined that it would be appropriate to include the LongView Fund and the LEI Fund in the exemption. Accordingly, the definition of Banking Services in the exemption has been modified to include the LongView Fund and, effective January 3, 1998, the LEI Fund.

For a more complete statement of the summary of facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on February 18, 1997 at 62 FR 7269.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department,

telephone (202) 219–8881. (This is not a toll-free number.)

Operating Engineers Local 150, Apprenticeship Fund (the Fund), Located in Plainfield, Illinois

[Prohibited Transaction Exemption 97–36; Exemption Application No. L–10280]

Exemption

The restrictions of section 406(a) and 406(b) (1) and (2) shall not apply to the sale (the Sale) of a certain parcel of improved real property (the Property) from the Fund to International Union of Operating Engineers, Local 150 (Local 150), a party in interest with respect to the Plan provided that the following conditions are met:

(1) The fair market value of the Property is established by a qualified and independent real estate appraiser;

(2) Local 150 pays the greater of $180,000 or the current fair market value of the Property as of the date of the transaction;

(3) The Sale is a one time transaction for cash; and

(4) The Fund pays no fees or commissions related to the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 17, 1997 at 62 FR 18803.

FOR FURTHER INFORMATION CONTACT: Allison Padams of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

The Roquette America, Inc. Pension Plan, for Salaried Employees (the Plan) Located in Keokuk, Iowa, [Prohibited Transaction Exemption 97–37; Exemption Application No. D–10390]

Exemption

The restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to (1) the loan by Aon Consulting, Inc. (Aon Consulting) to the Plan, in connection with certain excess distributions (the Overpayments) that Aon Consulting inadvertently caused to be made under the Plan, and (2) the potential repayment of the loan by the Plan to Aon Consulting.

This exemption is subject to the following conditions:

(1) The Plan pays no interest nor incurs any other expense relating to the loan;

(2) The loan amount covers the Overpayments, plus lost opportunity costs attributable to the Overpayments;

(3) Any repayment of the loan is restricted solely to the amount, if any, recovered by the Plan with respect to the Overpayments in litigation or otherwise; and

(4) A qualified, independent fiduciary for the Plan has reviewed the terms and conditions of the loan on behalf of the Plan and determined that such terms and conditions are in the best interests of and appropriate for the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 17, 1997 at 62 FR 18806.

Written Comments

The Department received two written comments with respect to the notice of proposed exemption.

Both commenters expressed concern that the proposed exemption would negatively affect their retirement benefits. Northern Trust, the Plan's independent fiduciary, confirmed that the proposed exemption would not change benefit payments under the Plan. The first commenter also stated that Aon Consulting should make the Plan whole, not merely make the Plan an interest-free loan. Northern Trust responded that the interest-free loan would have the effect of making the Plan whole, since Aon Consulting would receive repayment of the loan only to the extent that the Plan recovered any portion of the Overpayments made to certain Participants. The second commenter added that further legal action should be taken against these Participants. Northern Trust responded that under the proposed exemption, Aon Consulting would pay the legal fees associated with recovering the Overpayments.

After a careful consideration of the entire record, the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Robert A. Benz & Co., P. A., Certified Public Accountants

Employees Profit Sharing Plan (The Plan)

Located in Pensacola, Florida

[Prohibited Transaction Exemption 97–39;

Exemption Application No. D–10398]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to both (1) the cash sale (the Sale) of certain real property (the Property) to the Plan by Robert A. Benz & Co., P.A., Certified Public Accountants (the Employer), a party in interest with respect to the Plan, and (2) the lease-back (the Lease) of the Property by the Plan to the Employer; provided:

(A) The terms and conditions of the transactions are at least as favorable to the Plan as those obtainable from unrelated parties;

(B) The Plan is represented at all times and for all purposes with respect to the Sale and the Lease by a qualified, independent fiduciary;

(C) The Sale is a one-time transaction for a lump sum cash payment;

(D) The purchase price is the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser;

(E) The monthly rents paid to the Plan will be adjusted every year after the first 12 months of the Lease by an amount to reflect the greater of either a 3 percent per year increase or the most recent percentage increase in the U. S. Department of Labor Consumer Price Index;

(F) In addition, the rents initially paid under the Lease are no less than the fair market rental value of the Property as determined by a qualified, independent appraiser, and thereafter are adjusted every third year to be no less than the fair market rental value as then determined by the independent appraiser;

(G) The Lease is a triple-net lease under which the Employer as the lessee is obligated for all expenses incurred by the Property, including all taxes and assessments, maintenance, insurance, utilities, and any other expense;

(H) The qualified, independent fiduciary of the Plan monitors and enforces compliance with the terms and conditions of the Lease and this exemption;

(I) At all times the qualified, independent fiduciary for the Plan determines that the Lease is in the best interests of the Plan and its participants and beneficiaries, and at all times determines that there are adequate protections of the rights of the participants and beneficiaries of the Plan, and takes all the necessary steps to protect those rights;

(J) In the event the Plan sells the Property and the proceeds received from the sale plus the net rentals received for the Property are less than the Plan's cost of acquiring, holding, and maintaining the Property plus a 5 percent per annum compounded rate of return on the cost to the Plan in acquiring, holding, and

maintaining the Property, the Employer, or its successors, shall pay in cash the difference to the Plan within 45 days of the sale;

(K) No commissions, expenses, or costs shall be incurred by the Plan from the Sale or the Lease; and

(L) At all times during the Sale and Lease, the fair market value of the Property represents less than 25 percent of the total assets of the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on June 4, 1997, at 62 FR 30616.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Gart Brothers Sporting Goods Company 401(k) Plan (the Plan) Located in Denver, Colorado [Prohibited Transaction Exemption 97–39; Exemption Application No. D–10403]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of a 5 percent interest (the Interest) in the Hampden Enterprises Limited Partnership (the Partnership) to the Gart Bros. Sporting Goods Company, the sponsor of the Plan (the Employer) and a party in interest with respect to the Plan; provided (1) the terms and conditions of the transaction are at least as favorable to the Plan as those obtainable from unrelated parties, (2) the Sale is a one-time transaction for cash, (3) the Plan pays no commissions nor incurs any other expenses in connection with the transaction, (4) the Plan receives as consideration from the Sale the greater of either (a) the total funds expended by the Plan in acquiring and holding the Interest, less any return of capital realized from its investment in the Interest, or (b) the fair market value of the Interest as determined on the date of the Sale by an independent appraiser, and (5) if the Employer ever receives more from the Interest than it pays the Plan when acquiring the Interest, the Employer will pay the Plan the excess.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on June 4, 1997, at 62 FR 30618.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

BP America Inc. Retirement Trust, Located in Cleveland, Ohio; IBM Retirement Plan Trust, Located in Armonk, New York; United States Steel Corporation Plan, Located in Pittsburgh, Pennsylvania; and Retirement Plan of Marathon Oil Company, Located in Findlay, Ohio; (collectively, the Plans) [Prohibited Transaction Exemption No. 97–40; Exemption Application Nos. D–10441 through D–10444]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to (1) the granting to The Industrial Bank of Japan, Limited, New York Branch (IBJ), as the representative of lenders (the Lenders) participating in a credit facility (the Facility), of security interests in limited partnership interests in The Westbrook Real Estate Fund II, L.P. (the Partnership) owned by the Plans with respect to which some of the Lenders are parties in interest; and (2) the agreements by the Plans to honor capital calls made by IBJ in lieu of the Partnership's general partner; provided that (a) the grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; (b) the decisions on behalf of each Plan to invest in the Partnership and to execute such grants and agreements in favor of IBJ are made by a fiduciary which is not included among, and is independent of, the Lenders and IBJ; and (c) with respect to plans that may invest in the Partnership in the future, such plans will have assets of not less than $100 million and not more than 5% of the assets of such plans will be invested in the Partnership.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 4, 1997 at 62 FR 30621.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of July, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–20242 Filed 7–30–97; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Modification OMB No. 3145–0101; Comment Request; Title of Collection: 1998 Survey of Scientific and Engineering Research Facilities at Colleges and Universities

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 et seq.), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed information collection. This notice describes a modification to the currently cleared collection, NSF Survey of Scientific and Engineering Research Facilities at Colleges and Universities, OMB No. 3145–0101.

FOR FURTHER INFORMATION CONTACT: Call or write Gail A. McHenry for a copy of the collection instrument and instructions at NSF Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd. Suite 245, Arlington, VA. 22230; call (703) 306–1125 x2010; or send email to gmchenry@nsf.gov. Please include OMB No. 3145–0101 with your communication.

SUPPLEMENTARY INFORMATION:

1. Abstract. This survey collects information on the science and engineering (S&E) research facilities at the nation's higher education institution. These modifications to the approved 1998 questionnaire will make the data more useful to Federal agencies and policymakers. The OMB, Health Division, intends to use the aggregate data to establish benchmark guidelines for cost of construction and renovation. Indirect cost rate negotiators will also use these benchmarks for colleges and universities.

2. Proposed Modifications to the OMB-Approved 1998 Survey.

• *Sample size*. We are requesting that the 1998 survey sample be increased from 315 to 365. (This change is requested by NIH, NSF, and OMB.) Expanding the sample size with 50 additional institutions will allow for data to be reported by Carnegie classification, by minority serving institutions and institutions within the EPSCoR States, and to ensure that appropriate representation is made for each state.

• *Additional Information*

• Currently data are collected for the total net assignable square feet (NASF) of animal laboratories. NIH has requested that the survey collect the percent of total animal research NASF assigned to levels of restricted use laboratories. The information is readily available to the institutions and reporting it would be of minimal burden. This request would also serve the need of OMB to identify some of the driving forces behind high cost of some research facilities.

• For more usable data, OMB is requesting that data also be reported by gross square feet (GSF) of space in science and engineering disciplines. Institutions already have that data to calculate the NASF of that project

• *Clarifying Relationship of Data*

• OMB has requested that in addition to collecting the total repair/renovation or new construction costs (including non-fixed equipment over $1 million), that we also collect the *proportion* of repair/renovation or new construction project costs assignable to non-fixed equipment costing over $1 million. These data are readily available to the institutions and reporting these data should add very little burden.

• OMB has requested that in addition to collecting the proportion of construction and repair/renovation cost attributable to institutional funds, that we collect the *percent of institutional funds made up by indirect costs recovered* from federal grants and/or contracts. The question will be posed in two parts: (1) Asking if the institution has ready access to these data; and (2) if data are available, asking the institution to supply that data. This way of posing the question assures minimal burden to the respondent.

• *Discontinuing* the collection of the status of institutions relative to the cap on tax-exempt bonds. This modification was requested by NIH as well as NSF.

3. Use of Information. The purpose of this study is to collect data about status of academic S&E research facilities. The information from this survey will be used by Federal policy makers, planners, and budget analysts in making policy decisions, as well as by academic officials, the S&E establishment, and State agencies that fund universities and colleges.

The NSF will publish a separate report of the findings for Congress; it will also prepare a special report for NIH on the Status of Biomedical Research Facilities and it will also include them in other NSF compilations such as National Patterns of R&D Resources and Science and Engineering Indicators. Special reports will be prepared for other Federal agencies on an as-needed basis. A public release file of collected data in aggregate form will be made available to researchers on the World Wide Web. The results of the survey will help policy makers in decision about the health of academic S&E research, funding, regulations, and reporting guidelines.

4. Expected Respondents. Not-for-Profit institutions, specifically, research organizations/hospitals and academic institutions.

5. Burden on the Public. Much of the proposed modification includes data that are readily available to the respondents; we expect that changes to the questionnaire will cause little or no change in burden hours. A substantial reduction in response burden over 1996 is expected with the improvements in the computer-aided survey: 60% of the institutions are expected to respond through this method in 1998, compared to 40% in 1986.

The Foundation estimates a total annual burden of 8,760 hours. The calculation is *365 institutions*×total annual reporting and recordkeeping burden of *24 hours per respondent.*

Comments Requested

Date: NSF should received written comments on or before September 29, 1997.

Address: Submit written comments to Mrs. McHenry through surface mail (NSF Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd. Suite 245, Arlington, VA 22230); email (gmchenry@nsf.gov); or fax (703–306–0201). Please include OMB No. 3145–0101 with your communication.

Special Areas for Review: NSF especially 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, e.g., permitting electronic submission of responses.

Dated: July 25, 1997.

Gail A. McHenry,

NSF Reports Clearance Officer.

[FR Doc. 97–20099 Filed 7–30–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Environmental Molecular Science Institutes (EMSI): Special Research Opportunity (NSF 97–135); Program Announcement

The National Science Foundation (NSF) Directorate for Mathematical and Physical Sciences and U.S. Department of Energy (DOE) Office of Energy Research (ER) announce a one-time opportunity for support of Environmental Molecular Science Institutes (EMSI) aimed at increasing fundamental understanding of natural and industrial processes and their interaction at the molecular level. NSF and DOE encourage cohesive, interdisciplinary, university-industry group efforts in basic research on fundamental issues that underpin the amelioration of environmental problems caused by societal activities such as

manufacturing and utilization activities that are energy- and pollution-intensive.

This funding opportunity will establish one to three Environmental Molecular Science Institutes. Five year requests in the range of $0.5 million to $2 million per year are appropriate. Up to $2.0 million per year from NSF will be made available beginning in FY98, subject to availability of funds. In addition, approximately $2.0 million from DOE in FY98, subject to availability of funds, will support specific activities within Institutes appropriate to DOE interests, such as elaborated in the supplementary information section below. This announcement is being made jointly by DOE and NSF to ensure that the strongest possible programs are supported with the limited funds available, to minimize multiple submissions to the two agencies, and to concentrate resources to realize measurable progress in focused research areas.

An Institute should serve as a national model and resource for excellence in collaborative environmental research and in dissemination of results for solution of amelioration of environmental problems. To strengthen the probability that the proposed basic research focus will contribute in the future to improved technologies and processes, it is expected that proposals will include working collaborations with appropriate and relevant industries. Understanding the molecular behavior of complex, dynamic environmental systems is expected to require interdisciplinary approaches involving scientists from multiple departments. An Institute must have a focused research theme and specific goals. The organization and management structure must be designed to enable these goals to be met. An Institute should not be a collection of existing projects. Rather proposers are invited to take a fresh look at environmental challenges to develop a unified activity.

Examples of appropriate research areas include, but are not limited to: chemical and materials synthesis or processing for pollution prevention; integrated understanding of speciation, sorption, transport, and bioavailability in a specified environment; response of a specific environment to chemical perturbations caused by human activities. The proposed activities, as an ancillary benefit, should help to integrate research and education and provide broadened experience to students. Strong institutional support for programmatic reinforcement of the educational activities will be considered positively.

Proposal Submission

Eligibility is limited to colleges, universities, and other not-for-profit institutions in the U.S. and its territories, as described in detail in the Grant Proposal Guide (NSF 95–27). Potential applicants are required to submit a brief preliminary proposal. All preliminary applications must reference this document (NSF 97–135) and five copies must be received by October 15, 1997. The preliminary proposal should include a project summary; a three-page project description that outlines goals, research plans, and roles of collaborators; biographical sketches limited to two pages per investigator; one budget page for the total funding requested (institutional signature is not required). Other general guidance and forms are provided in the NSF Grant Proposal Guide (NSF 9527). Proposals must be sent to: EMSI (NSF 97–135), NSF—Room P60–PPU, 4201 Wilson Boulevard, Arlington, VA 22230.

Preliminary proposals will be evaluated by NSF and DOE staff from relevant disciplines in order to advise Principal Investigators on responsiveness to goals and priorities described above and on the likelihood of successful competition with other proposals in the merit review process. Those submitting will be informed of the result of this review by November 15, 1997.

Full proposals (15 copies including the original, prepared in accordance with the NSF Grant Proposal Guide) must be received by February 1, 1998. These will be evaluated by appropriate mechanisms, which may include ad hoc mail review, panel review, or site visits. In addition to the published new NSF criteria, other factors will be considered, such as the potential for significant contributions to environmental chemistry, the strength of the collaborations planned, the value to education, and the potential for national leadership among the constituency interested in the research theme. Proposals involving industrial collaboration will receive preference over those of equal scientific merit that lack such collaboration. Activities considered for funding by DOE will be reviewed for excellence of the science and relevance to the mission of the Department and its technology programs. Below is Additional Information on scope, format, and review criteria.

Grants awarded as a result of this announcement will be administered in accordance with the terms and conditions of NSF GC–1 (10/95) or FDP–III (u/1/96), Grant General Conditions. Copies of these documents are available on www.nsf.gov under ''Grants and Awards.'' NSF encourages, but does not require, organizations responding to this announcement to contribute to the costs of the project beyond the minimum one-percent statutory cost-sharing requirement. However, any additional cost-sharing specified in the proposal will be referenced and included as a condition of any award resulting from this announcement.

Janet G. Osteryoung, Director, Division of Chemistry, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, josteryo@nsf.gov, 703-306-1845

Robert S. Marianelli, Director, Chemical Sciences Division, Office of Basic Energy Sciences, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874-1290, robert.marianelli@mailgw.er.doe.gov, (301) 903-5808

Additional Information on Scope of Institutes and Full Proposal Format

This letter broadly describes the nature and scope of an institute and is not intended to be unnecessarily prescriptive. There are many models and variations that may be considered, including the traditional understanding of an institute at a specific location, as well as regional or more widely distributed institutes. Proposal should include information that defines the institute, describes the planning process, defines mission and goals, describes how the desired goals will be achieved and how it will be determined that these goals have been accomplished. The proposing groups are encouraged to construct the appropriate organization and structure that will maximize the effectiveness and impact of their strengths and resources.

The leadership of an institute should be provided by a small group, including a director and, as approrpratie for the size of the institute, an associate director and an external advisory committee. The director of an institute should be a respected scientist with demonstrated organizational, managerial, and leadership ability. An institute's scientific guidance should be provided by a committee of scientists from the participating institutions. Although a multi-institutional consortium may be involved, a single entity must accept overall management responsibility in dealing with NSF.

The NSF Grant Proposal Guide (GPG), NSF 95-27, describes the format required for proposals. The Project

Description in the full proposal will be subject to the page limitations for each section described below.

Proposals not adhering to these limits will be returned without review.

*Detailed description of the intellectual focus and rationale for the institute, its overall goals, and expected impact (3 pages, maximum);
*Planned scientific activities, including a five-year plan for phasing activities in or out, and the roles of the various partners (15 pages, maximum);
*Plans for human resource development, including involvement of undergraduate, graduate and postdoctoral students and members of under-represented groups (2 pages, maximum);
*Description of planned outreach activities and dissemination (2 pages, maximum);
*Description of goals and outcomes expected and how the impact will be demonstrated and evaluated (2 pages, maximum);
*Description of the organizational structure of the institute, clearly outlining the proposed management structure, mechanisms for focusing institute activities, methods for selecting and integrating research emphases, criteria for selection of participants, allocating funds and equipment, and managing the involvement of other groups (4 pages, maximum).

Each biographical sketch, limited to two pages, should include a brief summary of results of prior NSF support. Please note that letters describing collaborative arrangements significant to the proposals should be included under ''supplementary documentation.'' Only letters of commitment are permitted; ''endorsement'' letters may not be included. No appendices are permitted. Additional sources of financial support for the institute should be identified.

Merit Review Process

Proposals submitted in response to this announcement will be subject to the NEW merit review criteria approved by the National Science Board on March 28, 1997 (NSB9772). Additional information on NSF's new merit review criteria is available in the Merit Review Task Force Final Report at www.nsf.gov/cgibin/getpub?nsbmr975. The new merit review criteria are:

What is the Intellectual Merit and Quality of the Proposed Activity?

The following are suggested questions that the reviewer will consider in assessing how well the proposal meets this criterion. Each reviewer will address only those questions which he/she considers relevant to the proposal and for which he/she is qualified to make judgments.

How important is the proposed activity to advancing knowledge and understanding within its own field and across different fields? How well qualified is the proposer (individual or team) to conduct the project? (If appropriate, the reviewer will comment on the quality of prior work.) To what extent does the proposed activity suggest and explore creative and original concepts? How well conceived and organized is the proposed activity? Is there sufficient access to resources?

Wht Are the Broader Impacts of the Proposed Activity?

The following are suggested questions that the reviewer will consider in assessing how well the proposal meets this criterion. Each reviewer will address only those questions which he/she considers relevant to the proposal and for which he/she is qualified to make judgments.

How well does the activity advance discovery and understanding while promoting teaching, training, and learning? How well does the proposed activity broaden the participation of underrepresented groups (e.g., gender ethnicity, geographic, etc.)? To what extent will it enhance the infrastructure for research and education, such as facilities, instrumentation, networks, and partnerships? Will the results be disseminated broadly to enhance scientific and technological understanding? What may be the benefits of the proposed activity to society?

Additional Criteria Specific to This Activity

In addition to these generic review criteria, reviewers will be asked to use the following additional criteria when reviewing proposals that respond to this announcement. These criteria are as follows:

* Quality of the scientific activities and their potential for leadership and impact on environmental chemistry and solutions to environmental problems;
* Extent of interdisciplinarity and the extent to which communication and interaction with other areas of science and engineering are fostered by linkages and partnerships among university research groups, industry, national laboratories, etc.;
* Capabilities of the institute leadership, including managerial and organizational ability of the director and of the proposed leadership team;
* Quality and anticipated effectiveness of the management plan, including plans for interaction among institute staff and institutional partners and for operation of the institute, including selection of activities and participants;
* Quality of the institute's education and training components, especially plans to attract, involve and mentor students and under-represented groups;
* Quality and effectiveness of proposed outreach activities and dissemination of results;
* Clarity of mission and goals and quality of the evaluation plan;
* Level and quality of the commitment to the institute by the lead institution and its partners.

A summary rating and accompanying narrative will be completed and signed by each reviewer. In all cases, reviews are treated as confidential documents. Verbatim copies of reviews, excluding the names of the reviewers, are mailed to the proposer by the Program Director. In addition, the proposer will receive an explanation of the decision to award or decline funding.

Supplementary Information on Topical Workshops Sponsored by NSF and DOE

NSF and DOE have co-sponsored two interdisciplinary workshops to help define priorities for research in two areas that have been identified as activities responsible for complex and intransigent environmental problems.

These are: (1) Vehicular Transportation and (2) Reducing Energy Consumption and Pollution from Energy and Pollution Intensive Processes.

A critical issue identified for the 21st Century is the balancing of industrial activity and environmental stewardship; more knowledge is needed to make choices to achieve that balance. There are seven industries that consume 80 percent of the energy and produce over 90 percent of the wastes in the manufacturing sector. These seven industries are chemicals, petroleum refining, forest products, steel, aluminum, glass, and metal casting. Those aspects of the workshop reports that deal with fundamental molecular science and the crosscutting issues identified in the reports are particularly relevant to proposals in response to this announcement.

Copies of the workshop reports entitled ''Basic Research Needs for Environmentally Responsive Technologies of the Future'' and ''Basic Research Needs for Vehicles of the Future'' can be obtained from Princeton

Materials Institute, Bowen Hall, Princeton University, 70 Prospect Avenue, Princeton, New Jersey 08544–522.

The reports can also be found on the World Wide Webb at http://pmi.princeton.edu.

The Foundation provides awards for research and education in the sciences and engineering. The awardee is wholly responsible for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for the research findings or their interpretation.

The Foundation welcomes proposals from all qualified scientists and engineers and strongly encourages women, minorities, and persons with disabilities to compete fully in any of the research and education related programs described here. In accordance with federal statutes, regulations, and NSF policies, no person on grounds of race, color, age, sex, national origin, or disability shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the National Science Foundation.

Facilitation Awards for Scientists and Engineers with Disability (FASED) provide funding for special assistance or equipment to enable persons with disabilities (investigators and other staff, including student research assistants) to work on NSF projects. See the program announcement or contact the program coordinator at (703) 306–1636.

Privacy Act. The information requested on proposal forms in solicited under the authority of the National Science Foundation Act of 1950, as amended. It will be used in connection with the selection of qualified proposals and may be disclosed to qualified reviewers and staff assistants as part of the review process; to applicant institutions/grantees; to provide or obtain data regarding the application review process, award decisions, or the administration of wards; to government contractors, experts, volunteers, and researchers as necessary to complete assigned work; and to other government agencies in order to coordinate programs. See Systems of Records, NSF 50, Principal Investigators/Proposal File and Associated Records, and NSF–51, 60 FR 4449 (January 23, 1995). Reviewer/Proposal File and Associated Records, 59 FR 8031 (February 17, 1994).

Public Burden. Submission of the information is voluntary. Failure to provide full and complete information, however, may reduce the possibility of your receiving an award.

The public reporting burden for this collection of information is estimated to average 120 hours per response, including the time for reviewing instructions. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Gail A. McHenry, Reports Clearance Officer, Information Dissemination Branch, National Science Foundation, 4201 Wilson Boulevard, Suite 245, Arlington, VA 22230.

The National Science Foundation has TDD (Telephonic Device for the Deaf) capability, which enables individuals with hearing impairment to communicate with the Foundation about NSF programs, employment, or general information. To access NSF TDD, dial (703) 306–0090; for FIRS, 1–800–877–8339.

Dated: July 25, 1997.

Janet G. Osteryoung,

Director, Chemistry Division.

[FR Doc. 97–20096 Filed 7–30–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission: Reinstatement.

2. The title of the information collection: Applicant Self-Assessment Form.

3. The form number if applicable: NRC Form 563.

4. How often is the collection required: On occasion.

5. Who will be required or asked to report: Basically qualified external applicants applying for engineering and scientific positions with the NRC.

6. An estimated of the number of responses: 1,500.

7. The estimated number of annual respondents: 1,500.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 125 hours (five minutes per response).

9. An indication of whether Section 3507(d). Pub. Law 104–13 applies: Not Applicable.

10. Abstract: The Applicant Self-Assessment will be used to collect uniform information from external applicants as to which technical specialties they possess that are unique to the needs of the NRC. This information will be reviewed by Office of Personnel staff and used to match applicants' technical specialties with those required by selecting officials when an engineering or scientific vacancy position is to be filled.

Submit, by September 2, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library). Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of the notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions should be directed to the OMB reviewer by September 2, 1997: Edward Michlovich, Office of Information and Regulatory Affairs (3150–0177), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–7318.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 23rd day of July, 1997.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 97–20185 Filed 7–30–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: Proposed Rule, 10 FR Parts 50 and 73, Frequency of Reviews and Audits for Emergency Preparedness Programs, Safeguards Contingency Plans and Security Programs for Nuclear Power Reactors.

3. The form number if applicable: Not applicable.

4. How often is the collection required: At least once every 2 years for each program.

5. Who will be required or asked to report: Nuclear power plant licensees.

6. An estimate of the number of responses: Approximately 170 per year.

7. The estimated number of annual respondents: Approximately 73 licensees per year.

8. An estimate of the number of hours annually needed to complete the requirement or request: A reduction of approximately of 20,000 hrs annually (275 hours per licensee).

9. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Applicable.

10. Abstract: Currently, the frequency with which licensees conduct independent reviews and audits of their emergency preparedness programs, safeguards contingency plans, and security programs is every 12 months. The proposed amendment would require that reactor licensees conduct program reviews and audits in response to program performance indicators, or on the occasion of a significant change in personnel, procedures, equipment, or facilities, but in no case less frequently than every 24 months. The potential savings to some licensees could be as much as 50 percent of their current costs.

Submit by September 2, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. The proposed rule indicated in ''the title of the information collection'' is or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** notice. Instruction for accessing the electronic OMB clearance package for the rulemaking have been appended to the electronic rulemaking. Members of the public may access the electronic OMB clearance package by following the directions for electronic access provided in the preamble to the titled rulemaking.

Comments and questions should be directed to the OMB reviewer by September 2, 1997: Edward Michlovich, Office of Information and Regulatory Affairs (3150 –0002,-0011), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Bethesda, Maryland, this 24th day of July, 1997.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 97–20186 Filed 7–30–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review of continued approval of information collection under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: Policy statement on Cooperation with States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities.

3. Current OMB approval number: 3150–0163.

4. How often the collection is required: On occasion—when a State wishes to observe NRC inspections or perform inspections for NRC.

5. Who is required or asked to report: Those States interested in observing or performing inspections.

6. The number of annual respondents: Maximum of 50, although not all States have participated in the program.

7. The number of hours needed annually to complete the requirement or request: An average estimate of 10 hours per State or 500 hours if all States participated in the program.

8. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

9. Abstract: States wishing to enter into an agreement with NRC to observe or participate in NRC inspections at nuclear power facilities are requested to provide certain information to the NRC to ensure close cooperation and consistency with the NRC inspection program as specified by the Commission's Policy of Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. Members of the public who are in the Washington, DC area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library) NRC subsystem at FedWorld, (703) 321–3339. Members of the public who are located outside of the Washington, DC area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address:

fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at (703) 487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC area at (202) 634–3273.

Comments and questions may be directed to the OMB reviewer by September 2, 1997: Edward Michlovich, Office of Information and Regulatory Affairs (3150–0163), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 24th day of July, 1997.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 97–20187 Filed 7–30–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–22]

Private Fuel Storage, Limited Liability Company; Notice of Consideration of Issuance of a Materials License for the Storage of Spent Fuel and Notice of Opportunity for a Hearing

The Nuclear Regulatory Commission is considering an application dated June 20, 1997, for a materials license, under the provisions of 10 CFR part 72, from Private Fuel Storage, Limited Liability Company (the applicant or PFS) to possess spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI) located on the Skull Valley Goshute Indian Reservation in Skull Valley, Utah. If granted, the license will authorize the applicant to store spent fuel in dry storage cask systems at the ISFSI which the applicant proposes to construct and operate on the Skull Valley Goshute Indian Reservation. Pursuant to the provisions of 10 CFR part 72, the term of the license for the ISFSI would be twenty (20) years.

Prior to issuance of the requested license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. The issuance of the materials license will not be approved until the NRC has reviewed the application and has concluded that approval of the license will not be inimical to the common defense and security and will not constitute an unreasonable risk to public health and safety. The NRC, in accordance with 10 CFR 51.20(b)(9), will complete an environmental impact statement. This action will be the subject of a subsequent notice in the **Federal Register**. Pursuant to 10 CFR 2.105, by September 15, 1997, the applicant may file a request for a hearing; and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the subject materials license in accordance with the provisions of 10 CFR 2.714. If a request for hearing or petition for leave to intervene is filed by the above date, an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. In the event that no request for hearing or petition for leave to intervene is filed by the above date, the NRC may, upon satisfactory completion of all required evaluations, issue the materials license without further prior notice.

A petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend a petition, without requesting leave of the Board, up to 15 days prior to the holding of the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the NRC by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. William F. Kane, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards; petitioner's name and telephone number; date petition was mailed; facility name; and publication date and

page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Jay Silberg, P.C., Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW, Washington, DC 20037–8007.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application dated June 20, 1997, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555. The Commission's license and safety evaluation report, when issued, may be inspected at the above location.

Dated at Rockville, Maryland, this 21st day of July 1997.

For the U.S. Nuclear Regulatory Commission.

William F. Kane,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–20184 Filed 7–30–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7002]

Notice of Amendment to Certificate of Compliance GDP–2 for the U.S. Enrichment Corporation Portsmouth Gaseous Diffusion Plant Portsmouth, Ohio

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination the staff concluded that (1) there is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: April 28, 1997

Brief description of amendment: The proposed amendment corrects a typographical error contained in Technical Safety Requirement 2.6.4.2 entitled ''Air Gaps'' by revising Surveillance Requirement 2.6.4.2.1 from ''Verify and document the pressure of air gaps required by NCSAs'' to ''Verify and document the presence of air gaps required by NCSAs.''

Basis for Finding of No Significance

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The amendment corrects a typographical error in the surveillance requirement of Technical Safety Requirement 2.6.4.2 by replacing the word ''pressure'' with ''presence.'' As such, the proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed amendment will not increase radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed amendment will not result in any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed change involves correction of a typographical error. As such, it does not affect the potential for,

or radiological or chemical consequences from, previously evaluated accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The change will not create new operating conditions or a new plant configuration that could lead to a new or different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed change corrects a typographical error. As such, there is no reductions in the margins of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

The proposed amendment corrects a typographical error. As such, the effectiveness of the safety, safeguards, and security programs is not decreased.

Effective date: 30 days after issuance

Certificate of Compliance No. GDP–2: Amendment will incorporate a revised Surveillance Requirement of a Technical Safety Requirement.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 22nd day of July 1997.

For the Nuclear Regulatory Commission

Carl J. Paperiello,

Director Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–20036 Filed 7–30–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7001]

Notice of Receipt of Amendment Application to Certificate of Compliance GDP–1 for The U.S. Enrichment Corporation Paducah Gaseous Diffusion Plant Paducah, Kentucky; Notice of Comment Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or the Commission) has received an amendment application from the United States Enrichment Corporation that may be considered to be significant pursuant to 10 CFR 76.45. Any interested party may submit written comments on the application for amendment for consideration by the staff. To be certain of consideration, comments must be received by September 2, 1997. Comments received after the due date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

Written comments on the amendment application should be mailed to the Chief, Rules Review and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand delivered to 11545 Rockville Pike, Rockville, MD 20852 between 7:45 a.m. and 4:15 p.m. Federal workdays. Comments should be legible and reproducible, and include the name, affiliation (if any), and address of the submitter. All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room and the Local Public Document Room. In accordance with 10 CFR 76.62 and 76.64, a member of the public must submit written comments to be eligible to petition the Commission requesting review of the Director's Decision on the amendment request.

For further details with respect to the action see the application for amendment. The application is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: April 23, 1997.

Brief description of amendment: The amendment is related to the planned modifications to upgrade the seismic capability of Buildings C–331 and C–335 at the Paducah Gaseous Diffusion Plant. Specifically, the proposed amendment will move back the completion date for the seismic modifications contained in Compliance Plan Issue 36. Additionally, the following three issues will be addressed: (1) The increased stiffness of the buildings following completion of the modifications may increase the number and the probability of seismically-induced equipment failures inside the buildings; (2) the process of installing the new structural steel may temporarily make the building and contained equipment more susceptible to seismically-induced failure as the existing structural frames are altered and/or replaced; and (3) the process of installing the new structural steel may temporarily increase the probability of equipment failures due to postulated load handling accidents during construction.

Certificate of Compliance No. GDP–1: Amendment will revise Compliance Plan Issue 36 on the seismic modifications and will allow the planned modifications to proceed.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 22nd day of July 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–20039 Filed 7–30–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Power Company; McGuire Nuclear Station, Units 1 and 2; Environmental Assessment and; Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. NPF–9 and NPF–17 issued to the Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 70.24, which requires a monitoring system that will energize clear audible alarms if accidental criticality occurs in each area in which special nuclear material is handled, used, or stored. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations.

The proposed action is in response to the licensee's application dated February 4, 1997, as supplemented on March 19, 1997.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power

plant the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored on site is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 4.75 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and features designed to prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24, therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the exemption is granted. Inadvertent or accidental criticality will be precluded through compliance with the McGuire Nuclear Station Technical Specifications, the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures. Technical Specifications requirements specify reactivity limits for the fuel storage racks and minimum spacing between the fuel assemblies in the storage racks.

Appendix A of 10 CFR Part 50, ''General Design Criteria for Nuclear Power Plants,'' Criterion 62, requires the criticality in the fuel storage and handling system to be prevented by physical systems or processes, preferably by use of geometrically safe configurations. This is met at McGuire, as identified in the Technical Specification Sections 3/4.9 and 5.6 and in the Updated Final Safety Analysis Report (UFSAR) Section 9.1, by detailed procedures that must be available for use by refueling personnel. Therefore, as stated in the Technical Specifications, these procedures, the Technical Specifications requirements, and the design of the fuel handling equipment with built-in interlocks and safety features, provide assurance that it is unlikely that an inadvertent criticality could occur during refueling. In addition, the design of the facility does not include provisions for storage of fuel in a dry location.

UFSAR Section 9.1.1, New Fuel Storage, states that new fuel is stored in the New Fuel Storage Racks located within a New Fuel Storage Vault at each McGuire unit. The new fuel storage racks are arranged to provide dry storage. The racks consist of vertical cells grouped in parallel rows, six rows wide and 16 cells long, which provide support for the new fuel assemblies and maintain a minimum center-to-center distance of 21 inches between assemblies. (Note that in none of these locations would criticality be possible.)

The proposed exemption would not result in any significant radiological impacts. The proposed exemption would not affect radiological plant effluent nor cause any significant occupational exposures since the Technical Specifications, design controls (including geometric spacing and design of fuel assembly storage spaces) and administrative controls preclude inadvertent criticality. The amount of radioactive waste would not be changed by the proposed exemption.

The proposed exemption does not result in any significant nonradiological environmental impacts. The proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the ''Final Environmental Statement Related to the Operation of McGuire Nuclear Station Units 1, 2, and 3'' dated March 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on July 12, 1997, the staff consulted with the North Carolina State official, Richard Fry of the Division of Radiation Protection, North Carolina Department of Environment, Health, and Natural Resources, regarding the environmental impact of the proposed exemption. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 4, 1997, and supplement dated March 19, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at local public document room located at the J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina.

Dated at Rockville, Maryland, this 24th day of July 1997.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Acting Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–20190 Filed 7–30–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Power Company, et al.; Catawba Nuclear Station, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52, issued to Duke Power Company, et al. (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed action would amend the licenses to reflect the licensee's name change from ''Duke Power Company'' to ''Duke Energy Corporation.''

The proposed action is in response to the licensee's application dated June 12, 1997.

The Need for the Proposed Action

Duke Power Company changed its name to ''Duke Energy Corporation.'' The facility operating licenses for Catawba were issued to indicate the name of the licensee as ''Duke Power Company,'' and therefore need to be amended to substitute the new name of the licensee. The proposed action is purely administrative.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the amendments are granted. No changes will be made to the design and licensing bases, and procedures of the two units at Catawba Nuclear Station. Other than the name change, no other changes will be made to the facility operating licenses, including the Technical Specifications.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does did not involve the use of any resources not previously considered in the Final Environmental Statement related to the Catawba Nuclear Station.

Agencies and Persons Contacted

In accordance with its stated policy, on July 11, 1997, the staff consulted with the South Carolina State official, Virgil Autrey of the Bureau of Radiological Health, South Carolina Department of Health and Environmental Control, regarding the environmental impact of the proposed amendments. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed amendments will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendments.

For further details with respect to the proposed action, see the licensee's request for the amendments dated June 12, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, Maryland, this 24th day of July 1997.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Acting Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–20188 Filed 7–30–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Updated Standard Review Plan Chapter 7: Issuance, Availability

The Nuclear Regulatory Commission (NRC) has prepared an update to Chapter 7, Instrumentation and Controls, of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' (SRP). The updated SRP Chapter 7, Revision 4, incorporates changes in the NRC review criteria in the area of instrumentation and control (I&C) systems, particularly digital computer-based I&C systems of nuclear power plants that have occurred since the last major revision of the SRP in 1981.

The revisions were derived from the following programmatic areas: NRC regulatory documents issued after the 1981 SRP revision; NRC staff positions related to digital I&C system retrofits at operating nuclear power plants as documented in relevant safety evaluation reports; NRC staff endorsement of industry consensus standards applicable to I&C systems; NRC staff positions related to evolutionary and advanced light water reactor design reviews as presented in SECY–91–292, ''Digital Computer Systems for Advanced Light Water Reactors,'' and the Staff Requirements Memorandum on SECY–93–087, ''Policy, Technical, and Licensing Issues Pertaining to Evolutionary and Advanced Light Water Reactor (ALWR) Designs;'' NRC design certification safety evaluation reports for the General Electric Advanced Boiling Water Reactor Design and the ABB-CE System 80+ Design; and nuclear power plant operating experience. The revised text for the SRP Chapter 7 update includes the resolution of public comments received in response to the draft version issued on December 6, 1996.

The updated SRP Chapter 7 is a ''rule'' for the purposes of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C., Chapter 8). The staff believes that SRP Chapter 7, Revision 4 is a non-major rule and is in the process of confirming this with the Office of Management and Budget (OMB).

The updated SRP Chapter 7, Revision 4 does not, by itself, establish any new or revised requirements. It incorporates previously established NRC staff positions, and lessons learned from the completed reviews of I&C systems in the advanced light water reactors and digital I&C system retrofits of operating reactors. The review guidance described in the updated SRP Chapter 7 will be used by the NRC staff in the evaluation of future submittals in connection with applications for construction permits, standard design certifications and design approvals, combined operating licenses, and operating plant license amendments.

The updated SRP Chapter 7, Revision 4, is being made available to the public as part of the NRC's policy to inform the nuclear industry and the general public of regulatory procedures and policies. SRP Chapter 7 will be revised periodically, as appropriate, to accommodate future new technologies, information, and experience. The NRC encourages comments from interested parties. Comments and suggestions will

be considered in future revisions to the document. Written comments may be submitted to Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

The SRP Chapter 7, Revision 4 will be accessible indefinitely from the NRC Homepage on the World Wide Web—URL: http://www.nrc.gov under the ''Nuclear Reactors'' menu options by selecting ''Standard Review Plan Chapter 7, Instrumentation and Controls,'' beginning September 1997. Specific guidance is provided on-line to guide the user on the various options available for reading, commenting on, and downloading the document.

Chapter 7 of the SRP is available for inspection and copying at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555.

A limited number of copies of SRP Chapter 7 in the printed form on paper are available free, to the extent of supply, upon written request to the Office of Administration, Distribution Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax at (301) 415–2260.

Dated at Rockville, Maryland, this 22nd day of July, 1997.

For the Nuclear Regulatory Commission.

Jared Wermiel,

Chief, Instrumentation and Controls Branch, Division of Reactor Controls and Human Factors, Office of Nuclear Reactor Regulation.

[FR Doc. 97–20040 Filed 7–30–97; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collecitons, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application to Act as Representative Payee; OMB 3220–0052. Under Section 12 of the Railroad Retirement Act, the Railroad Retirement Board (RRB) may pay benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or is a minor. A representative payee may be a court-appointed guardian, a statutory conservator or an individual selected by the RRB. The producers pertaining to the appointment and responsibilities of a representative payee are prescribed in 20 CFR part 266.

The forms furnished by the RRB to apply for representative payee status, and for securing the information needed to support the application follow. RRB Form AA–5, Application for Substitution of Payee, obtains information needed to determine the selection of a representative payee who will serve in the best interest of the beneficiary. RRB Form G–478, Statement Regarding Patient's Capability to Manage Payments, obtains information about an annuitant's capability to manage payments. The form is completed by the annuitant's personal physician or by a medical officer, if the annuitant is in an institution. It is not required when a court has appointed an individual or institution to manage the annuitant's funds or, in the absence of such appointment, when the annuitant is a minor.

Completion is voluntary. One response is requested of reach respondent. The RRB is proposing minor editorial changes to Forms AA–5 and G–478 to incorporate language required by the Paperwork Reduction Act of 1995. No other changes are proposed. The estimated completion time(s) is estimated at 17 minutes for Form AA–5 and 6 minutes for Form G–478. The RRB estimates that approximately 3,000 Form AA–5's and 2,000 Form G–478's are completed annually.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–20205 Filed 7–30–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–22765; File No. 812–10722]

Aetna Life Insurance and Annuity Company, et al.

July 25, 1997.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Aetna Life Insurance and Annuity Company (''Aetna Annuity'') and its Variable Annuity Account B. Variable Annuity Account C, and Variable Life Account B; and Aetna Insurance Company of America (''Aetna of America'' and collectively with Aetna Annuity, ''Aetna'') and its Variable Annuity Account I.

RELEVANT 1940 ACT SECTIONS: Orders requested pursuant to Sections 26(b) and 17(b) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(b) of the 1940 Act, approving the substitution of shares of certain unaffiliated registered management investment companies (''Replaced Funds'') with shares of certain Aetna-advised, registered management investment companies (''Substitute Funds''). Applicants also seek an order, pursuant to Section 17(b) of the 1940 Act, granting exemptions from Section 17(a) to permit Applicants to carry out the above-referenced substitutions in part by redeeming shares of the Replaced Funds in-kind, and using the redemption proceeds to purchase shares of the Substitute Funds, and to permit Applicants to combine certain subaccounts holding shares of the same Substitute Fund after the substitutions.

FILING DATE: The application was filed on July 18, 1997, and amended and restated on July 24, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 19, 1997, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 fifth Street, N.W., Washington, DC 20549. Applicants, c/o Julie Rockmore, Esquire, Aetna Life Insurance and Annuity Company, 151 Farmington Avenue, RE4A, Hartford, CT 06156.

FOR FURTHER INFORMATION CONTACT: Megan L. Dunphy, Attorney, or Mark Amorosi, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Aetna Annuity, a stock life insurance company incorporated in Connecticut, is authorized to issue life insurance and annuities in the District of Columbia, Guam, Puerto Rico, the Virgin Islands and all states of the United States. Aetna Annuity is an indirect subsidiary of Aetna Inc., which is a holding company with shares traded on the New York Stock Exchange.

2. Aetna of America, a stock life insurance company incorporated in Connecticut, is authorized to do business in the District of Columbia and all states of the United States except New York and North Carolina. Aetna of America is a wholly-owned subsidiary of Aetna Annuity.

3. Aetna Annuity's Variable Annuity Account B, Variable Annuity Account C and Variable Life Account B and Aetna of America's Variable Annuity Account I (collectively, the ''Separate Accounts'') are separate accounts established by Aetna pursuant to the insurance laws of Connecticut and are registered under the 1940 Act as unit investment trusts. The assets of each Separate Account support either variable Annuity contracts or variable life insurance policies issued by Aetna (''Products''). Interests in each of the Separate Accounts offered through such Products are registered under the Securities Act of 1933 (''1933 Act'').

4. The variable annuity contracts and variable life policies are structured to allow the accumulation of assets to fund benefits payable under the Products (annuity payments or life insurance proceeds). The assets accumulate in variable or fixed investment options. The variable investment options are registered management investment companies or separate series of those companies (''Funds''). Contributions allocated to a given Fund through a Product are used to buy shares of that Fund. The shares of each Fund are held in a separate subaccount of a Separate Account.

5. Most of Aetna's variable annuity contracts are issued as group contracts where the owner of the contract is the employer, sponsor or trustee (''Sponsor'') of a group retirement plan. Members of the group (''Participants'') acquire an interest in the contract and have certain rights as determined by the group contract or the retirement plan. The remaining contracts are issued to or on behalf of individuals. All contracts allow the owners (including Sponsors) of the Product (''Customers'') or in the case of group contracts or policies, Participants, to allocate payments among the variable and fixed investment options available under the contract.

6. Variable life policies issued by Aetna Annuity include individual variable life, second to die, corporate variable universal life and group variable life policies. Premium payments under the policies accumulate in variable and fixed investment options in the same manner as for variable annuity contracts. Accumulated amounts are used to fund death benefits and withdrawals payable under the policies.

7. There are currently 53 different Funds offered as variable investment options under the various Products, of which 11 have Aetna Annuity as the investment adviser and its affiliate, Aeltus Investment Management, Inc., as the subadviser (''Aetna Funds''). The Funds are registered as management investment companies under the 1940 Act and the shares of each Fund are registered under the 1933 Act.

8. Aetna is organizing a new management investment company, Portfolio Partners, Inc. (''Portfolio Partners''), which will be authorized to issue shares in series (''Portfolios''), each having its own investment objectives and policies and its own assets. Aetna will serve as the investment adviser of Portfolio Partners and has contracted with unaffiliated third parties to manage the assets of each series of Portfolio Partners as subadviser.

9. Applicants propose to substitute shares of the Substitute Funds, five Portfolios and two Aetna Funds, for shares of the Replaced Funds, eleven unaffiliated Funds (see Table 1).

TABLE 1.—FUNDS TO BE REPLACED

Replaced fund	Substitute fund
1. Scudder Variable Life Investment Fund—International Portfolio (Class A Shares).	Portfolio Partners Scudder International Growth Portfolio.
2. MSF Emerging Growth Series	Portfolio Partners MFS Emerging Equities Portfolio.
3. MFS Research Series	Portfolio Partners MFS Research Growth Portfolio.
4. MFS Value Series	Portfolio Partners MFS Value Equity Portfolio.
5. American Century VP Capital Appreciation (Formerly TCI Growth)	Portfolio Partners MFS Research Growth Portfolio.
6. Alger American Small Capitalization Portfolio	Portfolio Partners MFS Emerging Equities Portfolio.
7. Alger American MidCap Growth Portfolio	Portfolio Partners T. Rowe Price Growth Equity Portfolio.
8. Alger American Growth Portfolio	Portfolio Partners T. Rowe Price Growth Equity Portfolio.
9. Neuberger & Berman AMT Growth Portfolio	Portfolio Partners MFS Value Equity Portfolio.
10. Janus Aspen Short-Term Bond Portfolio	Aetna Variable Encore Fund (money market).
11. Franklin Government Securities Trust	Aetna Income Shares (bond).

10. Applicants represent that the Substitute Funds have investment objectives the same as, similar to, or consistent with the objectives of the Replaced Funds. For each of the substitutions numbered 1–4 in Table 1 above, the Replaced Fund and Substitute Fund are ''clone'' funds of the same retail fund and have the same investment objectives, and the investment adviser of the Replaced Fund will continue to provide investment advice to the Substitute Fund as a sub-adviser to the Fund.

For each of the Substitutions numbered 5–9 in Table 1 above, Applicants state that the investment objectives of the Replaced Fund and Substitute Fund involved are not the same, but are substantially similar. For each substitution, Applicants have concluded that, the investment objectives of the Substitute Funds are sufficiently similar to those of the Replace Funds so that the investment objectives of Customers and Participants can be met.

In the substitutions numbered 10 and 11 in Table 1 above, Applicants state that the investment objectives of the two funds, although different, are generally consistent. For each substitution, Applicants have concluded that the investment objectives are sufficiently consistent with those of the Replace Funds so that the essential investment objectives of Customers and Participants can be met.

11. Applicants state that the proposed substitutions are part of an overall business plan of Aetna to make its Products more competitive and thus more attractive to Customers and more efficient to administer and oversee. Applicants represent that the proposed substitutions and related transactions will be in the best interest of Customers and Participants in that they will (i) continue to provide the benefits of third party asset management while increasing Aetna's ability to control the expenses associated with the management and administration of the Funds; (ii) replace Funds with higher than average volatility, performance inconsistency and/or below average performance; (iii) replace funds with insufficient assets to remain cost effective, and (iv) reduce costs and the potential for conflicts.

12. The prospectuses for each of the registration statements affected by the proposed substitution will be amended to describe the Substitute Funds, identify which Funds are being replaced and disclose the impact of the Substitutions on Fund fees and expenses. The amendments will be distributed to all Customers and Participants.

13. Aetna will file with the Commission a new registration statement on Form N–1A, registering Portfolio Partners under the 1940 Act and registering shares in each Portfolio under the 1933 Act. Applicants state that copies of the Portfolio prospectuses will be distributed to Customers and Participants. Alternatively, Applicants may send summaries (Summaries) of the Portfolio prospectuses to Participants describing the material features of each Portfolio, including its investment objective and policies, risks, investment adviser, and to the extent applicable, past performance and a comparison of that performance to an appropriate index. The Summaries also will advise Participants that before they make any decision to transfer assets, they are entitled to review the Substitute Fund prospectuses and amendments to the prospectuses for their Products, and include instructions on how to obtain free copies.

14. Applicants state that the prospectuses for the Portfolios and amendments to the Product prospectuses will be accompanied by notices to all Customers and Participants advising them of the substitutions. The notice will be sent to all Customers and Participants at least 60 days prior to the date the substitutions (''Substitution Date'') will take place and will describe the Portfolios and their sub-advisers, the funds affected by the substitutions, the reasons for engaging in the substitutions, and the material terms and conditions of the substitutions. The notice also will advise Customers and Participants that they can transfer assets from any Replaced or Substitute Fund to any other funding options available under their Product, without charge and without limitation on the number of transfers from the date of the notice through a date at least 30 days following the date of the substitution, or withdraw assets from the Products subject to applicable deferred sales charges. Customers and Participants who had assets in Replaced Funds will be sent confirmation of the substitutions within five days following the Substitution Date confirming that the substitutions have been completed.

15. Applicants represent that the proposed substitutions will be effected by redeeming shares of the Replaced Funds on the Substitution Date at net asset value and using the proceeds to purchase shares of the Substitute Funds at net asset value on the same date. No transfer or similar charges will be imposed by Aetna and, at all times, all contract and policy values will remain unchanged and fully invested.

16. The use of in-kind redemptions and contributions will be done in a manner consistent with the investment objectives and policies and diversification requirements of the applicable Substitute Fund, and Aetna Annuity and each Substitute Fund's subadviser will review the in-kind redemptions to assure that the assets proposed are suitable for the Substitute Fund. The assets subject to in-kind redemption and purchase will be valued based on the normal valuation procedures of the redeeming and purchasing Funds. Applicants state that any inconsistencies in valuation procedures between the Replaced Fund and the Substitute Fund will be reconciled so that the redeeming and purchasing values are the same.

17. Applicants state that after the substitutions have been completed, in several instances, there will be two or more subaccounts of the same Separate Account holding shares of the same Substitute Fund. In any such instance, Applicants intend to combine those two subaccounts into a single subaccount by transferring shares from one subaccount to the other. The transfers will be done at net asset value on the same date so that there is no financial impact to any Customer or Participant.

Terms and Conditions of the Transactions

1. Terms

The significant terms of the substitutions described in the application include:

a. The Substitute Funds have objectives, policies and restrictions sufficiently similar to the objectives of the Replaced Funds so that the Customers' and Participants' objectives will continue to be met.

b. Aetna will waive its fees and/or reimburse the Portfolios' expenses so that through April 30, 1999, the fees and expenses of the Portfolios will not exceed the fees and expenses set forth for those Funds in the application, which in all cases are less than those of the Replaced Funds. Aetna anticipates that after April 30, 1999, the fees and expenses of the Portfolios will continue to be less than or equal to those currently charged by the applicable Replaced Funds, assuming that the asset levels of the Portfolios do not decrease significantly.

c. Customers may transfer assets from the Replaced or Substitute Funds to any other Fund available under their Product without any charge from the

date of notice through a date at least 30 days following the Substitution Date.

d. The substitutions, in all cases, will be effected at the net asset value of the respective shares in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder, without the imposition of any transfer or similar charge by Aetna.

e. The substitution will take place at relative net asset value with no change in the amount of any Customer's or Participant's contract or policy value or in the dollar value of his or her investment in such contract or policy. Customers and participants will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or Aetna's obligations under the contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by Aetna. The proposed substitutions will not cause the contract fees and charges currently being paid by existing Customers and Participants to be greater after the proposed substitutions than before the proposed substitutions.

f. Redemptions in-kind will be done in a manner consistent with the investment objectives and policies and diversification requirements of the applicable Substitute Fund and Aetna Annuity and each Substitute Fund's subadviser will review the in-kind redemptions to assure that the assets proposed for the Fund are suitable for the Substitute fund. Consistent with Rule 17a–7(d) under the 1940 Act, no brokerage commissions, fees (except customary transfer fees) or other remuneration will be paid in connection with the in-kind transactions.

g. The substitutions will not be counted as new Fund selections in determining the limit on the total number of Funds that Customers and Participants can select during the life of a Product.

h. The substitutions will not alter in any way the annuity or life benefits, tax benefits or any contractual obligations of Aetna under the Products.

i. Customers and Participants may withdraw amounts under the Products or terminate their interest in a Product, under the conditions that currently exists, including payment of any applicable deferred sales charge.

j. Customers and Participants affected by the substitutions will be sent confirmation of the substitutions within five days following the Substitution Date identifying each substitution made on behalf of that Customer or Participant.

2. Conditions

The substitutions described in the application will not be completed unless all of the following conditions are met:

a. The Commission will have issued an order approving the substitutions under Section 26(b) of the 1940 Act.

b. The Commission will have issued an order exempting the in-kind redemptions and the combination of subaccounts from the provisions of section 17(a) of the 1940 Act as necessary to carry out the substitutions as described in the application.

c. The Commission will have declared effective the amendments to the registration statements for the Products describing the substitutions.

d. The Commission will have declared the registration statement for Portfolio Partners and its Portfolios effective.

e. Each Customer will have been sent a copy of the effective prospectuses for the Substitute Funds and the effective amendments to the applicable Product prospectus.

f. Aetna will have satisfied itself, based on advice of counsel familiar with insurance laws, that the contracts involved in all the Products allow the substitutions of Funds as described in the application and that the transactions can be consummated as described herein under applicable insurance laws and under the various contracts and policies governing the Products.

g. Aetna will have complied with any regulatory requirements it believes necessary to complete the transactions in each jurisdiction where the Products are qualified for sale.

h. Aetna will have sent to Customers and Participants at least 60 days prior to the Substitution Date a notice, describing the terms of the substitutions and of Customers' and Participant's rights in connection with them.

i. Participants will have been sent amendments to the Product prospectuses and either prospectuses for the Portfolios or Summaries of them with written instructions on how to request a Portfolio prospectus, as provided in the relief granted to Aetna by the staff of the Commission. See Aetna Life Insurance and Annuity Company (pub. avail. Jan. 6, 1997).

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides, in pertinent part, that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' Section 26(b) of the 1940 Act also provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants request an order pursuant to section 26(b) of the 1940 Act approving the substitutions and related transactions. Applicants assert that the purposes, terms, and conditions of the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the 1940 Act. Applicants further assert that the proposed substitutions will not result in the type of costly forced redemption that section 26(b) was intended to guard against.

3. Section 17(a)(1) of the 1940 Act prohibits any affiliated person, or an affiliate of an affiliated person, of a registered investment company, from selling any security other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any affiliated person from purchasing any security or other property from such registered investment company.

4. Applicants state that redemptions and purchases in-kind involve the purchase of property from a registered investment company and the sale of property to a registered investment company by Aetna, an affiliated person of those investment companies. Similarly, in instances where Aetna combines two subaccounts into a single subaccount holding shares of the same Substitute Fund, the transfer of property could be said to involve purchase and sale transactions between the subaccounts by an affiliated person of each separate account.

5. Applicants request an order pursuant to section 17(b) of the 1940 Act exempting the in-kind redemptions and purchases and the combination of certain subaccounts from the provisions of Section 17(a). Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting a proposed transaction from Section 17(a) if evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

6. Applicants represent that the terms of the in-kind redemptions and purchases are reasonable and fair and do not involve overreaching on the part of any person concerned and that the interest of Customers and Participants will not be diluted. The in-kind redemptions and purchases will be done at values consistent with the policies of both the Replaced and Substitute Funds. Both Aetna and the proposed subadviser of the Substitute Funds will review all the asset transfers to assure that the assets meet the objectives of the Substitute Fund and that they are valued under the appropriate valuation procedures of the Replace Funds and the Substitute Fund. In-kind redemptions and purchases will reduce the brokerage costs that would otherwise be incurred in connection with the substitutions. The Applicants represent that the transactions are consistent with the policies of each investment company involved and the general purposes of the 1940 Act, and comply with the requirements of section 17(b).

7. Applicants represent that the combination of subaccounts is intended to reduce administrative costs and thereby benefit Customers with assets in those subaccounts. The purchase and sale transactions described in the application will be effected based on the net asset value of the Fund shares held in the subaccounts and the value of the units of the subaccount involved. Therefore, there will be no change in value to any Customer or Participant.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitution and related transactions involving in-kind redemptions and the combination of certain separate account subaccounts should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–20171 Filed 7–30–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22763; File No. 812–10398]

CUNA Mutual Life Insurance Company, et al.

July 24, 1997.

AGENCY: Securities and Exchange Commission (the ''SEC'' or ''Commission'').

ACTION: Notice of Application for Exemptions under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: CUNA Mutual Life Insurance Company (''CUNA Mutual Life''), CUNA Mutual Life Variable Account (''Account''), Ultra Series Fund (''Fund''), CIMCO, Inc. (''CIMCO''), CUNA Mutual Life Insurance Company Pension Plan for Agents, CUNA Mutual Life Insurance Company Pension Plan for Home Office Employees, CUNA Mutual Life Insurance Company 401(k)/Thrift Plan for Agents, CUNA Mutual Life Insurance Company 401(k)/Thrift Plan for Home Office Employees, CUNA Mutual Pension Plan, CUNA Mutual Savings Plan and CUNA Mutual Thrift Plan. (The seven plans shall be referred to collectively as the ''Plans.'' CUNA Mutual Life, the Account, the Fund, CIMCO and the Plans shall be referred to collectively as the ''Applicants.'')

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemptions form sections 9(a), 13(a) and 15(b) of the 1940 Act, and Rule 6e–3(T) thereunder; and an order requested under section 17(b) of the 1940 Act for exemptions from section 17(a) of the 1940 Act.

SUMMARY OF APPLICATION: CUNA Mutual Life, the Account and the Fund seek an order exempting them and certain other separate accounts established in the future by CUNA Mutual Life, or any life insurance company affiliate of CUNA Mutual Life (''future affiliated accounts'') and other separate accounts established in the future by any other life insurance company (''future unaffiliated accounts,''and together with the future affiliated accounts, the ''future accounts''), from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rule 6e–3(T) thereunder, to the extent necessary to permit the Account and the future accounts to hold shares of the Fund at the same time that the Fund offers its shares to such future accounts, the Plans or other qualified pension or retirement plans (the ''unaffiliated plans''). In addition, the Plans and CIMCO seek an order exempting them from Section 17(a) of the 1940 Act to the extent necessary to permit the Plans to purchase certain classes of shares of the Fund with investment securities of the Plans.

FILING DATE: The application was filed on October 15, 1996, and amended and restated on May 9, 1997 and July 23, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 18, 1997, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Linda L. Lilledahl, Esq., Associate General Counsel, CUNA Mutual Group, 5910 Mineral Point Road, Madison, WI 53701–0391.

FOR FURTHER INFORMATION CONTACT: Megan Dunphy, Attorney, or Mark Amorosi, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applications' Representations

1. CUNA Mutual Life, former Century Life of America, is principally engaged in the offering of life insurance contracts and is the depositor and sponsor of the Account. On July 1, 1990, CUNA Mutual Life entered into a permanent affiliation with CUNA Mutual Insurance Society (''CUNA Mutual''). All of the directors of CUNA Mutual Life are also directors of CUNA Mutual and many of the senor executive officers of CUNA Mutual Life hold similar positions with CUNA Mutual. However, both companies remain separate corporate entities and their respective owners retain their voting rights.

2. The Account, a separate account registered under the 1940 Act as a unit investment trust, was established on August 16, 1993 to serve as a funding vehicle to support variable life insurance contracts issued by CUNA Mutual Life. The Account is divided into subaccounts and invests in shares of open-end management investment companies with one or more investment portfolios or series, including the Fund.

3. The future accounts also would need to rely on the exemptions requested in the application. Any such future accounts would be registered under the 1940 Act as unit investment trusts.

4. CUNA Mutual, a mutual life insurance company, is principally engaged in the offering of insurance products and related services.

5. CIMCO is engaged primarily in the business of providing investment management and advice to insurance company pension plans, investment companies and other organizations. CIMCO is registered under the Investment Advisers Act of 1940, is the investment adviser to the Fund, and manages certain assets of the Plans. CUNA Mutual Life and CUNA Mutual Investment Corporation each own a one-half interest in CIMCO. CUNA Mutual Investment Corporation is a wholly-owned subsidiary of CUNA Mutual.

6. The board of directors of CUNA Mutual Life established CUNA Mutual Life Insurance Company Pension Plan For Agents, CUNA Mutual Life Insurance Company Pension Plan For Home Office Employees, CUNA Mutual Life Insurance Company 401(k)/Thrift Plan for Agents, and CUNA Mutual Life Insurance Company 401(k)/Thrift Plan for Home Office Employees (the ''CUNA Life Mutual Plans''). Participation in a CUNA Mutual Life Plan is open to eligible employees of CUNA Mutual Life and its subsidiaries or other companies under common control with CUNA Mutual Life and which has adopted a CUNA Mutual life Plan. CUNA Mutual Life Insurance Company 401(k)/Thrift Plan for Agents and CUNA Mutual Life Insurance Company 401(k)/Thrift Plan for Home Office Employees (the ''CUNA Mutual Life Defined Contribution Plans'') are voluntary defined contribution plans. CUNA Mutual Life Insurance Company Pension Plan For Agents and CUNA Mutual Life Insurance Company Pension Plan for Home Office Employees are defined benefit plans.

7. The board of directors of CUNA Mutual established CUNA Mutual Pension Plan, CUNA Mutual Savings Plan and CUNA Mutual Thrift Plan (''CUNA Mutual Plans''). Participation in a CUNA Mutual Plan is open to eligible employees of CUNA Mutual and its subsidiaries or other companies under common control with CUNA Mutual and which adopted a CUNA Mutual Plan. The CUNA Mutual Pension Plan is a defined benefit plan. The CUNA Mutual Savings Plan and CUNA Mutual Thrift Plan (the ''CUNA Mutual Defined Contribution Plans'') are voluntary defined contribution plans.

8. All of the Plans are intended to qualify under sections 401(a) and 501(a) of the Internal Revenue Code of 1986, as amended (the ''Code''). The CUNA Mutual Life Defined Contribution Plans and CUNA Mutual Defined Contribution Plans include cash or deferred arrangements intended to qualify under section 401(k) of the Code. The Plans also are subject to, and have been designed to comply with, the provisions of the Employee Retirement Income Security Act of 1977 (''ERISA'').

9. Each of the Plans is funded by a trust with an institutional trustee or by an annuity contract issued by CUNA Mutual Life or CUNA Mutual. CUNA Mutual Life and CUNA Mutual retain the right to establish different funding arrangements or to appoint other trustees. Each of the Plans is managed and administered by a plan committee and other fiduciaries appointed by CUNA Mutual Life or CUNA Mutual, as applicable (hereinafter, ''plan committees'').

10. The unaffiliated plans will be pension or retirement plans intended to qualify under Section 401(a) and 501(a) of the Code and will be subject to, and will be designed to comply with, the applicable provisions of ERISA. The unaffiliated plans will not be affiliated persons of the Applicants or affiliated persons of such persons. The trustees and the other fiduciaries of the unaffiliated plans also will not be affiliated persons of the Applicants or affiliated persons of such persons.

11. The CUNA Mutual Thrift Plan offers participants seven investment options including, among others, the following: a growth and income investment portfolio, a capital appreciation investment portfolio, a bond investment portfolio a balanced investment portfolio, and a money market investment portfolio. The CUNA Mutual Savings Plan offers participants three investment options: a growth and income investment portfolio, a bond investment portfolio, and a money market investment portfolio. The CUNA Mutual Life Defined Contribution Plans offer participants three investment options: a capital appreciation investment portfolio, a growth and income investment portfolio and a money market investment portfolio. Assets of the other Plans are not held as part of separate Plan investment portfolios.

12. The Fund, an open-end management investment company organized as a Massachusetts business trust on September 16, 1983, is a series company that consists of six investment portfolios: Capital Appreciation Stock Fund, Growth and Income Stock Fund, Balanced Fund, Bond Fund, Money Market Fund and Treasury 2000 Fund.

13. The investment objective of the Capital Appreciation Stock Fund is long-term capital growth. The investment objective of the Growth and Income Stock Fund is long-term capital growth, with income as a secondary consideration. The investment objective of the Balanced Fund is to achieve a high total return through the combination of income and capital appreciation by investing in a broadly diversified life of securities including common stocks, bonds and money market instruments. The investment objective of the Bond Fund is to generate a high level of current income, consistent with the prudent limitation of investment risk, through investment in a diversified portfolio of fixed-income securities with maturities of up to 30 years. The investment objective of the Money Market Fund is to seek the highest current income available from money market instruments consistent with the preservation of capital and liquidity by maintaining a dollar weighted average portfolio maturity which does not exceed 90 days. The investment objective of the Treasury 2000 Fund is to provide safety of capital and a relative predictable payout upon portfolio maturity, primarily by investing in stripped Treasury securities.

14. To date, the Fund has offered its shares only to CUNA Mutual Life (as seed money investments), the Account, CUNA Mutual Life Variable Annuity Account (''Annuity Account''), and CUNA Mutual Life Group Variable Annuity Account (''Group Annuity Account''). The Fund offers each series of shares to corresponding subaccounts of the Account to support variable life insurance contracts (''VLI contracts'') and to the Annuity Account and the Group Annuity Account to support variable annuity contracts (''VA contracts,'' and together with VLI contracts, ''variable contracts'').

15. Changes in the tax law have created the opportunity for the Fund to substantially increase its assets based through the sale of Fund shares to the Plans and the unaffiliated plans. Section 817(h) of the Code imposes certain diversification standards on the assets underlying variable contracts. The Code provides that variable contracts shall not be treated as annuity contracts or life insurance contracts for any period in which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations which established diversification requirements for the investment portfolios underlying variable contracts. Treas. Reg. § 1.817–5 (1989). The regulations provide that, to meet the diversification requirements,

all of the beneficial interests in the investment company must be held by the segregated asset accounts for one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts. Treas. Reg. § 1.817–5(f)(3)(iii). As a result of this exception to the general diversification requirement, qualified pension and retirement plans (such as the Plans or the unaffiliated plans) may hold Fund shares and select an investment portfolio of the Fund as an investment option without endangering the tax status of CUNA Mutual Life's VLI contracts or VA contracts as life insurance or annuities, respectively.

16. Applicants propose that, in one or more discrete instances, the Plans purchase Fund shares using investment securities held by the Plans. The CUNA Mutual Life Defined Contribution Plans and the CUNA Mutual Defined Contribution Plans would use investment securities constituting a separate Plan investment portfolio, currently available to participants as an investment option, to purchase Fund shares, while the other Plans would use securities held by the Plan but not as a separate Plan investment portfolio.

17. Applicants state that the CUNA Mutual Defined Contribution Plans and the CUNA Mutual Life Defined Contribution Plans will each use the assets of their capital appreciation investment portfolios to purchase shares of the Fund's Capital Appreciation Stock Fund, use the assets of their growth and income investment portfolios to purchase shares of the Fund's Growth and Income Stock Fund, use the assets of their bond investment portfolios to purchase shares of the Fund's Bond Fund, use the assets of their balanced investment portfolio to purchase shares of the Fund's Balanced Fund and use the assets of the money market investment portfolios to purchase shares of the Fund's Money Market Fund. If the proposed consolidations were to occur, the Plans would initially acquire a substantial majority of the outstanding shares of the Fund's Growth and Income Stock Fund, Bond Fund and Money Market Fund as well as a controlling interest in the Fund's Capital Appreciation Stock Fund.

Applicants' Legal Analysis

A. Request for Exemptions Under Section 6(c)

(i) General Grounds for Relief

1. CUNA Mutual Life, the Account and the Fund (the ''Section 6(c) Applicants'') request that the Commission issue an order pursuant to section 6(c) of the 1940 Act exempting them as well as any future accounts and depositors and principal underwriters of any future accounts from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rule 6e–3(T)(b)(15) thereunder, to the extent necessary for the Account and any future accounts to hold shares of the Fund at the same time that the Plans or the unaffiliated plans hold shares of the Fund or for the Account and any unaffiliated future account to simultaneously hold shares of the Fund.

2. CUNA Mutual Life and the Account currently rely on the exemptions provided by Rule 6e–3(T)(b)(15) under the 1940 Act, which provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act for certain VLI contracts. However, the exemptions granted by the rule are available only where: (i) the Fund offers its shares exclusively to separate accounts of CUNA Mutual Life or any life insurance company affiliate of CUNA Mutual Life offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or (ii) the Fund offers its shares to variable annuity separate accounts of CUNA Mutual Life or of any life insurance company affiliate of CUNA Mutual Life. The Rule 6e–3(T)(b)(15) exemptions would not be available to CUNA Mutual Life, the Account or any future accounts (affiliated or unaffiliated) if the Fund were to sell its shares to the Plans or to unaffiliated plans.

3. In general, section 9(a) of the 1940 Act disqualifies any person convicted of certain offenses, and any company affiliated with that person, from acting or serving in various capacities with respect to a registered investment company. Section 9(a)(3) provides that it is unlawful for any company to serve as investment adviser or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a) (1) or (2). However, Rule 6e–3(T)(b)(15) (i) and (ii) provide exemptions from section 9(a), under certain circumstances and subject to certain conditions that limit the application of the eligibility restrictions of Section 9(a) to affiliated individuals or companies that directly participate in the management of the Fund.

4. The section 6(c) Applicants assert that the partial relief provided by Rule 6e–3(T)(b)(15) effectively limits the amount of monitoring of personnel that CUNA Mutual Life and its affiliates (or future account depositors and their affiliates) would have to conduct to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. The section 6(c) Applicants further assert that the rule recognizes that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply to provisions of section 9(a) to the many hundreds of individuals in a large insurance company complex, most of whom typically have no involvement in matters pertaining to investment companies affiliated with that organization.

5. Rule 6e–3(T)(b)(15)(iii) provides partial exemptions from sections 13(a), 15(a) and 15(b) of the 1940 Act to permit CUNA Mutual Life, under certain limited circumstances, to: (i) disregard the voting instructions of VLI contract owners if following such instructions would cause CUNA Mutual Life to make (or refrain from making) certain investments that would result in changes in the subclassification or investment objectives of the Fund; or (ii) (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rule 6e–3(T)) approve or disapprove any contract between the Fund and CIMCO (or another investment adviser), when such action is mandated by an insurance regulatory authority.

6. The section 6(c) Applicants assert that historically, the exclusivity provision in Rule 6e–3(T)(b)(15) evolved from the Commission's concern about possible divergent interests between or among different classes of investors (e.g., VA owners and VLI owners) in mutual funds supporting variable life insurance separate accounts. The unit investment trust structure for supporting VLI contracts created the opportunity for a mutual fund underlying a trust also to offer its shares to a variable annuity separate account (hereinafter, ''mixed funding''). This structure also created the opportunity for a mutual fund underlying such a separate account also to offer its shares to separate accounts of two or more insurance companies that are not affiliated persons of each other (hereinafter, ''shared funding'').

7. The section 6(c) Applicants state that the Commission addressed its

concerns about divergent interests among investors when it adopted Rule 6e–2 (the primary exemptive rule for scheduled premium variable life insurance). Rule 6e–2 does not permit mixed or shared funding. Several insurers relying on Rule 6e–2 sought and obtained individual exemptions to permit mixed funding, subject to certain conditions designed to identify and resolve potential or existing conflicts of interest among variable contract owners. The section 6(c) Applicants maintain that, ultimately, Rule 6e–3(T)(b)(15) was designed to permit a separate account supporting both flexible and scheduled premium VLI contracts to share the same underlying fund and engage in mixed funding.

8. The section 6(c) Applicants maintain that qualified retirement plan investors in the Fund would have substantially the same interests as current variable contract owners. Like variable contract owners, qualified retirement plan investors are long-term investors. Therefore, most can be expected not to withdraw their assets from the Plans or the unaffiliated plans. In addition, since neither variable contract owners nor Plan and unaffiliated plan in investors would be taxed on the investment return of their respective investments in the Fund, they would share a strong interest in the Fund operating in a manner that preserves its tax status.

9. The section 6(c) Applicants represent that the Account and the Plans are governed in similar ways as would be future accounts and unaffiliated plans. Plan committees (and other plan fiduciaries) have a fiduciary duty to participants that is similar to the obligations that CUNA Mutual Life or any other life insurance company has to look after the interests of variable contract owners.

10. The section 6(c) Applicants assert that, because investors in the Plans and unaffiliated plans would have beneficial interests similar to those of current investors, the addition of the Plans and unaffiliated plans as shareholders of the Fund and the addition of participants as persons having beneficial interests in the Fund should not increase the risk of material irreconcilable conflicts among and between investors. The section 6(c) Applicants further assert that even if a material irreconcilable conflict involving the Plans or the unaffiliated plans or their respective participants arose, the fiduciaries of the Plans and the trustees (or other fiduciaries) of the unaffiliated plans can, if their fiduciary duty to the participants requires it, redeem the shares of the Fund held by the Plans or the unaffiliated plans and make alternative investments without obtaining prior regulatory approval. Similarly, the Plans and most, if not all, of the unaffiliated plans may hold cash or other liquid assets pending their reinvestment in a suitable alternative investment.

1. The section 6(c) Applicants maintain that variable contract owners would benefit from the expected increase in net assets of the Fund's portfolios resulting from additional investments by the Plans and unaffiliated plans. Such additional investments should lower some of the costs of investing for variable contract owners, promote economies of scale, permit increased safety through greater portfolio diversification, provide the Fund's investment adviser with greater flexibility because of a larger portfolio, and make the addition of new portfolios in the future more feasible.

12. The section 6(c) Applicants note that when the Commission last revised Rule 6e–3(T) in 1987, the Treasury Department had not issued Treasury Regulation 1.817–5 which permits the Fund to sell shares to qualified pension or retirement plans without adversely affecting the tax status of variable contracts. The section 6(c) Applicants submit that, although proposed regulations had been published, the Commission did not envision this possibility when it last examined Rule 6e–3(T)(b)(15), and might well have broadened the exclusivity provision of the rule at that time to include plans such as the Plans (or the unaffiliated plans) had this possibility been apparent.

(ii) Voting Rights

13. The section 6(c) Applicants do not see any inherent conflicts arising between or among the interests of variable contract owners, or Plan participants because of the potential for the Plans to hold a controlling interest in a portfolio of the Fund. If the exemptions requested herein are granted, the trustees or the plan committee of each Plan would enter into a participation agreement with the Fund that contains certain conditions, as discussed below. These conditions would serve to enhance the ability of the Fund's board of trustees and CUNA Mutual Life as well as depositors of future accounts to protect the interests of variable contract owners and minimize any potential for material conflicts between or among the interests of plan investors on the one hand and variable contract owners on the other.

14. The section 6(c) Applicants maintain that there is no reason to believe that the trustees or the plan committees of the various Plans as a group would vote in a manner that would disadvantage variable contract owners. Moreover, because a majority of the Fund's trustees will not be interested persons of the Fund, the trustees, the plan committees and other affiliated persons of the Plans will not be in a position to exercise undue influence over the Fund or any of its portfolios.

15. Also, with regard to resolving or remedying possible material conflicts of interest related to voting, the Plans' investment in the Fund does not present any complications not otherwise occasioned by traditional mixed funding as permitted by Rule 6e–3(T)(b)(15). The section 6(c) Applicants submit that the interests and opinions of Fund investors may differ, but this does not mean that inherent conflicts of interest exist between or among such investors.

16. Section 403(a) of ERISA provides that, with few exceptions, trustees of the unaffiliated plans would have the exclusive authority and responsibility for exercising voting rights attributable to their respective plan's investment securities. Where a named fiduciary appoints an investment adviser, the adviser has the authority and responsibility to exercise such voting rights unless the authority and responsibility is reserved to the trustee(s) or a non-trustee fiduciary.

17. The section 6(c) Applicants generally expect many of the unaffiliated plans to have their trustees or other fiduciaries exercise, in their discretion, voting rights attributable to investment securities held by the unaffiliated plans. Some of the unaffiliated plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants.

18. Where unaffiliated plans do not provide participants with the right to give voting instructions, the section 6(c) Applicants do not see any potential for material irreconcilable conflicts of interest between variable contract owners and unaffiliated plan investors with respect to voting of Fund shares. In this regard, the section 6(c) Applicants submit that investment in the Fund by the unaffiliated plans will not create any of the voting complications occasioned by traditional mixed and shared funding, or by the Plans' proposed investment in the Fund.

19. Where unaffiliated plans provide participants with the right to give voting instructions, the section 6(c) Applicants do not believe that participants in unaffiliated plans generally or those in

a particular unaffiliated plan, either as a single group or in combination with participants in other unaffiliated plans, would vote in a manner that would disadvantage variable contract owners. The purchase of Fund shares by the unaffiliated plans that provide voting rights does not present any complications not otherwise occasioned by mixed and shared funding.

20. In light of Treasury Regulation 1.817–5(f)(3)(iii) which specifically permits ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company, the section 6(c) Applicants have concluded that neither the Code, nor other Treasury Regulations or revenue rulings thereunder, would create any inherent conflicts of interest between or among participants and variable contract owners.

(iii) Tax Treatment of Distributions

21. Although there are differences in the manner in which distributions from the Plans or the unaffiliated plans and distributions from variable contracts are taxed, the section 6(c) Applicants maintain that these differences will have no impact on the Fund. The Account, any future accounts, the Plans, and the unaffiliated plans each will purchase and redeem Fund shares at net asset value in conformity with Rule 22c–1 under the 1940 Act.

(iv) Potential Future Conflicts Arising From Tax Law Changes

22. The section 6(c) Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of plan investors and other Fund investors from possible future changes in the federal tax laws than that which already exists with regard to such conflicts arising between VLI contract owners and VA contract owners.

(v) Grounds for Relief for Shared Funding

23. The section 6(c) Applicants maintain that the holding of Fund shares by separate accounts of unaffiliated insurance companies would not entail greater potential for material irreconcilable conflicts arising between or among the interests of VLI owners and VA owners than does traditional mixed funding. Likewise, the holding of Fund shares by separate accounts of unaffiliated insurance companies would not create greater potential for material irreconcilable conflicts arising between or among the interests of variable contract owners and plan investors than would be the case if only separate accounts of CUNA Mutual Life's insurance company affiliates and plan investors held Fund shares.

24. The section 6(c) Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several, or all, states. The section 6(c) Applicants note that where insurers are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other insurance companies are domiciled. The section 6(c) Applicants submit that this possibility is no different from and no greater than what exists where a single insurer and its affiliates offer their insurance products in several states.

25. The section 6(c) Applicants also assert that the right of an insurance company to disregard VLI contract owner voting instructions does not raise any issues different from those raised by the authority of different state insurance regulators over separate accounts. Affiliation does not eliminate the potential for divergent judgments by such companies as to the advisability or legality of a change in investment policies, principal underwriting, or investment adviser of an open-end management investment company in which their separate account invests. The section 6(c) Applicants assert that the potential for disagreement between or among insurance companies is limited by the requirement that the insurance company's disregard of voting instructions be both reasonable and based on specific good faith determinations. Moreover, in the event that a decision of CUNA Mutual Life or the depositor of a future account to disregard VLI contract owners' instructions represents a minority position or would preclude a majority vote at a Fund shareholders meeting, CUNA Mutual Life or such depositor could be required, at the election of the Fund, to withdraw its investment in that Fund.

(vi) Conditions for Relief

Applicants represent and agree that if the exemptions required in the application pursuant to section 6(c) are granted, CUNA Mutual Life and the Account will only rely on such exemptions to purchase and hold Fund shares if the following conditions are met:

1. The board of trustees of the Fund, including a majority of those trustees who are not interested persons of the Fund or interested persons of such persons, adopts a resolution approving the sale of Fund shares to the Plans and the unaffiliated plans. for this purpose, interested person means ''interested persons'' as defined by Section 2(a)(19) of the 1940 Act, and rules thereunder, and as modified by any applicable Commission orders, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or trustees, then the operation of this condition shall be suspended for (a) a period of 45 days of the vacancy or vacancies may be filled by the remaining trustees, (b) a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies, or (c) such longer period as the Commission may prescribe by order upon application.

2. The board of trustees of the Fund, a majority of whom shall not be interested persons of the Fund or interested persons of such persons, shall monitor the Fund for the existence of any material irreconcilable conflicts between or among the interests of VLI owners, VA owners and plan investors and determine what action, if any, should be taken in response to those conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority, (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or (c) a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities, (d) the manner in which the investments of any Fund are being managed, (e) a difference in voting instructions given by VLI owners, VA owners and plan investors, (f) a decision by CUNA Mutual Life to disregard variable contract owner voting instructions, and (g) a decision by a Plan trustee (or other Plan fiduciary) to disregard voting instructions of Plan participants.

3. CUNA Mutual Life will monitor its operations and those of the Fund for the purpose of identifying any material conflicts or potential material conflicts between or among the interests of plan investors, VA owners and VLI owners.

4. CUNA Mutual Life and CIMCO will report any such conflicts or potential conflicts to the Fund's board of trustees and will provide the board at least annually, with all information reasonably necessary for the board to consider any issues raised by such existing or potential conflicts. CUNA Mutual Life will also assist the board in carrying out this obligation including, but not limited to: (a) informing the board whenever it disregards VLI owner voting instructions, and (b) providing such other information and reports as the board may reasonably request. CUNA Mutual Life will carry out these obligations with a view only to the interests of VA owners and VLI owners.

5. CUNA Mutual Life will provide ''pass-through'' voting privileges to VA owners and VLI owners as long as the Commission interprets the 1940 Act to require such privileges in such cases. CUNA Mutual Life will vote Fund shares held by it that are not attributable to VA contract or VLI contract reserves in the same proportion as instructions received in a timely fashion from

VA owners and VLI owners and shall be responsible for ensuring that the Account and the Annuity Account each calculate ''pass-through'' votes in a consistent manner.

6. In the event that a conflict of interest arise between VA owners or VLI owners and plan investors, CUNA Mutual Life will, at its own expense, take whatever action is necessary to remedy such conflict as it adversely affects VA owners or VLI owners up to and including (1) establishing a new registered management investment company, and (2) withdrawing assets attributable to reserves for the VA contracts or VLI contracts subject to the conflict form the Fund and reinvesting such assets in a different investment medium (including another portfolio of the Fund) or submitting the question of whether such withdrawal should be implemented to a vote of all affected VA owners or VLI owners, and, as appropriate, segregating the asset supporting the contracts of any group of such owners that votes in favor of such withdrawal, or offering to such owners the option of making such a change. CUNA Mutual Life will carry out the responsibility to take the foregoing action with a view only to the interests of VA owners and VLI owners. Notwithstanding the foregoing, CUNA Mutual Life will not be obligated to establish a new funding medium for any group of VA contracts or VLI contracts if an offer to do so has been declined by a vote of a majority of the VA owners or VLI owners adversely affected by the conflict.

7. If a material irreconcilable conflict arises because of CUNA Mutual Life's decision to disregard the voting instructions of VLI owners and that decision represents a minority position or would preclude a majority vote at any Fund shareholder meeting, then, at the request of the Fund's board of trustees, CUNA Mutual Life will redeem the shares of the Fund to which the disregarded voting instructions relate. No charge or penalty, however, will be imposed in connection with such a redemption.

8. A majority vote of the disinterested trustees of the Fund shall represent a conclusive determination as to the existence of a material irreconcilable conflict between or among the interests of VLI owners, VA owners and plan participants. A majority vote of the disinterested trustees of the Fund shall represent a conclusive determination as to whether any proposed action adequately remedies any material irreconcilable conflict between or among the interests of VLI owners, VA owners and plan participants. The Fund shall notify CUNA Mutual Life, depositors of future accounts, Plans and unaffiliated plans in writing of any determination of the foregoing type.

9. All reports sent by CUNA Mutual Life, the depositors of the future accounts, the Plans or the unaffiliated plans to the board of trustees of the Fund or notices sent by the board to CUNA Mutual Life, the depositors of the future accounts, the Plans or the unaffiliated plans notifying the recipient of the existence of or potential for a material conflict between the interests of VA owners, VLI owners and plan investors as well as board deliberations regarding conflicts or potential conflicts shall be recorded in the board meeting minutes of the Fund or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

10. The Fund's prospectus shall disclose that (1) its shares are offered in connection with mixed funding, shared funding and to 401(a) plans, (2) both mixed funding, shared funding and investment by 401(a) plans in the Fund may present certian conflicts of interest between VA owners, VLI owners and plan investors and (3) the Fund's board of trustees will monitor for the existence of any material conflict of interest. The Fund shall also notify the Plan trustees, the trustees of unaffiliated plans, CUNA Mutual Life and the life insurance company depositors of the future accounts that similar prospectus disclosure may be appropriate in separate account prospectuses or any plan prospectuses or other plan disclosure documents.

11. CUNA Mutual Life and the Account will continue to rely on Rule 6e–3(T)(b)(15) and to comply with all of its conditions. In the event that Rule 6e–3(T) is amended, or any successor rule is adopted, CUNA Mutual Life and the Account will instead comply with such amended or successor rule.

12. Each Plan will execute a participation agreement with the Fund requiring the trustees or plan committees of the Plan to: (a) monitor the Plan's operations and those of the Fund for the purpose of identifying any material conflicts or potential material conflicts between or among the interests of plan investors, VA owners and VLI owners, (b) report any such conflicts or potential conflicts to the Fund's board of trustees, and (c) provide the board, at least annually, with all information reasonably necessary for the board to consider any issues raised by such existing or potential conflicts and any other information and reports that the board may reasonably request, (d) ensure that the Plan votes Fund shares as required by applicable law and governing Plan documents.

13. In the event that a conflict of interest arises between plan investors and VA owners or other investors in the Fund, each Plan will, at its own expense, take whatever action is necessary to remedy such conflict as it adversely affects that Plan or participants in that Plan up to and including (1) establishing a new registered management investment company, and (2) withdrawing Plan assets subject to the conflict from the Fund and reinvesting such assets in a different investment medium (including another portfolio of the Fund) or submitting the question of whether such withdrawal should be implemented to a vote of all affected plan participants, and, as appropriate, segregating the assets of any group of such participants that votes in favor of such withdrawal, or offering to such participants the option of making such a change. Each Plan will carry out the responsibility to take the foregoing action with a view only to the interests of the plan investors in its Plan. Notwithstanding the foregoing, no Plan will be obligated to establish a new funding medium for any group of participants if an offer to do so has been declined by a vote of a majority of the Plan's participants adversely affected by the conflict.

14. If a material irreconcilable conflict arises because of a Plan trustee's (or other fiduciary's) decision to disregard the voting instructions of Plan participants (if such Plan should provide voting rights to its participants) and that decision represents a minority position or would preclude a majority vote at any shareholder meeting, then, at the request of the Fund's board of trustees, the Plan will redeem the shares of the Fund to which the disregarded voting instructions relate. No charge or penalty, however, will be imposed in connection with such a redemption.

15. The Fund will comply with all the provisions of the 1940 Act relating to security holder (i.e., persons such as VLI owners and VA owners or participants in plans that provide participants with voting rights) voting including Sections 16(a), 16(b) (when applicable) and 16(c) (even though the Fund is not a trust of the type described therein).

Applicants also represent that, with regard to the reliance of the future accounts (including their life insurance company depositors) on the section (6(c) exemptions requested in the application, the Fund will only sell shares to future accounts if the life insurance company depositors enter into a participation agreement with the Fund requiring the depositor to comply with conditions 3, 4, 5, 6, 7, 8 and 11 in the same manner as will CUNA Mutual Life. Likewise, the Fund will only sell shares to unaffiliated plans holding 10% or more of the shares of any investment portfolio of the Fund if such plans enter into a participation agreement with the Fund requiring the trustees or other appropriate plan fiduciaries to comply with conditions 8, 12, 13, and 14 in the same manner as will the Plans.

B. Request for Exemptions Under Section 17(b)

1. CIMCO and the Plans request that the Commission issue an order pursuant to section 17(b) of the 1940 Act exempting them from the provisions of section 17(a) of the 1940 Act to the extent necessary to permit the Plans to purchase shares of the Fund with investment securities of the Plans. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

2. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order

exempting any transaction from the prohibitions of section 17(a) if the evidence establishes that: (i) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (iii) the proposed transaction is consistent with the general purposes of the 1940 Act.

3. Section 2(a)(3) of the 1940 Act defines the term ''affiliated person of another person'' in relevant part as: ''(A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person.* * *''

4. CIMCO and the Plans assert that since a person under common control with a registered investment company is an affiliated person of that investment company, CIMCO and the CUNA Mutual Life Plans are affiliated persons of the Fund and of all of its investment portfolios. In addition, because CUNA Mutual Life owns of record more than 5% of the shares of each of the Fund's investment portfolios, CUNA Mutual Life is an affiliated person of the Fund and each of the Fund's investment portfolios. The Plans' proposal to purchase Fund shares with investment securities would entail the sale of such securities by the Plans (or by CIMCO and the Plans), acting as principal, to the Fund and therefore would contravene section 17(a).

5. Because each person who is under common control with a registered investment adviser is an affiliated person of that adviser, the CUNA Mutual Plans are affiliated persons of an affiliated person of the Fund.

6. CIMCO and the Plans assert that because CUNA Mutual Life owns of record all shares of the Fund and because section 2(a)(9) of the 1940 Act establishes a presumption that a person owning 25% or more of another person's outstanding voting securities controls the latter person, the Fund and each of its investments portfolios is arguably under the control of CUNA Mutual Life notwithstanding the fact that variable contract owners may be considered the beneficial owners of any such shares. CIMCO and the Plans further submit that, because CIMCO and the CUNA Mutual Life Plans are controlled by CUNA Mutual Life, they, the Fund, and the Fund's portfolios are under the common control of CUNA Mutual Life. Because CIMCO is also controlled by CUNA Mutual as are the CUNA Mutual Plans, CIMCO and the CUNA Mutual Plans are under common control.

7. CIMCO and the Plans represent that the terms of the proposed transactions as set froth in the application, including the consideration to be paid and received: (i) Are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) are consistent with the policies of the Fund and of its Capital Appreciation Stock Fund, Growth and Income Stock Fund, Balanced Fund, Bond Fund and its Money Market Fund, as recited in its current registration statement and reports filed under the 1940 Act; and (iii) are consistent with the general purposes of the 1940 Act.

8. Subject to certain enumerated conditions, Rule 17a–7 under the 1940 Act exempts from the prohibitions of section 17(a) a purchase or sale transaction between: (i) Registered investment companies or separate series of registered investment companies, which are affiliated persons, or affiliated persons of affiliated persons, of each other, (ii) between separate series of a registered investment company; or (iii) between a registered investment company or a separate series of a registered investment company and a person which is an affiliated person of such registered investment company (or affiliated person of such person) solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers

9. CIMCO and the CUNA Mutual Plans submit that they cannot rely on Rule 17a–7 because they are not affiliated persons of the Fund (or of the Bond Fund, Money Market Fund or the Treasury 2000 fund) solely by reason of having acommon investment adviser or affiliated investment advisers, common directors, and/or common officers. Likewise, the CUNA Mutual Plans cannot rely on Rule17a–7 because they are not affiliated persons of an affiliated person of the Fund solely by reason of having a common investment adviser or affiliated investment advisers, common directors, and/or common officers. Moreover, CIMCO and the Plans also note that since the proposed purchase of Fund shares by the Plans involves the purchase and sale of securities for securities, the proposed transaction does not meet the condition of Rule 17a–7 that the transaction be a purchase or a sale for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available.

10. CIMCO and the Plans maintain that the terms of the proposed transactions, including the consideration to be received by the Fund, are reasonable, fair, and do not involve overreaching by investment company affiliates principally because the transactions will conform in all material respects with the substance of all but one of the conditions enumerated in Rule 17a–7. CIMCO and the Plans assert that where, as here, they or the relevant investment company would comply in substance with, but cannot literally meet all of the requirements of, Rule 17a–7, the Commission should consider the extent to which they would meet the Rule 17a–7 or other similar conditions, and issue an order if the protections of Rule 17a–7 would be provided in substance.

11. CIMCO and the Plans submit that the proposed transactions would offer to the Fund the same degree of protection from overreaching that Rule 17a–7 offers to investment companies generally in connection with qualifying non-investment company affiliates of such investment companies. Although the transactions will not be for cash, each will be effected based upon: (i) The independent market price of the Plans' investment securities valued as specified in Rule 17a–7(b), and (ii) the net asset value per share of the Capital Appreciation Stock Fund, Growth and Income Stock Fund, Balanced Fund, Bond Fund or the Money Market Fund, valued in accordance with the procedures disclosed in the Fund's registration statement and as required by Rule 22c–1 under the 1940 Act. CIMCO and the Plans represent that no brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions. In addition, although the board of trustees of the Fund will not adopt specific procedures to govern the proposed transactions (because there will be at most only one such transaction for each Plan), it will scrutinize and specifically approve by resolution each such transaction, including the price to be paid for the Fund's shares and the nature and quality of the securities offered in payment for such shares.

12. CIMCO and the Plans represent that the proposed sale of additional shares is consistent with the investment

policy of the Capital Appreciation Stock Fund, Growth and Income Stock Fund, Balanced Fund, Bond Fund and Money Market Fund, as recited in the Fund's registration statement, and the sale of shares for investment securities, as contemplated by the proposed transactions, is also consistent with these investment policies provided that: (i) The shares are sold at net asset value, and (ii) the securities are of the type and quality that each investment portfolio would have acquired with the sale proceeds had the shares been sold for cash. As recited in the conditions listed below, the Fund's board of trustees will examine the portfolios of each CUNA Mutual Life and CUNA Mutual Defined Contribution Plan, capital appreciation stock investment portfolio, growth and income stock investment portfolio, balanced investment portfolio, bond investment portfolio and money market portfolio as well as any securities offered by the other Plans and only approve the proposed transactions if they, including a majority of these trustees who are not interested persons of the Fund, or interested persons of such persons, determine that (i) and (ii) would be met.

13. The proposed transactions, as described herein, are consistent with the general purposes of the 1940 Act as stated in the Findings and Declaration of Policy in Section 1 of the 1940 Act. The proposed transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent.

14. CIMCO and the Plans also assert that the proposed transactions, in addition to meeting the standards of Section 17(b) vis-a-vis the Fund, are fair and reasonable to the Plans and are in the best interests of the Plan participants as determined by the plan committees of each Plan. In particular, CIMCO and the Plans submit that the proposed transactions are consistent with the policy and purpose of the Plans as recited in each Plan's plan documents, and are consistent with the provisions of ERISA (applicable to defined contribution plans) regarding reporting and disclosure, participation and vesting, funding, fiduciary responsibility, administration and enforcement.

15. CIMCO and the Plans represent that the plan committee of each Plan will determine that the proposed transactions are in the best interests of participants in their Plan, and are consistent with the policies and purpose of the Plan as recited in the Plans themselves. In particular, the plan committee of each CUNA Mutual Life Defined Contribution Plan and CUNA Mutual Defined Contribution Plan will determine that the Fund's Capital Appreciation Stock Fund has substantially the same investment objects as the Plans' capital appreciation stock investment portfolio, the Fund's Growth and Income Stock Fund has substantially the same investment objects as the Plans' growth and income stock investment portfolio, the Fund's Balanced Fund has substantially the same investment objectives as the Plans' balanced investment portfolio, the Fund's Bond Fund has substantially the same investment objectives as the Plans' bond investment portfolio, and that the Fund's Money Market Fund has substantially the same investment objectives as the Plans' money market investment portfolio.

16. CIMCO and the Plans represent that Plan participants will benefit from the fact that the expense of liquidating Plan assets, purchasing Fund shares with cash, and reinvesting the cash in substantially the same assets, would be avoided. CIMCO and the Plans further represent that, in light of the fact that the plan committees of the CUNA Mutual Life and the CUNA Mutual Defined Contribution Plans will have determined that the Fund's Capital Appreciation Stock Fund, Growth and Income Stock Fund, Balanced Fund, Bond Fund and Money Market Fund should replace the Plans' current capital appreciation stock investment portfolio, growth and income stock investment portfolio, balanced investment portfolio, bond investment portfolio and money market investment portfolio, respectively, the proposed transactions would greatly diminish the expense of this replacement to Plan participants.

17. CIMCO and the Plans represent that the proposed transactions are consistent with the provisions of ERISA applicable to defined contribution plans regarding reporting and disclosure, participation and vesting, funding, fiduciary responsibility, administration and enforcement.

18. CIMCO and the plans represent and agree that if the exemptions requested in the application pursuant to section 17(b) of the 1940 Act are granted, the Plans will purchase shares of the Fund with investment securities only if the following conditions are met:

1. The transactions are effected at the ''independent current market price'' of the investment securities as that term is defined in Rule 17a–7 under the 1940 Act, and at the net asset value of appropriate Fund shares next computed after the closing of the transaction.

2. No brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with the transactions.

3. The Fund's board of trustees, including a majority of those trustees who are not interested persons of the Fund, or interested persons of such persons, reviews the terms of the transactions, the composition of the investment portfolios of the Plans to be used as the purchase price in the transactions, and the value (and the valuation method) of the investment securities comprising the purchase price in the transactions; and adopts a resolution determining separately for each transaction, that the transaction is reasonable and fair to the existing investors in the appropriate Fund investment portfolio, that the transaction would not subject the Fund to overreaching and that the investment securities offered by the Plan trustees on behalf of each Plan in that transaction are consistent with the investment objective, policies and restrictions of the related Fund investment portfolio.

4. The Fund agrees in writing that it will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the transaction occurs, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the investment securities used as the purchase price for Fund shares, the terms of such transaction, and the information and materials upon which the determinations described in condition 3 above were made.

Conclusion

1. CIMCO and the Plans request an order of the Commission pursuant to section 17(b) of the 1940 Act, exempting them from section 17(a) of the 1940 Act to the extent necessary to permit the Plans to purchase shares of the Fund with investment securities of the Plans. CIMCO and the Plans represent that, for the reasons stated above, the terms of the proposed transactions, including the consideration to be paid and received, are reasonable and fair to the Fund, to its Capital Appreciation Stock Fund, its Growth and Income Stock Fund, its Balanced Fund, its Bond Fund and its Money Market Fund, to shareholders and the variable contract owners invested in each of these Funds and do not involve overreaching on the part of any person concerned. Furthermore, the proposed transactions will be consistent with the policies of the Fund and of its Capital Appreciation Stock Fund, its Growth and Income Stock Fund, its Balanced Fund, its Bond Fund and its Money Market Fund as stated in the Fund's current registration statement and reports filed under the 1940 Act and with the general purposes of the 1940 Act.

2. In addition, the section 6(c) Applicants request an order of the Commission pursuant to section 6(c) of the 1940 Act, exempting them and any future accounts from the provisions of

sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rule 6e–3(T)(b)(15) thereunder, to the extent necessary for the Account and any future accounts to hold shares of the Fund at the same time that the Plans and the unaffiliated plans hold shares of the Fund or for the Account and any unaffiliated future account simultaneously hold shares of the Fund. The section 6(c) Applicants submit that, for the reasons stated above, the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–20048 Filed 7–30–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26745]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

July 25, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 18, 1997, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice of order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central Power and Light Company, et al. (70–9075)

Central Power and Light Company, 539 North Carancahua Street, Corpus Christi, Texas 78401–2802, Public Service Company of Oklahoma, 212 East Sixth Street, Tulsa, Oklahoma 74119–1212, Southwestern Electric Power Company, 428 Travis Street, Shreveport, Louisiana 71156–0001, and West Texas Utilities Company, 301 Cypress Street, Abilene, Texas 79601–5820, each an electric public-utility subsidiary company (collectively, ''Operating Companies'') of Central and South West Corporation (''CSW''), a registered holding company, and Central and South West Services, Inc. (''CSW Services''), Williams Tower 2, 2 West 2nd Street, Tulsa, Oklahoma 74103, a service company subsidiary of CSW, have filed an application under sections 9(a) and 10 of the Act and rule 54 under the Act.

The Operating Companies, directly or through CSW Services, propose to enter into arrangements with one or more providers (''Plan Providers'') of warranty plans (''Plans'') for the servicing and repair of appliances and offer the Plans to their customers. Applicants propose to offer Plans for kitchen and laundry appliances, heating, ventilation and air conditioning systems, personal computer systems and home entertainment video and audio systems.

The Plans would be offered to customers of the Operating Company using marketing materials either designed or approved by the Operating Companies and mailed to customers using the billing and mailing systems of the Operating Companies. The Plans would be legal obligations of the Plan Providers, underwritten by such insurance arrangements as the Operating Companies might require. The Plan Providers would be responsible for responding to customers' calls for service and for making arrangements with adequately licensed and insured service contractors to perform the services covered by the Plans. In certain cases, the Operating Companies might qualify as service contractors under the Plans.

The Operating Companies would bill enrolled customers for monthly Plan fees and remit the fees to the Plan Providers. Either the Plan Providers would pay a service and administration fee to the Operating Companies, or the Operating Companies would retain such a fee out of the monthly Plan fees. The Operating Companies would have no responsibility for ensuring payment of the monthly fees.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–20169 Filed 7–30–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22764; 811–3879]

Seilon, Inc.; Notice of Application

July 25, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Seilon, Inc. (''Seilon'').

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 18, 1997, and amended on July 9, 1997.

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 August 19, 1997, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, P.O. Box 411, 212 West Main Street, Smithville, Missouri 64089.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Seilon is a registered closed-end management investment company organized as a Delaware corporation. In October 1984, Seilon registered under the Act by filing a notification of registration on Form N–8A. Seilon has made no public offering of securities since its registration under the Act. Seilon has not filed any securities registration statements pursuant to the Securities Act of 1993. Any sales of securities of Seilon have been effected through private placements pursuant to applicable federal and state exemptions. Seilon has approximately 2,300 stockholders. Seilon states that it is not a party to any litigation or administrative proceeding, and that it is not in the process of liquidating or winding up its affairs and has no intention of liquidating its assets. Seilon requests an order declaring that it has ceased to be an investment company because it does not meet the definition of an investment company under section 3(a)(1) of the Act.

2. Seilon was incorporated in November, 1921, as the Sciberling Rubber Company, with its principal offices located in Akron, Ohio. Originally, Seilon was primarily engaged in the business of manufacturing tires, but in the early 1960's, Seilon's stock price began to deteriorate. As a result, Mr. Edward Lamb, an attorney in Toledo, Ohio, acquired voting control over the company in order to diversify its business activities.

3. As part of Seilon's plan to diversify its business activities, it changed its name from the Sciberling Rubber Company to Seilon, Inc. During the 1960's, Seilon acquired Thomas International (sugar cane harvesting equipment), Lockport (central pivot irrigation systems), and Air-Way Sanitizer (vacuum cleaner systems), among others. All of these companies were operating companies that did not hold investment securities. In 1969, Seilon acquired a controlling interest in First Bancorporation, a registered bank holding company in Reno, Nevada. Consequently, Seilon was required to become a registered bank holding company and to divest itself of certain non-banking businesses. In 1976, Seilon changed the name of First Bancorporation to Nevada National Bancorporation (''Nevada Bancorp''). In 1982, Seilon sold Nevada Bancorp and thereafter, Seilon sold Thomson International, the remaining asset of Seilon, to facilitate the retirement of Seilon's outstanding debt.

4. After selling Nevada Bancorp and Thomas International, Seilon's only assets were cash and other short-term liquid assets, which it intended to utilize for the acquisition of another operating company. Because Seilon was unable to purchase another operating company, it registered under the Act.

5. Around 1989, Seilon acquired College Transitions, Inc., a corporation headquartered in Conyers, Georgia, and changed its name to Diversified Merchandise and Service Corporation (''Diversified''). Diversified was engaged in the wholesale distribution of college-identified expendable merchandise to convenience stores in the Southeast United States. In 1991, Diversified filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code and liquidated its assets. Since Diversified's liquidation, Seilon has not owned any other operating subsidiaries and essentially has remained inactive. After the liquidation, Seilon's only assets were cash, cash equivalents, and other liquid assets.

6. In 1996, in order to infuse additional capital into the company, Seilon undertook a private placement of its common stock with a group related to the Mayfield International, Inc. in Minneapolis, Minnesota. The private placement was for 650,000 shares of common stock of Seilon at a price of $1.00 per share, and 250,000 shares of preferred stock at a price of $1.00 per share. With this additional funding, Seilon acquired ninety percent of the outstanding stock of Peachtree Medical Equipment, Inc. (''Peachtree'') and Physicians Home Care Services, Inc. (''Physicians Home Care''), both of which are Georgia corporations, from David and Paula Court on July 27, 1996, at a price of $900,000. David and Paula Count each own the remaining ten percent of stock in Peachtree and Physicians Home Care, respectively. Seilon was unable to borrow any funds for these acquisitions because of the limitations of the Act related to the issuance of debt.

7. Seilon states that, if an order pursuant to section 8(f) is granted by the SEC, it intends to aggressively pursue the acquisition of several other companies in the health care business, subject to its ability to obtain financing at a reasonable cost. Currently, due to the limitations of the Act, such acquisitions will be limited to the extent that Seilon is unable to issue debt to finance such transactions. Seilon states that it does not anticipate acquiring investment securities, nor do Peachtree and Physicians Home Care contemplate owning investment securities that would subject Seilon to the requirements of the Act. Thus, the deregistration would allow Seilon the resumption of its historic posture, similar to that it assumed in the period from 1921 to 1983, and would further permit the acquisition of other concerns with the use of seller financing as opposed to equity.

Applicant's Legal Analysis

1. Section 3(a)(1)(C) of the Act defines an investment company as any issuer which ''is engaged * * * in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding forty percentum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.'' [1] At the time of its initial filing under the Act, Seilon believed that it met the definition of investment company under section 3(a)(1)(C) of the Act, because its short-term liquid assets were securities as defined in the Act and accounted for more than 40% of its total assets. Seilon now believes that it does not meet the definition of investment company under section 3(a)(1)(C) of the Act.

2. Seilon states that at the end of 1996, the value of its assets was $1,144,251. Seilon holds subsidiary promissory notes in the amount of $900,000. Seilon asserts that the promissory notes are excluded from the definition of investment securities under section 3(a)(2) of the Act because the promissory notes are securities of Peachtree and Physicians Home Care, Seilon's majority-owned subsidiaries. Seilon also asserts that any remaining cash and cash items held by it are excluded from the definition of investment securities under section 3(a)(2). Thus, Seilon contends that it does not own any investment securities and does not meet the criteria in section 3(a)(1)(C) of the Act to be deemed an investment company. Further, Seilon asserts that its subsidiaries do not have any investment securities that can be attributed to Seilon.

3. Seilon asserts that it has always derived all of its revenues and income from the business of its operating subsidiaries, rather than from its incidental holdings of cash and cash

[1] Investment securities are defined in section 3(a)(2) to include all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority owned subsidiaries of the owner which are not investment companies, and are not relying on the exception from the definition of investment company in sections 3(c)(1) or 3(c)(7) of the Act.

equivalents. Seilon states that it has not derived any net income from investment securities for the last twelve years. Seilon states that all of such subsidiaries have been majority-owned and none of them has ever been an investment company within the meaning of the Act. In addition, Seilon asserts that its recent acquisitions have been for the purpose of operating such businesses. Seilon states that its net income is derived from the operation of its subsidiaries, which generate income from the sale of home health services and the sale and rental of durable medical equipment.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–20172 Filed 7–30–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38873; File SR–NYSE–97–15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc. Relating to Requirements for Notification by Member Organizations of Participation in Distributions

July 24, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] notice is hereby given that on May 21, 1997, the New York Stock Exchange, Inc. (''NYSE'' or ''the Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change. The Exchange subsequently filed Amendment No. 1 on June 20, 1997. The proposed rule change and Amendment No. 1 are 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 and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to NYSE Rule 392 to require notification by member organizations of any stabilizing bid made in connection with an offering of an Exchange-listed security. Proposed new language is in italics.

Notification Requirements for Offerings of Listed Securities

Rule 392

(a) No change.

(b) Any Exchange member or member organization effecting a syndicate covering transaction or imposing a penalty bid *or placing or transmitting a stabilizing bid* in a listed security shall provide *prior* notice of such to the Exchange in such format and within such time frame as the Exchange may from time to time require.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In March 1997, the Exchange proposed Rule 392 to require notification to the Exchange whenever a member organization acts as a lead underwriter in any offering of an Exchange-listed security. The Exchange's Rule 392 codifies the notification requirements of Regulation M under the Act.[2] The Commission approved Rule 392 on April 4, 1997.[3]

The Exchange is now proposing to amend Rule 392 with respect to notification of any stabilizing bid made in connection with an offering. Rule 104(h)(1) under Reg M requires notification to the market when any person makes a stabilizing bid.[4] The Exchange understands that such notification to the market includes notification to the Exchange as a self-regulatory organization. To encompass this, the Exchange proposes to add a requirement in Rule 392 for stabilization notification. The Exchange originally proposed to require the date and time of a stabilizing bid or transaction under Rule 392(a) but subsequently amended the proposal under Amendment No. 1, to require prior notice of the placing or transmitting of a stabilizing bid pursuant to Rule 392(b).

2. Statutory Basis

The statutory basis for the proposed rule change is the requirement under Section 6(b)(5) of the Act 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.

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. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 21, 1997.

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[1] 15 U.S.C. § 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 38067 (December 20, 1996), release adopting anti-manipulation rules concerning securities offerings (''Reg M'').

[3] *See* Securities Exchange Act Release No. 38478 (April 4, 1997).

[4] *See* Securities Exchange Act Release No. 38067 (December 20, 1996), adopting Reg M. *See also* Securities Exchange Act Release No. 38363 (March 4, 1997), regarding technical amendments to Regulation M.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the NYSE's proposal is consistent with the Act and the rules and regulations thereunder applicable to national securities exchanges. Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act that requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In addition, the Commission believes that the Exchange's proposal to enhance timely notification to the Exchange of stabilizing bids made with respect to offerings of NYSE-listed securities will facilitate compliance with Regulation M. The Commission therefore finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of filing thereof in the **Federal Register.**

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change, NYSE–97–15, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

[FR Doc. 97–20170 Filed 7–30–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. § 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2965]

State of Michigan; (Amendment #1)

In accordance with a notice from the Federal Emergency Management Agency dated July 22, 1997, the above-numbered Declaration is hereby amended to include Genesee County, Michigan as a disaster area due to damages caused by severe storms, tornadoes, and flooding which occurred on July 2, 1997.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Saginaw, Shiawassee, and Tuscola in the State of Michigan may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 9, 1997 and for economic injury the termination date is April 13, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 23, 1997.

Becky C. Brantley,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 97–20140 Filed 7–30–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2572]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea Working Group on Fire Protection; Notice of Meeting

The U.S. Safety of Life at Sea (SOLAS) Working Group on Fire Protection will conduct an open meeting on Wednesday, August 20, 1997, at 9:30 AM, in Room 6103 at U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC 20593. The purpose of the meeting will be to prepare for discussions anticipated to take place at the Forty-second Session of the International Maritime Organization's Subcommittee on Fire Protection, to be held December 8–12, 1997.

The meeting will focus on proposed amendments to the 1974 SOLAS Convention for the fire safety of commercial vessels. Specific discussion areas include: Ro-ro ferry safety, fire test procedures, proposed restructuring of Chapter II–2, fire extinguishing systems, emergency escape breathing devices, criteria for maximum fire loads, interpretations to SOLAS 74, the High Speed Craft Code, role of the human element, and shipboard safety emergency plans.

Members of the public wishing to make a statement on new issues or proposals at the meeting are requested to submit a brief summary to the U.S. Coast Guard five days prior to the meeting.

Members of the public may attend this meeting up to the seating capacity of the room. For further information regarding the meeting of the SOLAS Working Group on Fire Protection contact Mr. Jack Booth at (202) 267–2997.

Dated: July 21, 1997.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–20085 Filed 7–30–97; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on April 23, 1997 [62 FR 19854].

DATES: Comments must be submitted on or before September 2, 1997.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 Seventh Street, S.W., Washington, DC 20590, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Part 249 Preservation of Records.

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

OMB Control Number: 2138–0006.

Affected Public: Certificated air carriers and public charter operators.

Abstract: Part 249 requires the retention of such records as general and subsidiary ledgers, journals and journal vouchers, voucher distribution registers, accounts receivable and payable journals and ledgers, subsidy records documenting underlying financial and statistical reports to the Department, funds reports, consumer records, sales reports, auditors and flight coupons, airway bills, etc. Depending on the nature of the document, it may be retained for a period of 30 days to 3 years. Public charter operators and overseas military personnel charter operators must retain documents which evidence or reflect deposits made by each charter participant and commissions received by, paid to, or deducted by travel agents, and all statements, invoices, bills and receipts from suppliers or furnishers of goods and services in connection with the tour

or charter. These records are retained for 6 months after completion of the charter program. Not only is it imperative that carriers and charter operators retain source documentation, but it is critical that we ensure that DOT has access to these records. Given DOT's established information needs for such reports, the underlying support documentation must be retained for a reasonable period of time. Absent the retention requirements, the documentary support for such reports may or may not exist for audit/validation purposes and the relevance and usefulness of carrier submissions would be impaired, since the data could not be verified to the source on a test basis.

Estimated Annual Burden Hours: 678 hours.

Number of Respondents: 470.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 24, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–20110 Filed 7–30–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: Systems of Records

AGENCY: Operating Administrations, DOT.

ACTION: Notice.

SUMMARY: Notice to amend systems of records.

EFFECTIVE DATE: July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Crystal M. Bush at (202) 366–9713 (Telephone), (202) 366–7066 (FAX), crystal.bush@ost.dot.gov (Internet Address).

SUPPLEMENTARY INFORMATION: The Department of Transportation systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above mentioned address.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered systems report.

DOT/FHWA 204

SYSTEM NAME:

FHWA Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases, DOT/FHWA.

SECURITY CLASSIFICATION:

Confidential.

SYSTEM LOCATION:

Department of Transportation (DOT), Federal Highway Administration (FHWA). All FHWA Regional Offices (See 49 CFR part 7 appendix D for addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers, agents or employees of motor carriers, including drivers who have been the subject of investigation for Motor Carrier Safety regulation violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information pertaining to Motor Carrier safety regulation violations and identifying features.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Motor Carrier Safety Act of 1984.

PURPOSE(S):

This system of records serves as a Federal Highway Administration docket. The records are maintained by both the Regional Counsels and the Office of Chief Counsel at the Washington Headquarters, and are used to decide enforcement action and for use as historical documents in case of appeal.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records are used for referral to U.S. Attorney civil proceedings or referred to other agencies for criminal or civil investigation of other Federal violations.

Prefatory Statement of General Routine Uses. Routine use number 5 does not apply to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage:

The records are maintained in file folders in the Regional Counsel's Office.

RETRIEVABILITY:

These records are indexed by names of motor carriers or individuals.

SAFEGUARDS:

The records are marked ''Confidential.'' Only Office of Chief Counsel or Regional Counsel Office employees and Office of Motor Carriers (OMC) employees have access to the files.

RETENTION AND DISPOSAL:

The records are retained for one year and then are generally sent to the local Federal Records Centers for an additional three-year period.

SYSTEM MANAGER(S) AND ADDRESS:

FHWA, Office of Chief Counsel, 400 Seventh Street, SW., Room 4224, Washington, DC 20590; FHWA Regional Offices, Office of Regional Counsel.

NOTIFICATION PROCEDURE:

Same as ''System Manager.''

RECORD ACCESS PROCEDURES:

Same as ''System Manager.''

CONTESTING RECORD PROCEDURES:

Same as ''System Manager.''

RECORD SOURCE CATEGORIES:

Individuals, motor carrier files, OMC file information as gathered by OMC investigators, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to (k) (2) of 5 U.S.C. 552a this system of records is exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f).

DOT/FHWA 212

SYSTEM NAME:

Medals of Honor File.

SECURITY CLASSIFICATION:

Sensitive.

SYSTEM LOCATION:

Department of Transportation (DOT), Federal Highway Administration (FHWA), Office of Motor Carrier Field Operations, 400 Seventh Street, SW., Room 4432A, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Nominees and recipients of Presidential Medals of Honor for Lifesaving on Highways.

CATEGORIES OF RECORDS IN THE SYSTEM:

Description of incidents, motor carrier safety investigators' reports, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

DOT Order 3450. DOT Award for Heroism, dated March 11, 1975.

PURPOSE(S):

The purpose of this system of records is to provide a source of historical information to monitor individuals that have been nominated for the DOT Award for Heroism. The system is used by Motor Carrier personnel for the nomination, the approval or disapproval of prospective recipients, and presentation of the DOT Medal of Honor for Heroism.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To determine the applicability of Medals of Honor criteria and to maintain background information for preparation of Medal presentation.

See Prefatory Statement of General Routine Uses. The routine uses numbered 1, 2, 4, and 9 are not applicable to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in a file folder in a single file drawer.

RETRIEVABILITY:

The records are indexed by name of Medal of Honor nominees and/or recipients.

SAFEGUARDS:

These records are accessible only by designated persons who are involved in the Medal of Honor nomination, approval, and presentation processes.

RETENTION AND DISPOSAL:

The records are retained approximately two years after presentation or denial of the Medal of Honor.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, Federal Highway Administration, Office of Motor Carrier Field Operations, 400 Seventh Street, SW., Room 4432A, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as in ''System Manager'' above.

RECORD ACCESS PROCEDURES:

Same as in ''System Manager'' above.

CONTESTING RECORD PROCEDURES:

Same as in ''System Manager'' above.

RECORD SOURCE CATEGORIES:

Medal of Honor Nomination.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FHWA 213

SYSTEM NAME:

Driver Waiver File.

SECURITY CLASSIFICATION:

Sensitive.

SYSTEM LOCATION:

Department of Transportation, Federal Highway Administration (FHWA), FHWA Regional Offices and Motor Carriers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records pertain to operators of interstate commercial vehicles that transport certain commodities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include applications for waiver (usually involving physical disability); final disposition of request for waiver; and waiver renewal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Motor Carrier Safety Act of 1984.

PURPOSE(S):

This system of records is necessary to monitor drivers of commercial interstate vehicles who have been identified as physically impaired. The regulations state that impaired drivers must be evaluated every two years to insure that they are physically qualified to drive a commercial vehicle.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To control physically impaired operators of commercial motor vehicles.

See Prefatory Statement of General Routine Uses. Routine use number 5 is not applicable to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders in file cabinets.

RETRIEVABILITY:

The records are filed by drivers' name.

SAFEGUARDS:

Files are classified as sensitive and are accessible only by designated employees within the Regional Offices of Motor Carriers.

RETENTION AND DISPOSAL:

The files are retained while the driver waivers are active. The inactive driver waiver files are purged each year.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, Federal Highway Administration, Office of Motor Carrier Research and Standards, 400 Seventh Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as in ''System Manager'' above.

RECORD ACCESS PROCEDURES:

Same as in ''System Manager'' above.

CONTESTING RECORD PROCEDURES:

Same as in ''System Manager'' above.

RECORD SOURCE CATEGORIES:

Information obtained from Application for Waiver or Waiver Renewal.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FHWA 215

SYSTEM NAME:

Travel Advance File.

SECURITY CLASSIFICATION:

Sensitive.

SYSTEM LOCATION:

Department of Transportation (DOT), Federal Highway Administration (FHWA), Office of Budget and Finance, 400 Seventh Street, SW., Washington, DC 20590; Federal Aviation Administration, Southern Region, Travel and Transportation Section, ASO–22A, Campus Building, Room C–210E, 1701 Columbia Avenue, College Park, GA 30337; and all FHWA Federal Lands Division Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who are not eligible for the contractor issued credit card and other

groups of employees, such as Federal Lands, and relocating employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of travel advances and repayments.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

FHWA Order 2700.2.

PURPOSE(S):

The data contained in this system of records is required by the General Accounting Office (GAO) for controlling the repayments of travel advances to FHWA personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To control the repayments of FHWA travel advances. The Support of Advance Receivable document is used for posting and as a legal record for collection of receivables.

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to ''consumer reporting agencies'' (collecting on behalf of the U.S. Government) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Open advances are maintained on a 5 x 8 inch form.

RETRIEVABILITY:

The files are indexed by name.

SAFEGUARDS:

The records are maintained in a locked file cabinet.

RETENTION AND DISPOSAL:

The files are retained for 6½ years pursuant to General Records Schedule 9, Travel and Transportation Records.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, Federal Highway Administration, Office of Budget and Finance, Chief, Operations Team, 400 Seventh Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as ''System Manager.''

RECORD ACCESS PROCEDURES:

Same as ''System Manager.''

CONTESTING RECORD PROCEDURES:

Same as ''System Manager.''

RECORD SOURCE CATEGORIES:

The information is obtained from the individuals on whom the records are maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FHWA 216

SYSTEM NAME:

Travel Voucher—Change of Duty Station.

SECURITY CLASSIFICATION:

Non-sensitive.

SYSTEM LOCATION:

Department of Transportation, Federal Highway Administration, Office of Budget and Finance, 400 Seventh Street, SW., Washington, DC 20590; Federal Aviation Administration, Southern Region, Travel and Transportation Section, ASO–22A, Campus Building Room C–210E, 1701 Columbia Avenue, College Park, GA 30337.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

First duty station employees and transferring employees within the FHWA and those from other Federal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel vouchers, copies of third party payments (i.e., GBL carrier bills, relocation service bills, tax information records, administrative notices, and IRS 4782's.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

FHWA Order 2700.2.

PURPOSE(S):

The data contained in this system of records is required by the General Accounting Office (GAO) to support the payments to employees and serves as support for updated employee earnings records. Voucher examiners provide copies to employees from these records. The records are also used to conduct research and to develop reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The file supports the payments to employees and serves as support for updated employee earnings records. Retrieval of records by voucher examiners is needed to provide copies to employees, to conduct research and to develop reports.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this systems to 'consumer reporting agencies' (collecting on behalf of the U.S. Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on an 8 x 10 inch form.

RETRIEVABILITY:

The files are indexed by name.

SAFEGUARDS:

Supervised by the PCS Team Leader and Chief of the Operations Team in FHWA and the Supervisor of the FAA Travel and Relocation Section.

RETENTION AND DISPOSAL:

General Records Schedule 9, Travel and Transportation Records.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, Federal Highway Administration, Office of Budget and Finance, Chief, Operations Team, 400 Seventh Street, SW., Washington, DC 20590; and Chief, Travel and Transportation Section, Federal Aviation Administration, ASO–22A, Campus Building, Room C–210E, 1701 Columbia Avenue, College Park, GA 30337.

NOTIFICATION PROCEDURE:

Same as in ''System Manager'' above.

RECORD ACCESS PROCEDURES:

Same as in ''System Manager'' above.

CONTESTING RECORD PROCEDURES:

Same as in ''System Manager'' above.

RECORD SOURCE CATEGORIES:

The information is obtained from individuals on whom the records are maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FHWA 217

SYSTEM NAME:

Accounts Receivable.

SECURITY CLASSIFICATION:

Sensitive.

SYSTEM LOCATION:

Department of Transportation, Federal Highway Administration, Office of

Budget and Finance, 400 Seventh Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals indebted to the Federal Highway Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Amount of indebtedness.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

FHWA Order 2700.2.

PURPOSE(S):

The records in this system are required by the Internal Revenue Service (IRS) and the Department of Justice to monitor and control accounts receivable and support bills of collection issued to debtors of the Federal Highway Administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To control accounts receivable and support bill of collections issued to debtors of the Federal Highway Administration.

SEE PREFATORY STATEMENT OF GENERAL ROUTINE USES.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this systems to ''consumer reporting agencies'' (collecting on behalf of the U.S. Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and loose-leaf binders.

RETRIEVABILITY:

The records are filed by name.

SAFEGUARDS:

Supervised by Chief, Accounting Team.

RETENTION AND DISPOSAL:

General Records Schedule 7, Expenditure Accounting Records.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, Federal Highway Administration, Office of Budget and Finance, Chief, Accounting Team, 400 Seventh Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as in ''System Manager'' above.

RECORD ACCESS PROCEDURES:

Same as in ''System Manager'' above.

CONTESTING RECORD PROCEDURES:

Same as in ''System Manager'' above.

RECORD SOURCE CATEGORIES:

Employer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 035

SYSTEM NAME:

Personnel Security Record System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of Transportation (DOT), Office of the Secretary (OST), Office of Security and Administrative Management, M–70,400 7th Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOT applicants, employees, former employees, and detailees to DOT from other Federal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of personnel security processing, personal data on investigative and employment forms completed by the individual, reports of investigations, records of security and suitability determinations, records of access authorizations granted, documentation of security briefings/debriefings received, record of security violations by the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 CFR part 1.

PURPOSE(S):

To make suitability determinations for employment or retention in government service, assignment to sensitive duty positions and access to classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by Departmental personnel security representatives, including contractor personnel, for making security determinations and granting access authorizations, by Departmental personnel management officials for making suitability determinations, by representatives of other Federal agencies with which the individual is seeking employment, and by Federal agencies conducting official inquiries to the extent that the information is relevant and necessary to the requesting agency's inquiry, and by Departmental officials, to the extent necessary, to identify the individual to sources from whom information is requested for any of the foregoing purposes to inform the source of the nature and purpose of the request and to indicate the type of information requested.

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to ''consumer reporting agencies'' (collecting on behalf of the U.S. Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Completed forms and typed pages in individual folders in a manual filing system, and on a manual system control cards.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Stored in locked room with proprietary lock or in approved security safe. Access limited to authorized staff members.

RETENTION AND DISPOSAL:

Retained in accordance with General Records Schedule 18. Authorized destruction done by secure means used for classified materials.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Security and Administrative Management, M–70, Department of Transportation, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURES:

Same as System Manager. However, information compiled solely for the purpose of determining suitability, eligibility, or qualification for Federal civilian employment or access to classified information may be exempted from the access provisions pursuant to 5 U.S.C. 552a(k)(5).

CONTESTING RECORD PROCEDURES:

Same as ''Record Access Procedure.''

RECORD SOURCE CATEGORIES:

Investigative sources contacted in personnel security investigations,

National Agency Check and Written Inquiry and similar investigations; investigative reports reviewed at other Government agencies; personal history statements, employment applications and other data provided by the individual and/or other agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information compiled solely for the purpose of determining suitability, eligibility, or qualification for federal civilian employment or access to classified information may be exempted from the access provisions pursuant to 5 U.S.C. 552a(k) (1) and/or (5).

Dated: July 23, 1997.

Crystal M. Bush,

Privacy Act Coordinator, Department of Transportation.

[FR Doc. 97–20064 Filed 7–30–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Senior Executive Service Performance Review Boards (PBR) Membership

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental Performance Review Boards (PRB) established by DOT under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Glenda M. Tate, Director, Human Resource Management, and Executive Secretary, DOT Executive Resources Board, (202) 366–4088.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 4312 requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, 5 U.S.C. 4314(c) requires each agency to establish one or more PRBs, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, D.C., on July 25, 1997.

Melissa J. Spillenkothen,

Assistant Secretary for Administration.

Office of the Secretary

Transportation Administrative Service Center

Bureau of Transportation Statistics

Richard M. Biter, Deputy Director, Office of Intermodalism, Office of the Secretary
Roberta D. Gabel, Assistant General Counsel for Environmental, Civil Rights, and General Law, Office of the Secretary
Bernard Gaillard, Director, Office of International Transportation and Trade, Office of the Secretary
Paul M. Geier, Assistant General Counsel for Litigation, Office of the Secretary
Luz A. Hopewell, Director, Office of Small And Disadvantaged Business Utilization, Office of the Secretary
George W. McDonald, Deputy Director, Office of Budget and Program Performance, Office of the Secretary
Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings, Office of the Secretary
Patricia D. Parrish, Principal, Customer Service, TASC
Rolf R. Schmitt, Associate Director for Transportation Studies, Bureau of Transportation Statistics
Edward L. Thomas, Associate Administrator for Research, Demonstration and Innovation, Federal Transit Administration
Gerard P. Yoest, Director, International Affairs, United States Coast Guard

Office of Inspector General

Eileen Boyd, Deputy Inspector General for Enforcement and Compliance, Department of Health and Human Services
John J. Connors, Deputy Inspector General, Department of Housing and Urban Development
Judith J. Gordon, Assistant Inspector General for Systems Evaluation, Department of Commerce
Nancy Hendricks, Assistant Inspector General for Audits, Department of Energy
William G. Dupree, Assistant Inspector General for Investigations, Department of Defense
Steven A. McNamara, Assistant Inspector General for Audit, Department of Education
Everett Mosley, Deputy Inspector General, Agency for International Development
Robert S. Terjesen, Assistant Inspector General for Investigations, Department of State
Joseph R. Willever, Deputy Inspector General, Office of Personnel Management

United States Coast Guard

RADM Gerald F. Woolever, Assistant Commandant for Human Resources, United States Coast Guard
RADM Ernest R. Riutta, Assistant Commandant for Operations, United States Coast Guard
RADM Joyce M. Johnson, Director, Health and Safety Directorate, United States Coast Guard
RADM John T. Tozzi, Assistant Commandant for Systems, United States Coast Guard
RADM Paul E. Busick, Assistant Commandant for Acquisition, United States Coast Guard
RADM George N. Naccara, Director of Information and Technology, United States Coast Guard
RADM Paul J. Pluta, Director, Office of Intelligence and Security, United States Coast Guard
Jerry A. Hawkins, Director, Office of Personnel and Training, Federal Highway Administration
Diana Zeidel, Deputy Associate Administrator for Administration, Federal Highway Administration
Richard Chapman, Principal, Office of Information Technology Operations, TASC
Kay Frances Dolan, Director of Human Resource Management, Federal Aviation Administration
Joan M. Bondareff, Chief Counsel, Maritime Administration

Federal Highway Administration

George S. Moore, Jr., Associate Administrator for Administration, Federal Highway Administration
Julie A. Cirillo, Regional Administrator, Region 9, San Francisco, Federal Highway Administration
Robert J. Betsold, Associate Administrator for Research and Development, Federal Highway Administration
Gloria J. Jeff, Associate Administrator for Policy, Federal Highway Administration
Thomas J. Ptak, Associate Administrator for Program Development, Federal Highway Administration
Herman Simms, Associate Administrator for Administration, National Highway Traffic Safety Administration

Federal Railroad Administration

Jane Bachner, Deputy Associate Administrator for Policy and Program Development, Federal Railroad Administration
James T. McQueen, Associate Administrator for Railroad

Development, Federal Railroad Administration
Ray Rogers, Associate Administrator for Administration, Federal Railroad Administration
Bruce M. Fine, Executive Advisor, Federal Railroad Administration
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
George S. Moore, Associate Administrator for Administration, Federal Highway Administration
Luz A. Hopewell, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary

National Highway Traffic Safety Administration

Herman Simms, Associate Administrator for Administration, National Highway Traffic Safety Administration
Adele Derby, Associate Administrator for Regional Operations, National Highway Traffic Safety Administration
Robert Shelton, Associate Administrator for Safety Performance Standards, National Highway Traffic Safety Administration
Dennis Judycki, Associate Administrator for Safety and Systems Application, Federal Highway Administration
Luz A. Hopewell, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary

Federal Transit Administration

Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
Peter G. Halpin, Director, Office of Congressional Affairs, Office of the Secretary
James T. McQueen, Associate Administrator for Railroad Development, Federal Railroad Administration
Janet L. Sahaj, Deputy Associate Administrator, Office of Program Management, Federal Transit Administration
Gloria J. Jeff, Associate Administrator for Policy, Federal Highway Administration
Jerry A. Hawkins, Director, Office of Personnel and Training, Federal Highway Administration
Kevin E. Heanue, Director, Office of Environment and Planning, Federal Highway Administration

Maritime Administration

Bruce J. Carlton, Associate Administrator for Policy and International Affairs, Maritime Administration
James J. Zok, Associate Administrator for Ship Financial Assistance and Cargo Preference, Maritime Administration
Margaret D. Blum, Associate Administrator for Port, Intermodal and Environmental Activities, Maritime Administration
John L. Mann, Jr., Associate Administrator for Administration, Maritime Administration
James E. Caponiti, Associate Administrator for National Security, Maritime Administration
Joan M. Bondareff, Chief Counsel, Maritime Administration
Sharon Brooks, Director, Office of Congressional and Public Affairs, Maritime Administration
Jerry A Hawkins, Director, Office of Personnel and Training, Federal Highway Administration

Research and Special Programs Administration

Beverly Pheto, Director, Office of Budget and Program Performance, Office of the Secretary
David J. Litman, Director, Acquisition and Grant Management, Office of the Secretary
Joseph Kanianthra, Director, Office of Crash Avoidance Research, National Highway Traffic Safety Administration
Richard Felder, Associate Administrator for Pipeline Safety, Research and Special Programs Administration
Jerry Franklin, Associate Administrator for Management and Administration, Research and Special Programs Administration
William A. Vincent, Director, Office of Policy and Program Support, Research and Special Programs Administration
Judith S. Kaleta, Chief Counsel, Research and Special Programs Administration
Robert A. McGuire, Deputy Associate Administrator for Hazardous Material Safety, Research and Special Programs Administration
Frank F. Tung, Deputy Director, Volpe National Transportation Systems Center, Research and Special Programs Administration.

[FR Doc. 97–20111 Filed 7–30–97; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–046]

Chemical Transportation Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and its Vapor Control System (VCS) Subcommittee will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. All meetings are open to the public.

DATES: The meeting of CTAC will be held on Thursday, September 4, 1997, from 9 a.m. to 3 p.m. The meeting of the VCS Subcommittee will be held on Wednesday, September 3, 1997, from 9 a.m. to 11:30 a.m. Written material and requests to make oral presentations should reach the Coast Guard on or before August 25, 1997.

ADDRESSES: The CTAC meeting will be held in room 6200, Nassif Building, 400 Seventh St. SW., Washington, DC. The VCS Subcommittee meeting will be held in room 2415 at U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC. Written material and requests to make oral presentations should be sent to Commander Kevin S. Cook, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander Kevin S. Cook, Executive Director of CTAC, or Lieutenant J. J. Plunkett, Assistant to the Executive Director, telephone (202) 267–0087, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

Chemical Transportation Advisory Committee (CTAC). The agenda includes the following:

(1) Progress report from the Prevention through People (PTP) Subcommittee.

(2) Final report from the Vapor Control System (VCS) Subcommittee.

(3) Chemical spill response efforts conducted by Marine Safety Office New Orleans, LA, including the details of the capsizing of ID 960, collision of the M/V FORMOSA SIX, and the grounding of DC 346.

(4) Status of the implementation of the International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code).

(5) Status of the Hazardous Substance Response Plan rulemaking project.

(6) Lessons learned during implementation of the Streamlined Inspection Program (SIP).

Vapor Control System (VCS) Subcommittee. The agenda includes the following:

(1) Review the minutes from the meeting conducted July 22–23, 1997, in Houston, TX.

(2) Discuss work completed by facility VCS work group.

(3) Discuss work completed by vessel VCS work group.

Procedural

All meetings are open to the public. At the Chairperson's discretion, members of the public may make oral presentations during the meetings. Persons wishing to make oral presentations at the meeting should notify the Executive Director no later than August 25, 1997. Written material for distribution at the meeting should reach the Coast Guard no later than August 25, 1997. If a person submitting material would like a copy distributed to each member of the committee or subcommittee in advance of the meetings, that person should submit 25 copies to the Executive Director no later than August 18, 1997.

Information on Services for the Disabled

For information on facilities or services for the disabled or to request special assistance at the meeting, contact Lieutenant Plunkett as soon as possible.

Dated: July 25, 1997.

Joseph J. Augelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–20222 Filed 7–30–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Record of Decision for the Proposed Development of the JFK International Airport Light Rail System, Queens, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of the Record of Decision (ROD).

SUMMARY: The FAA is making available the Record of Decision for the proposed Development of the JFK International Airport Light Rail System Queens, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence Schaefer, FAA, John F. Kennedy International Airport, AEA–610, Jamaica, NY 11430, fax: (718) 955–9219; telephone (718) 553–3340.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of the ROD by submitting a request to the FAA contact identified above. The FAA is Lead Agency for purposes of implementing the procedures required by the National Environmental Policy Act of 1969 (NEPA), as amended, on a proposed transportation system for an airport access improvement project sponsored by the The Port Authority of New York and New Jersey (Port Authority), operator of the airport.

The purpose of this notice is to inform the public that the Record of Decision (ROD) is available to anyone upon request.

The FAA considered potential environmental impacts and other factors resulting from the construction of the JFK International Airport Light Rail System Project (the Project) at JFK International Airport (JFK). The ROD presents:

—alternatives considered for the project;
—the basis/justification for selecting the Preferred Alternative;
—impacts analysis;
—mitigation measures for the Preferred Alternative;
—response to comments; and
—Agency Findings.

The project proposed by the Port authority is the development of a Light Rail System (LRS) to improve ground access within JFK International Airport (JFK) in Queens County, New York, as well as to and from JFK via connections at Jamaica Station and the New York City Transit Howard Beach Station. Construction of the Project requires the incorporation of the system right-of-way in the Airport Layout Plan. The FAA conditionally approved a modification to the Airport Layout Plan on January 23, 1997. This approval was made subject to an acceptable environmental review.

The FAA, as the Lead Agency has determined that the requirements of the NEPA have been satisfied for the construction of the proposed project in Queens County, New York. This decision is based upon the FAA's close monitoring of the process and consideration of the effects of the project, all of which are documented in the Draft Environmental Impact Statement, the Written Reevaluation/Technical Report on Changes to the Proposed JFK Airport Access Program and the Final Environmental Impact Statement. The FAA's determinations are outlined in the ROD. The Final Environmental Impact Statement was approved on May 12, 1997. The ROD was concurred in on July 18, 1997.

The LRS is intended to achieve the objective of providing reliable, safe, and efficient ground access for air passengers and employees with frequent service to, from, and within JFK, and links to the regional mass transportation system, that will assist JFK to realize its effective capacity and continue operating successfully. By removing cars traveling to and from JFK on the regional roadway network, the LRS would result in reduced vehicle miles traveled (VMT) in the region, easing congestion, and improving air quality, assisting in the region's efforts to comply with federal air quality standards. In terms of broader objectives, the LRS is intended to support the region's competitive position in the global economy, as well as preserve the capacity of the national air transportation system.

Improved access to JFK will provide the potential for JFK to remain the critical gateway that it currently is, and may enhance its ability to compete with other gateway cities in the Region.

Issued in Jamaica, New York on July 23, 1997.

William DeGraaff,

Assistant Manager, Airports Division.

[FR Doc. 97–20075 Filed 7–30–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss general aviation operations issues.

DATES: The meeting will be held on August 19, 1997 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Noreen Hannigan, Regulations Analyst, Office of Rulemaking (ARM–106), 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–7476; FAX: (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss general aviation operations

issues. This meeting will be held on August 19, 1997 at 9:30 a.m. at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22314.

The agenda for this meeting will include: (1) A status report on the Part 103 (Ultralight Vehicles) Working Group's NPRM, ''Sport Pilot Certification Requirements;'' (2) a status report on the IFR Fuel Requirements/Destination and Alternate Weather Minimums Working Group's NPRM, ''Flight Plan Requirements for Helicopter Operations Under Instrument Flight Rules;'' (3) a discussion of overflights of national parks; (4) and the FAA's August 4, 1997, implementation of revisions to 14 CFR part 61.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTRACT**.

Issued in Washington, DC on July 24, 1997.

Louis C. Cusimano,

Assistant Executive Director for General Aviation Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–20076 Filed 7–30–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. M–038]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Erhard W. Koehler, Division of Ship Maintenance and Repair, Maritime Administration, MAR–611, Room 2119, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2631 or FAX 202–366–3954. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Maintenance and Repair Cumulative Summary.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0007.

Form Number: MA–140.

Expiration Date of Approval: March 31, 1998.

Summary of Collection of Information: The collection consists of form MA–140 to which are attached invoices and other supporting documents for expenses claimed for subsidy. Subidized operators submit form MA–140 to the appropriate MARAD region office for review within 60 days of the termination of a subsidized voyage.

Need and Use of the Information: The collected information is necessary to perform the reviews required in order to permit payment of Maintenance and Repair subsidy.

Description of Respondents: Subsidized ship operators must submit the necessary paperwork to determine qualification for subsidy.

Annual Responses: 100.

Annual Burden: 1200 hours.

Comments: Send all comments regarding this information collection to Joel C. Richard, Department of Transportation, Maritime Administration, MAR–120, Room 7210, 400 Seventh Street, SW., Washington, DC 20590. Send comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

By Order of the Maritime Administrator.

Dated: July 25, 1997.

Joel C. Richard,

Secretary.

[FR Doc. 97–20117 Filed 7–30–97; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–43; Notice 1]

American Honda Motor Company, Inc.; Receipt of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 122

American Honda Motor Co., Inc., of Torrance, California (''Honda''), has applied for a temporary exemption from the fade and water recovery requirements of Federal Motor Vehicle Safety Standard No. 122 *Motorcycle Brake Systems.* The basis of the application is that an exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard.

This notice of receipt of an application is published in accordance with the requirements of 49 U.S.C. 30113(b)(2) and does not represent any judgment of the agency on the merits of the application.

Honda seeks an exemption of one year for its 1998 CBR1100XX motorcycle ''from the requirement of the minimum hand-lever force of five pounds in the base line check for the fade and water recovery tests.'' It wishes to evaluate the marketability of an ''improved'' motorcycle brake system setting which is currently applied to the model sold in Europe. The difference in setting is limited to a softer master cylinder return spring in the European version. Using the softer spring results in a ''more predictable (linear) feeling during initial brake lever application.'' Although ''the change allows a more predictable rise in brake gain, the on-set of braking occurs at lever forces slightly below the five pound minimum'' specified in Standard No. 122. Honda considers that motorcycle brake systems have continued to evolve and improve since Standard No. 122 was adopted in 1972, and that one area of improvement is brake lever force which has gradually been reduced. However, the five-pound minimum specification ''is preventing further development and improvement'' of brake system characteristics. This limit, when applied to the CBR1100XX ''results in an imprecise feeling when the rider applies low-level front brake lever inputs.''

The machine is equipped with Honda's Linked Brake System (LBS) which is designed to engage both front and rear brakes when either the front brake lever or the rear brake pedal is used. The LBS differs from other

integrated systems in that it allows the rider to choose which wheel gets the majority of braking force, depending on which brake control the rider uses.

According to Honda, the overall braking performance remains unchanged from a conforming motorcycle. If the CBR1100XX is exempted it will meet ''the stopping distance requirement but at lever forces slightly below the minimum.''

Specifically, Honda asks for relief from the first sentence of S6.10 *Brake application forces,* which reads:

''Except for the requirements of the fifth recovery stop in S5.4.3 and S5.7.2 (S7.6.3 and S7.10.2) the hand lever force is not less than five and not more than 55 pounds and the foot pedal force is not less than 10 and not more than 90 pounds.''

Upon review of this paragraph, NHTSA has determined that granting Honda's petition would require relief from different provisions of Standard No. 122, although S6.10 relates to them. Paragraph S6 only sets forth the test conditions under which a motorcycle must meet the performance requirements of S5. A motorcycle manufacturer certifies compliance with the performance requirements of S5 on the basis of tests conducted according to the conditions of S6 and in the manner specified by S7. In short, NHTSA believes that granting Honda's petition would require relief from the performance requirements of S5 that are based upon the lever actuation force test conditions of S6.10 as used in the test procedures of S7.

These relate to the baseline checks under which performance is judged for the service brake system fade and fade recovery tests (S5.4), and for the water recovery tests (S5.7). According to the test procedures of S7, the baseline check stops for fade(S7.6.1) and water recovery (S7.10.1) are to be made at 10 to 11 feet per second per second (fpsps) per stop. The fade recovery test (S7.6.3) also specifies stops at 10 to 11 fpsps. Test data submitted by Honda with its application show that, using a hand lever force of 2.3 kg (5.1 pounds), the deceleration for these stops is 3.05 to 3.35 meters per second per second, or 10.0 to 11.0 fpsps. This does not mean that Honda cannot comply under the strict parameters of the standard, but the system is designed for responsive performance when a hand lever force of less than five pounds is used. For these reasons, NHTSA interprets Honda's application as requesting relief from S5.4.2, S5.4.3, and S5.7.2.

Honda argues that granting an exemption would be in the public interest and consistent with objectives of traffic safety because it ''should improve a rider's ability to precisely modulate the brake force at low-level brake lever input forces. Improving the predictability, even at very low-level brake lever input, increases the rider's confidence in the motorcycle's brake system.''

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the application will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 2, 1997.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8.)

Issued on July 24, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–20092 Filed 7–30–97; 8:45 am]

BILLING CODE 49I0–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

N—New application.
M—Modificaiton request.
PM—Party to application with modification request.

Issued in Washington, DC, on July 25, 1997.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
10581–N	Luxfer UK Limited, Nottingham, England	4	09/30/1977
11193–N	U.S. Department of Defense, Fall Church, VA	4	09/30/1977
11232–N	State of Alaska Department of Transportation, Juneau, AK	4	09/30/1977
11409–N	Pure Solve, Inc., Irving, TX	1	08/29/1977
11442–N	Union Tank Car Co., East Chicago, IN	4	09/30/1977
11443–N	Hercules Inc., Wilmington, DE	4	08/29/1977
11465–N	Monsanto Co., St. Louis, MO	4	09/30/1977
11511–N	Brenner Tank Inc., Fond du lac, WI	4	09/30/1977

NEW EXEMPTION APPLICATIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
11523–N	Bio-Lab, Inc., Conyers GA	4	09/30/1977
11537–N	Babson Bros. Co, Romeoville, IL	4	09/30/1977
11540–N	Convenience Products, Fenton, MO	1	09/30/1977
11559–N	Japan Oxygen, Inc., Long Beach, CA	4	08/29/1977
11561–N	Solkatronic Chemicals, Fairfield, NJ	4	09/30/1977
11578–N	General Alum & Chemical Co., Searsport, MA	4	08/29/1977
11591–N	Clearwater Distributors, Inc., Woodridge, NY	4	010/30/1977
11592–N	Amtrol Inc., West Warwick, RI	4	08/29/1997
11597–N	Zeneca, Inc., Wilmington, DE	4	08/29/1997
11606–N	Safety-Kleen Corp., Elgin, IL	4	08/29/1997
11613–N	Monsanto Co., St. Louis, MO	4	09/30/1997
11621–N	Aerojet Industrial Products, North Las Vegas, NV	4	09/30/1997
11646–N	Barton Solvents Inc., Des Moines, IO	4	08/29/1997
11653–N	Phillips Petroleum Co., Bartlesville, OK	4	08/29/1997
11654–N	Hoechst Celanese Corp., Dallas, TX	4	08/29/1997
11662–N	FIBA Technologies, Inc., Westboro, MA	4	09/30/1997
11668–N	AlliedSignal, Inc., Morristown, NJ	4	08/29/1997
11671–N	Matheson Gas Products, Secaucus, NJ	1	09/30/1997
11678–N	Air Transport Association, Washington, DC	4	08/29/1997
11682–N	Cryolor, Argancy, 57365 Ennery—France	4	08/29/1997
11687–N	Tri Tank Corp., Syracuse, NY	4	08/29/1997
11699–N	GEO Specialty Chemicals, Bastrop, LA	4	08/29/1997
11701–N	Dept. of Defense, Falls Church, VA	4	09/30/1997
11721–N	The Coleman Co., Inc., Wichita, KS	4	09/30/1997
11722–N	Citergas S.A., 86400 Civray, FR	1	08/29/1997
11735–N	R.D. Offutt Co., Parket Rapids, MN	4	08/29/1997
11739–N	Oceaneering Space Systems, Houston, TX	1	09/30/1997
11740–N	Morton International, Inc., Ogden, UT	4	08/29/1997
11748–N	Frank W. Hake Association, Memphis, TN	4	08/29/1997
11751–N	Delta Resigns & Refractories, Detroit, MI	4	08/29/1997
11759–N	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE	4	09/30/1997
11761–N	Vulcan Chemicals, Birmingham, AL	4	09/30/1997
11762–N	Owens Fabricators, Inc, Baton Rouge, LA	4	08/29/1997
11765–N	Laidlaw Environmental Services Inc., Columbia, SC	4	08/29/1997
11767–N	Ausimont USA, Inc., Thorofare, NJ	4	09/30/1997
11768–N	Flotec, Inc., Indianapolis, IN	4	08/29/1997
11769–N	Great Western Chemical Co., Portland, OR	4	08/29/1997
11772–N	Kleespie Tank & Petroleum Equipment, Morris, MN	4	08/29/1997
11773–N	West Coast Air Charter, Ontario, CA	4	07/31/1997
11774–N	Safety Disposal System, Inc., Opa Locka, FL	1	09/30/1997
11780–N	Hewlett-Packard Co., Washington, DC	4	09/30/1997
11782–N	Aeronex, Inc., San Diego, CA	4	09/30/1997
11783–N	Peoples Natural Gas, Rosemount, MN	4	09/30/1997
11786–N	Dow Corning Corp., Midland, MI	4	08/29/1997
11797–N	Cryodyne Technologies, Radnor, PA	4	09/30/1997
11798–N	Air Products & Chemicals, Inc., Allentown, PA	4	09/30/1997
11800–N	General Fire Extinguisher Corp., Northbrook, IL	4	09/30/1997
11809–N	Laidlaw Environmental Services Inc., Columbia, SC	4	09/30/1997
11811–N	Laidlaw Environmental Services Inc., Columbia, SC	4	09/30/1997
11814–N	The Columbiana Boiler Co., Columbia, OH	4	09/30/1997
11815–N	Union Pacific Railroad Co. et al, Omaha, NE	4	09/30/1997
11816–N	The Scotts Co., Marysville, OH	4	09/30/1997
11817–N	FIBA Technologies, Inc., Westboro, MA	4	10/30/1997
11821–N	Wyoming Department of Transportation, Cheyenne, WY	4	10/20/1997
11824–N	The Dow Chemical Co., Freeport, TX	4	09/30/1997
11830–N	North Coast Container Corp., Cleveland, OH	4	09/30/1997
11843–N	Shell Chemical Co., Houston, TX	4	09/30/1997

MODIFICATIONS TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
970–M	Callery Chemical Corp., Pittsburgh, PA	4	8/29/1997
4354–M	PPG Industries, Inc., Pittsburgh, PA	1	8/29/1997
5493–M	Montana Sulphur & Chemical Co., Billings, MT	4	8/29/1997
5876–M	FMC Corp., Philadelphia, PA	4	8/29/1997
6117–M	Montana Sulphur & Chemical Co., Billings, MT	4	8/29/1997
6610–M	ARCO Chemical Co., Newton Square, PA	4	9/30/1997
7517–M	Trinity Industries, Inc., Dallas, TX	4	9/30/1997

MODIFICATIONS TO EXEMPTIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
7879–M	Halliburton Energy Services, Duncan, OK	4	9/30/1997
8556–M	Air Products & Chemicals, Inc., Allentown, PA	4	8/29/1997
8723–M	Dyno Nobel Inc., Salt Lake City, UT	4	9/30/1997
9184–M	The Carbide/Graphite Group, Inc., Louisville, KY	4	9/30/1997
9266–M	ERMEWA, Inc., Houston, TX	4	9/30/1997
9413–M	EM Science Cincinnati, OH	4	9/30/1997
9706–M	Taylor-Wharton, Harrisburg, PA	4	8/29/1997
9758–M	Suunto, Carlsbad, CA	4	9/30/1997
9819–M	Halliburton Energy Services, Duncan, OK	4	9/30/1997
10429–M	Baker Performance Chemicals, Inc., Houston, TX	4	9/30/1997
10511–M	Schlumberger Technology Corporation, Houston, TX	4	8/29/1997
10798–M	Olin Corp., Stamford, CT	4	8/29/1997
10974–M	International Paper, Erie, PA	4	8/29/1997
11058–M	Spex Certiprep Inc., Metuchen, NJ	4	8/29/1997
11260–M	Texas Instruments Inc., Attleboro, MA	4	9/30/1997
11262–M	Caire, Inc., Burnsville, MN	4	8/29/1997
11579–M	Dyno Nobel Inc., Salt Lake City, UT	4	9/30/1997
11580–M	The Columbiana Boiler Co., Columbiana, OH	4	9/30/1997

[FR Doc. 97–20077 Filed 7–30–97; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

July 22, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: New.

Form Number: IRS Form W–7A.

Type of Review: New collection.

Title: Application for Taxpayer Identification Number for Pending Adoptions.

Description: Form W–7A will be used to apply for an Internal Revenue Service taxpayer identification number (an ATIN) for use in pending adoptions. An ATIN is a temporary nine-digit number issued by the IRS to individuals who are in the process of adopting a U.S. resident child but who cannot get a social security number for that child until the adoption is final.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 50,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—7 min.

Learning about the law or the form—7 min.

Preparing the form—16 min.

Copying, assembling, and sending the form to the IRS—17 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 39,000 hours.

OMB Number: 1545–0139.

Form Number: IRS Form 2106.

Type of Review: Extension.

Title: Employee Business Expenses.

Description: Internal Revenue Code (IRC) section 62 allows employees to deduct their business expenses to the extent of reimbursement in computing Adjusted Gross Income. Expenses in excess of reimbursements are allowed as an itemized deduction. Unreimbursed meals and entertainment are allowed to the extent of 50% of the expense. Form 2106 is used to figure these expenses.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 762,514.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hr., 38 min.

Learning about the law or the form—20 min.

Preparing the form—1 hr., 13 min.

Copying, assembling and sending the form to the IRS—41 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 2,678,861 hours.

OMB Number: 1545–0938.

Form Number: IRS Form 1120-IC-DISC, Schedule K and Schedule P.

Type of Review: Extension.

Title: Interest Charge Domestic International Sales Corporation Return (Form 1120); Shareholder's Statement of IC-DISC Distributions (Schedule K); and Intercompany Transfer Price or Commission (Schedule P).

Description: U.S. corporations that have elected to be an interest charge domestic international sales corporation (IC-DISC) file Form 1120-IC-DISC to report their income and deductions. The IC-DISC is not taxed, but IC-DISC shareholders are taxed on their share of IC-DISC income. IRS uses Form 1120-IC-DISC to check the IC-DISC's computation of income. Schedule K (Form 1120-IC-DISC) is used to report income to shareholders; Schedule P (Form 1120-IC-DISC) is used by the IC-DISC to report its dealings with related suppliers, etc.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,200.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1120–IC–DISC	95 hr., 54 min	19 hr., 56 min	29 hr., 49 min	2 hr., 9 min.
Schedule K	4 hr., 4 min	47 min	54 min..	
Schedule P	12 hr., 55 min	1 hr., 17 min	1 hr., 34 min..	

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 232,253 hours.

OMB Number: 1545–1441.

Form Number: IRS Form 2106-EZ.

Type of Review: Extension.

Title: Unreimbursed Employee Business Expenses.

Description: Internal Revenue Code (IRC) section 62 allows employees to deduct their business expenses to the extent of reimbursement in computing Adjusted Gross Income. Expenses in excess of reimbursements are allowed as an itemized deduction. Unreimbursed meals and entertainment are allowed to the extent of 50% of the expense. Form 2106-EZ is used to figure these expenses.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 3,337,019.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—40 min.

Learning about the law or the form—5 min.

Preparing the form—28 min.

Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 5,205,750 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–20114 Filed 7–30–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

July 24, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0085.

Form Number: IRS Form 1040A, Schedules 1, 2, 3 and EIC.

Type of Review: Revision.

Title: U.S. Individual Income Tax Return.

Description: This form is used by individuals to report their income subject to income tax and compute their correct tax liability. The data are used to verify that the income reported on the form is correct and are also for statistics use.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 26,051,305.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling and sending the form to the IRS
Form 1040A	1 hr., 4 min.	2 hr., 8 min.	3 hr., 4 min.	35 min.
Schedule 1	20 min.	4 min.	10 min.	20 min.
Schedule 2	33 min.	10 min.	40 min.	28 min.
Schedule 3	13 min.	14 min.	25 min.	35 min.
Schedule EIC	0 min.	2 min.	4 min.	20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 200,524,903 hours.

OMB Number: 1545–0410.

Form Number: IRS Form 6468.

Type of Review: Revision.

Title: How to Prepare Media Label for Form W–4.

Description: 26 U.S.C. 3402 requires all employers making payment of wages to deduct (withhold) tax upon such payments. Employers are further required under Regulation 31.3402(f)(2)–1(g) to submit certain withholding certificates (W–4) to IRS. Form 6468 is sent to employers who prefer to file this information on magnetic tape.

Respondents: Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 400.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 33 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–20115 Filed 7–30–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 24, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0067.

Form Number: PD F 974.

Type of Review: Extension.

Title: Certificate by Owner of United States Registered Securities Concerning Forged Requests for Payment or Assignments

Description: Form PD F 974 is used by owners of United States Securities to certify that the signature was forged to a request for payment or an assignment.

Respondents: Individuals or households.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 750 hours.

OMB Number: 1535–0101.

Form Number: PD F 345.

Type of Review: Extension.

Title: Description of Registered Securities.

Description: This form is used to identify an owner's registered securities.

Respondents: Individuals or households.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,250 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–20116 Filed 7–30–97; 8:45 am]

BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Performance Review Board

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice lists the membership to the Departmental Offices' Performance Review Board (PRB) and supersedes the list published in **Federal Register** 39485, Vol. 60, dated August 2, 1995, in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB is to review the performance of members of the Senior Executive Service and make recommendations regarding performance ratings, performance awards, and other personnel actions.

The names and titles of the PRB members are as follows:

Joan Affleck-Smith, Director, Office of Financial Institutions Policy
Steven O. App, Deputy Chief Financial Officer
John H. Auten, Director, Office of Financial Analysis
Richard S. Carnell, Assistant Secretary (Financial Institutions Policy)
Joyce H. Carrier, Deputy Assistant Secretary (Public Liaison)
Mary E. Chaves, Director, Office of International Debt Policy
Lowell Dworin, Director, Office of Tax Analysis
Joseph B. Eichenberger, Director, Office of Multilateral Development Banks
James H. Fall, III, Deputy Assistant Secretary (Technical Assistance Policy)
James J. Flyzik, Director, Office of Telecommunications Management
Michael B. Froman, Chief of Staff
Jon M. Gaaserud, Director, U.S. Saudi Arabian Joint Commission Program Office
Geraldine A. Gerardi, Director for Business Taxation
William H. Gillers, Director, Office of Management Advisory Services
Robert F. Gillingham, Deputy Assistant Secretary (Policy Coordination)
Ronald A. Glaser, Director, Office of Equal Employment Opportunity
Donald V. Hammond, Deputy Assistant Fiscal Secretary
James E. Johnson, Assistant Secretary (Enforcement)
Raymond W. Kelly, Under Secretary for Enforcement
Edward S. Knight, General Counsel
David A. Lebryk, Acting Deputy Assistant Secretary (Human Resources)
David A. Lipton, Deputy Under Secretary (International Affairs)
Margrethe Lundsager, Deputy Assistant Secretary (Trade and Investment Policy)
Mark C. Medish, Deputy Assistant Secretary (Eastern Europe and Soviet Union Policy)
Carl L. Moravitz, Director, Office of the Budget
George Muñoz, Assistant Secretary (Management) and Chief Financial Officer
Gerald Murphy, Fiscal Assistant Secretary
Alex Rodriguez, Deputy Assistant Secretary (Administration)
Susan L. Sallet, Deputy Assistant Secretary (Public Affairs)
Howard M. Schloss, Assistant Secretary (Public Affairs)
G. Dale Seward, Director, Automated Systems Division
Mary Beth Shaw, Director, Office of Financial Management
John P. Simpson, Deputy Assistant Secretary (Regulatory, Trade, and Tariff Affairs)
Jane L. Sullivan, Director, Office of Information Resources Management
Mozelle W. Thompson, Deputy Assistant Secretary (Government Financial Policy)
Robert A. Welch, Director, Office of Procurement

FOR FURTHER INFORMATION CONTACT: Debra Tomchek, Executive Secretary, PRB, Room 1462, Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Telephone: (202) 622–1440. This notice does not meet the Department's criteria for significant regulations.

George Muñoz,

Assistant Secretary of the Treasury (Management).

[FR Doc. 97–20202 Filed 7–30–97; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–66]

Customs Accreditation of SGS Control Services, Inc. as an Accredited Commercial Laboratory

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

ACTION: Notice of Accreditation of SGS Control Services, Inc. as a Commercial Laboratory.

SUMMARY: SGS Control Services, Inc. of Deer Park, Texas, has applied to U.S. Customs for accreditation for composition and identity of organic chemicals under § 151.13 of the Customs Regulations (19 CFR 151.13) at their Wilmington, North Carolina facility. Customs has determined that this office meets all of the requirements for accreditation as a commercial laboratory. Therefore, in accordance with § 151.13(f) of the Customs Regulations, SGS Control Services, Inc., Wilmington, North Carolina, is accredited to perform analysis on the products named above.

LOCATION: SGS Control Services, Inc. accredited site is located at: 111 Cowan Street, Wilmington, North Carolina, 28402.

EFFECTIVE DATE: July 23, 1997.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW, Washington, DC 20229 at (202) 927–1060.

Dated: July 24, 1997.

George D. Heavey,

Director, Laboratories and Scientific Services.

[FR Doc. 97–20224 Filed 7–30–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–67]

Revocation of Customs Broker License

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

ACTION: Broker License Revocation.

SUMMARY: Notice is hereby given that the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Parts 111.51 and 111.74 of the Customs Regulations, as amended (19 CFR 111.51 and 111.74), the following Customs broker licenses are canceled with prejudice.

Port	Individual	License No.
New York	Joseph Francis Jacovina.	3294
New York	Wood, Niebuhr & Co., Inc.	4814

Dated: July 28, 1997.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 97–20225 Filed 7–30–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–68]

Revocation of Customs Broker License

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

ACTION: Broker License Revocation.

SUMMARY: Notice is hereby given that the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Parts 111.51 and 111.74 of the Customs Regulations, as amended (19 CFR 111.51 and 111.74), canceled the following Customs broker licenses without prejudice.

Port	Individual	License No.
New York	Stephen M. Winsch	10229
New York	Devin M. Diran	9287
New York	Michael Titone	9422
New York	Thomas M. McGrath	9677
New York	Nehls & O'Connell ...	3943
New York	Francis X. Coughlin, Jr.	4087
New York	F.X. Coughlin Co., Inc.	7171
New York	Robert A. Leslie	5274
New York	Lo Curto & Funk Inc	9914
New York	Trans-Marine System, Inc.	3745
Seattle	Scott D. Ogden	7404
Seattle	Austen D. Hemion ...	2525
Houston ...	R.W. Smith	1803

Dated: July 28, 1997.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 97–20226 Filed 7–30–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Forms 8628 and 8635

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8628, Order Blank For Federal Income Tax Forms For ''Plan Only'' Accounts, and Form 8635, BPOL Order Blank for Federal Income Tax Forms.

DATES: Written comments should be received on or before September 29, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 8628, Order Blank For Federal Income Tax Forms For ''Plan Only'' Accounts, and Form 8635, BPOL Order Blank for Federal Income Tax Forms.

OMB Number: 1545–1222.

Form Number: Forms 8628 and 8635.

Abstract: Forms 8628 and 8635 allow banks, post offices and libraries to distribute tax forms and publications to taxpayers at convenient locations. Participation is on a voluntary basis and done as a public service for the Internal Revenue Service.

Current Actions: Changes to Form 8635.

Forms 9545, 9545–A and 9161 were eliminated and incorporated into Form 8635. Upon examination of the order blanks, it was determined that Forms 8635 and 9161, and Forms 9545 and 9545–A, were almost identical. Form 8635 was modified slightly so all outlets in the BPOL Program could utilize the same form; thus we could eliminate duplication.

There are no changes to Form 8628 at this time.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 42,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 3,350.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 23, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–20251 Filed 7–30–97; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Training Programs in Canada, Germany, Greece, Italy, Turkey, and the United Kingdom

ACTION: Request for proposals.

SUMMARY: The Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop projects that link their international exchange interests in Western Europe with counterpart institutions/groups in ways supportive of the aims of the Bureau of Educational and Cultural Affairs.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

The funding authority for the program cited above is provided through the Fulbright-Hays Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/P–98–03.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, October 31, 1997. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. Grants may begin February 1, 1998.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges, E/PE, Room 220, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone: 202–619–5319, fax: 202–619–4350, Internet Address: [cminer@usia.gov] to request a Solicitation Package containing more detailed information. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on Demand: The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System'', which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Christina Miner on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and ten copies of the application should be sent to: U.S. Information Agency, Ref.: E/P–98–03, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy'', USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries''. Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION: Diminished resources have forced USIA to limit the scope of this announcement; regrettably, proposals for countries and themes other than the ones described below will not be eligible for consideration.

USIA is interested in proposals in the following areas and countries:

Canada: Projects should focus on a U.S.-Canada parliamentary staff exchange program.

Germany: Projects should focus on a parliamentary exchange program for U.S. and German state legislators. The program for German legislators should examine such issues as the state political process, legislative structure, federalism, school to work transition and immigration/multiculturalism.

Greece: Projects should focus on the practices and ethics of journalism. The first part of the exchange should include an in-country seminar on the practical techniques and ethical requirements needed to report stories. The program would include sessions for professional and student journalists from Greek newspapers and public and private communications/journalism schools. In the second part of the exchange up to twelve journalists and students would participate in a U.S. internship program.

Italy: Projects should focus on judicial reform. Participants should include key magistrates, academics or think tank researchers. In part one of the exchange a small Italian delegation would travel to the U.S. for a program involving meetings, shadowing, and direct observation of the U.S. judicial system. The U.S. program should focus on the U.S. white collar criminal trial process, typical case development at the state and federal levels and the administration of the U.S. judicial system, including the organization of federal and state courts, continuing education for judges and court employees, the role of court and law clerks, and the use of new technology. In the second part of the exchange American legal experts/practitioners would spend time in Italy consulting with the Ministry of Justice, the Superior Council of the Magistracy in Rome, and individual magistrate associations in Milan, Rome and Naples.

Turkey: Projects should focus on local government administration in both eastern and western Turkey. Participants should include mayors and municipal officials, who are members of the Turkish Municipal Association. In the first part of the exchange Turkish participants would travel to the U.S. for a program concentrating on administration and fiscal and management procedures and relations with the federal government. The second part of the exchange would send approximately two U.S. specialists in administration and fiscal management to Turkey to conduct workshops with regional associations in at least three key regions (Ankara, Istanbul and Adana).

United Kingdom: Projects should focus on student political activists. The program would bring to the U.S. student political activists from Great Britain, Wales, Scotland and Northern Ireland. The exchange should concentrate on developing political and personal skills with no relations to Northern Ireland specific issues. The program might include workshops on writing and speaking skills, media, negotiation, and the American system of government. Case studies and role playing could also be included. A cultural component which would support the development of personal relationship is also be recommended.

Exchange and training programs supported by institutional grants should operate at two levels: they should enhance institutional relationships; and they should offer practical and comparative information to individuals to assist them with their professional responsibilities. Strong proposals usually have the following characteristics: An existing partner relationship between an American organization and a host-country institution; a proven track record of conducting program activity; cost sharing from American or in-country sources, including donations of air fares, hotel and housing costs; experienced staff with language facility; and a clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant. USIA wants to see tangible forms of time and money contributed to the project by the prospective grantee institution, as well as funding from third party sources.

Note: Research projects or projects limited to technical issues are not eligible for support nor are film festivals or exhibits. Exchange programs for students or faculty or proposals that request support for the development of university curricula or for degree-based programs are also ineligible under this RFP. Proposals to link university departments or to exchange faculty and/or students are funded by USIA's Office of Academic Programs (E/A) under the University Affiliation Program and should not be submitted in response to this RFP.

Guidelines

1. All grant proposals must clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. In the selection of all foreign participants, USIA and USIS posts retain the right to nominate participants and to approve or reject participants recommended by the program institution. Programs must also comply with J–1 visa regulations.

2. Programs that include internships in the U.S. should provide letters tentatively committing host institutions to support the internships. Letters of commitment from the hosts of study tour site visits should also be included, if applicable.

3. Applicants are encouraged to consult with USIS offices regarding program content and partner institutions before submitting proposals. Award-receiving applicants will be expected to maintain contact with the USIS post throughout the grant period.

Funding

Please refer to the Solicitation Package for complete package instructions.

Applicants must submit a detailed line item budget based on specific instructions in the Program and Budget Guidelines of the Proposal Submission Instructions. Proposals for less than $75,000 will receive preference. Proposals with strong cost-sharing will be given priority.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Allowable costs for the program include the following:

(1) International and domestic air fares; visas; transit costs; ground transportation costs.

(2) Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used.

Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate.

(3) Interpreters. If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors. USIA grants do not pay for foreign interpreters to accompany delegations from their home

country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

(4) Book and cultural allowance. Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $250 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

(5) Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

(6) Room rental, which generally should not exceed $250 per day.

(7) Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

(8) One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

(9) All USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

(10) Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposal will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of Western European and Canadian Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should respond to the program requirements of the RFP.

2. Program planning and ability to achieve objectives: Program objectives should be stated clearly and precisely and should reflect the applicant's expertise in the subject area and the region. Goals should be reasonable and attainable. A detailed agenda and relevant work plan should demonstrate how objectives will be achieved. A timetable indicating when major program tasks will be undertaken should be provided. The substance of seminars, presentations, consulting, internships and itineraries should be spelled out in detail. Responsibilities of incountry partners should be clearly described.

3. Support of diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Institutional capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. The narrative should demonstrate proven ability to handle logistics. Proposal should reflect the institution's expertise in the subject area and knowledge of the country. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

7. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

8. Cost-effectiveness/cost sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: July 28, 1997.

James D. Whitten,

Acting Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–20183 Filed 7–30–97; 8:45 am]

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federal register

Thursday
July 31, 1997

Part II

Environmental Protection Agency

40 CFR Part 51

Regional Haze Regulations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[Docket No A–95–38; FRL–5862–7]

RIN 2060–AF34

Regional Haze Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: On July 18, 1997 EPA published revisions to the national ambient air quality standards (NAAQS) for ozone and particulate matter (PM). In the final action revising the PM NAAQS, EPA recognized that visibility impairment is an important effect of PM on public welfare and concluded that the most appropriate approach for addressing visibility impairment is to establish secondary standards for PM identical to the suite of primary standards in conjunction with a revised visibility protection program to address regional haze in mandatory Class I Federal areas (certain large national parks and wilderness areas). Section 169A of the Clean Air Act (Act) sets forth a national goal for visibility which is the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.'' This section calls for regulations to assure reasonable progress toward meeting the national goal.

Today's proposal sets forth a program to address regional haze visibility impairment in the nation's most treasured national parks and wilderness areas. Because much of the pollution affecting haze in these generally rural areas is transported long distances, measures to protect these areas should also reduce air pollution and improve visibility outside of these areas as well.

DATES: Written comments on this proposal must be received by October 20, 1997. The EPA will hold a public hearing on the proposed rules on September 18, 1997.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to the Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460, Attention Docket Number A–95–38. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Public hearing. The regional haze rule is subject to the requirements of section 307(d)(5) of the Act that the Agency provide opportunity for public hearing. The EPA will hold a public hearing on the proposed rules at the Adam's Mark Hotel, 1550 Court Place, Denver, Colorado beginning at 10:00 AM on the date noted above. The EPA will hold the public comment period open for 30 days after completion of the public hearing to provide an opportunity for submission of rebuttal and supplemental information. Persons wishing to speak at the public hearing should contact Barbara Miles at (919) 541–5531.

Docket. The public docket for this action is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center (6102), Attention Docket A–95–38, South Conference Center, Room 4, 401 M Street, SW, Washington, DC 20460. A reasonable fee for copying may be charged. The regional haze regulations are subject to the rulemaking procedures under section 307(d) of the Act. The documents relied on to develop the proposed regional haze regulations have been placed in the docket.

FOR FURTHER INFORMATION CONTACT: For general questions regarding this action, contact Bruce Polkowsky, U.S. EPA, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5532.

SUPPLEMENTARY INFORMATION:

Electronic Availability—The official record for this rulemaking, as well as the public version, has been established under docket number A–95–38 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–95–38. Electronic comments on this proposal may be filed online at many Federal Depository Libraries. In addition, the following communications and outreach mechanisms have been established regarding implementation of the ozone and PM NAAQS and regional haze programs:

Overview information—World Wide Web (WWW) sites have been developed for overview information on visibility issues, the NAAQS, and discussions of implementation issues by the Clean Air Act Advisory Committee, Subcommittee on Ozone, Particulate Matter, and Regional Haze Implementation Programs. These web sites can be accessed from Uniform Resource Locator (URL): *http://www.epa.gov/airlinks/*.

Detailed and technical information—Information related to implementation issues under discussion by the above Subcommittee, established under the Federal Advisory Committee Act (FACA), is available on the Ozone, Particulate Matter, and Regional Haze (O3/PM/RH) Bulletin Board on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN), which is a collection of electronic bulletin board systems operated by OAQPS containing information about a wide variety of air pollution topics. The O3/PM/RH Bulletin Board contains separate areas for each of the five work groups of the FACA Subcommittee, with information on issue papers currently under discussion, materials for upcoming meetings, summaries of past meetings, general information about the process, lists of Subcommittee and work group members, and so on. The TTN can be accessed by any of the following three methods:

—By modem; the dial-in number is (919) 541–5742. Communications software should be set with the following parameters: 8 Data Bits, No Parity, 1 Stop Bit (8-N–1) 14,400 bps (or less).
—Full Duplex.
—ANSI or VT–100 Terminal Emulation.

The TTN is also available on the WWW site at the following URL: http://ttnwww.rtpnc.epa.gov. The TTN can also be accessed on the Internet using File Transfer Protocol (FTP); the FTP address is ttnftp.rtpnc.epa.gov. The TTN Helpline is (919) 541–5384.

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I. Regional Haze Program

A. Introduction

The visibility protection program under sections 110(a)(2)(J), 169A, and 169B of the Act is designed to protect mandatory Federal Class I areas [1] from impairment due to manmade air pollution. Congress adopted the visibility provisions in the Clean Air Act to protect visibility in these ''areas of great scenic importance.'' [2] The current regulatory program addresses visibility impairment in these areas that is ''reasonably attributable'' [3] to a specific source or small group of sources. In adopting section 169A, the core visibility provisions adopted in the 1977 Clean Air Act Amendments, Congress also expressed its concern with ''hazes'' and the potential corresponding need to control a ''variety of sources'' and ''regionally distributed sources.'' [4] The purpose of today's proposal to revise the existing visibility regulations at 40 CFR 51.300–51.307 is to integrate certain fundamental provisions addressing regional haze impairment. The resulting regulation will reflect a comprehensive visibility protection program for mandatory Class I Federal areas.

Regional haze is produced by a multitude of sources located across a broad geographic area emitting fine particles and their precursors. Twenty years ago, when initially adopting the visibility protection provisions of the Act, Congress specifically recognized that the ''visibility problem is caused primarily by emission into the atmosphere of sulfur dioxide, oxides of nitrogen, and particulate matter, especially fine particulate matter, from inadequate[ly] controlled sources.'' [5] The fine particulate matter (PM)(e.g., sulfates, nitrates, organic and elemental carbon, and soil dust) that impair visibility by scattering and absorbing light are among the same particles related to serious health effects and mortality in humans, as well as to environmental effects such as acid deposition. The role of regional transport of fine particles in contributing to elevated PM levels and regional haze impairment has been well documented by many researchers [6] and recognized as a significant issue by many policy makers.[7] Data from the existing visibility monitoring network show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness area monitoring stations. Average visual range in most of the Western U.S. is 100–150 kilometers (km), or about one-half to two-thirds of the visual range that would exist without manmade air pollution. In most of the East, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under natural conditions.

B. Background

Section 169A of the Act, established in the 1977 Amendments, sets forth a national visibility goal that calls for ''the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' The EPA's existing visibility regulations, [8] developed in 1980, address visibility impairment that is ''reasonably attributable'' to a single source or small group of sources. Under these rules, the 35 States and 1 territory (Virgin Islands) containing mandatory Class I Federal areas are required to: (1) Revise their SIPs to assure reasonable progress toward the national visibility goal; (2) determine which existing stationary facilities should install the Best Available Retrofit Technology (BART) for controlling pollutants which impair visibility; (3) develop, adopt, implement, and evaluate long-term strategies for making reasonable progress toward remedying existing and preventing future impairment in the mandatory Class I Federal areas; (4) adopt certain measures to assess potential visibility impacts due to new or modified major stationary sources, including measures to notify FLMs of proposed new source permit applications, and to consider visibility analyses conducted by FLMs in their new source permitting decisions; and (5) conduct visibility monitoring in mandatory Class I Federal areas.

The 1980 rules were designed to be the first phase in EPA's overall program to protect visibility. The EPA explicitly deferred action addressing regional haze impairment until some future date ''when improvement in monitoring techniques provides more data on source-specific levels of visibility impairment, regional scale models become refined, and our scientific knowledge about the relationships between emitted air pollutants and visibility impairment improves.'' [9]

While EPA is addressing visibility protection in phases, the visibility protection provisions of the Act are broad. The national visibility goal in section 169A calls for addressing visibility impairment generally, including regional haze.[10] Further,

[1] Areas designated as mandatory Class I Federal areas are those national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 areas, and all international parks which were in existence on August 7, 1977. Visibility has been identified as an important value in 156 of these areas. See 40 CFR Part 81, Subpart D. The extent of a mandatory Class I Federal area includes subsequent changes in boundaries, such as park expansions. CAA section 162(a).

[2] H.R. Rep. No. 294, 95th Cong. 1st Sess. at 205 (1977).

[3] ''Reasonably attributable'' visibility impairment, as defined in 40 CFR 51.301(s), means ''attributable by visual observation or any other technique the State deems appropriate.'' It includes impacts to mandatory Federal Class I areas caused by plumes or layered hazes from a single source or small group of sources.

[4] H.R. Rep. No. 95–294 at 204 (1977).

[5] H.R. Rep. No. 95–294 at 204 (1977).

[6] *See* Table 24–6, Long-Term Visibility and Aerosol Data Bases, in ''Acidic Deposition, State of Science and Technology, Volume III, Terrestrial, Materials, and Health and Visibility Effects, Report 24, Visibility Existing and Historical Conditions, Causes and Effects. p. 24–51, 1991, and Chapter 8, ''Effects on Visibility and Climate'' in ''Air Quality Criteria for Particulate Matter'', U.S. EPA, EPA 600/P–95/001bF, April 1996.

[7] *See* Clean Air Act Advisory Committee, Subcommittee on Ozone, Particulate Matter, and Regional Haze Implementation Programs, Initial Report on Subcommittee Discussions, April 1997. *See* also Grand Canyon Visibility Transport Commission, Recommendations for Improving Western Vistas, June 1996.

[8] *See* 45 FR 80084 (December 2, 1980) and 40 CFR 51.300–51.307.

[9] *See* 45 FR 80086.

[10] *State of Maine* v. *Thomas*, 874 F. 2d 883, 885 (1st Cir. 1989) (''EPA's mandate to control the

Continued

Congress added section 169B as part of the 1990 Amendments to the Act to focus attention on regional haze issues. This section includes provisions for EPA to conduct visibility research on regional regulatory tools with the National Park Service and other federal agencies, to develop an interim findings report on the visibility research,[11] and to provide periodic reports to Congress on visibility improvements due to implementation of other air pollution protection programs.[12] Section 169B allows the Administrator to establish visibility transport commissions. Section 169B(f) called for EPA to establish a visibility transport commission for the region affecting visibility of the Grand Canyon National Park, the purpose of which was to assess scientific and technical information pertaining to adverse impacts on visibility from existing and projected growth in emissions, and to issue a report to EPA recommending measures to remedy such impacts. The statute specifically called for the report to address long-term strategies for addressing regional haze.[13] In 1991 EPA established the Grand Canyon Visibility Transport Commission (GCVTC) and its final report was completed in June 1996.[14] Section 169B(e) calls for the Administrator, within 18 months of receipt of the GCVTC report, to carry out her ''regulatory responsibilities under section [169A], including criteria for measuring 'reasonable progress' toward the national goal.'' [15] Today's proposal is the first step toward fulfilling EPA's responsibility, defined since 1980, to put in place a national regulatory program that addresses both reasonably attributable and regional haze visibility impairment.

Today's proposal also implements the Administrator's decision to address the general national public welfare concern for visibility through a combined program of setting a new $PM_{2.5}$ secondary national ambient air quality standard equivalent to the primary standard, promulgated in a recent **Federal Register** rule published on July 18, 1997 (62 FR 38652), and a revised visibility protection program to address regional haze impairment in mandatory Class I Federal areas.

The regional haze program is being proposed in a manner that can facilitate integration to the extent possible with the implementation programs for new NAAQS for ozone and particulate matter (PM) given the sources, precursor pollutants, and geographic areas of concern that these air quality programs have in common. The regional haze program recognizes the value of multistate coordination for regional haze program planning and implementation because of the key role of regional pollutant transport in contributing to haze at mandatory Class I Federal areas, most of which are in remote locations. At a minimum, voluntary regional planning activities, such as establishing common protocols and approaches for emission inventory development, emissions tracking, progress assessments, and regional model development, can benefit those States that will need to participate in future development of emission management strategies for PM standards as well. EPA plans to address this multistate coordination process in future guidance. An example of voluntary coordination among States to address visibility issues is the effort under way by western States and Tribes to form the Western Regional Air Partnership.

C. Key Organizations Addressing Regional Haze Issues

In developing these proposed revisions, EPA has taken into account a significant body of knowledge, developed by a wide range of stakeholders, on regional haze technical and policy issues. Three important bodies in particular have recently addressed regional haze issues: the National Academy of Sciences Committee on Haze in National Parks and Wilderness Areas, the Clean Air Act Advisory Committee (Subcommittee on Ozone, Particulate Matter, and Regional Haze Implementation Programs), and the Grand Canyon Visibility Transport Commission (GCVTC). An overview of these groups follows.

1. National Academy of Sciences

The 1993 report by the National Academy of Sciences, Protecting Visibility in National Parks and Wilderness Areas, contributed significantly to the state of the science regarding regional haze visibility impairment. The National Academy of Sciences formed a Committee on Haze in National Parks and Wilderness Areas in 1990 to address a number of regional haze-related issues, including methods for determining anthropogenic source contributions to haze and methods for considering alternative source control measures. The Committee issued several important conclusions in the report, including: (1) Current scientific knowledge is adequate and control technologies are available for taking regulatory action to address regional haze; (2) progress toward the national goal will require regional programs that operate over large geographic areas and limit emissions of pollutants that can cause regional haze; (3) a program to address regional haze visibility impairment that focuses solely on determining the contributions of individual emission sources to such visibility impairment is likely to fail, and strategies instead should be adopted to consider the effect of many sources simultaneously on a regional basis; (4) visibility impairment can be attributed to emission sources on a regional scale through the use of several kinds of models; (5) visibility and control policies might need to be different in the West than the East; (6) efforts to improve visibility within Class I areas will benefit visibility outside these areas, and could help alleviate other types of air quality problems as well; (7) achieving the national visibility goal will require a substantial, long-term program; and (8) continued progress toward this goal will require a greater commitment toward atmospheric research, monitoring, and emissions control research and development. The EPA has taken these conclusions and recommendations into account in developing today's action

2. Clean Air Act Advisory Committee and Its Subcommittee on Ozone, Particulate Matter, and Regional Haze Implementation Programs

The Subcommittee on Ozone, PM and Regional Haze Implementation Programs, established in September 1995, has also provided important input on regional haze and NAAQS implementation issues. The Subcommittee discussed a range of policy and technical issues related to implementation programs for attaining new and revised NAAQS and reducing regional haze in Class I areas. The Subcommittee includes representatives of several important stakeholder groups, including State, Tribal, and local governments, industry and small

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vexing problem of regional haze emanates directly from the Clean Air Act, which 'declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'") (citation omitted).

[11] *See* U.S. EPA, ''Interim Findings on the Status of Visibility Research'', February 1995, (EPA/600/R–95/021); *see also* 60 FR 8659 notice announcing the report availability and how to obtain copies (Feb. 15, 1995).

[12] *See* U.S. EPA, ''Effects of the 1990 Clean Air Act Amendments on Visibility in Class I Areas; An EPA Report to Congress,'' October 1993, (EPA–452/R–93–014)

[13] CAA Section 169B(e)(1)

[14] Grand Canyon Visibility Transport Commission (GCVTC), ''Recommendations for Improving Western Vistas'', Report to the U.S. EPA, June 10, 1996 (hereafter ''GCVTC Report'').

[15] CAA Section 169B(e)(1).

business, environmental groups, academia, and others. Between September 1995 and July 1997, the Subcommittee has held 10 meetings in various locations across the U.S. Work groups reporting to the Subcommittee have developed (and continue to develop) recommendations on a number of air quality management issues. One paper specifically addressed regional haze issues. Several other issue papers have been developed on planning and implementation issues related to all three programs. The Subcommittee has issued a report to the full Committee summarizing the Subcommittee's discussions through November 1996.[16]

In discussing the various issue papers to date, the Subcommittee has provided important input to EPA on potential implementation options and approaches for the three air quality programs under consideration. The Subcommittee has recognized the significant role of transport of pollutants contributing to ozone, PM, and regional haze throughout the country. The Subcommittee has also recognized that in order to properly address air quality problems resulting from transported emissions, it is important to identify the broader geographic area contributing emissions to a particular area of concern (such as an area violating the NAAQS, or a mandatory Federal Class I area identified for visibility protection). For air quality problems that do not result predominantly from local emissions sources, the Subcommittee has generally supported the concept of initiating, as appropriate, multistate planning processes for conducting technical assessments (emission inventories, modeling, source attribution) and developing regional emission reduction strategy alternatives. A framework for regional planning efforts is addressed in the Subcommittee's ''Institutional Mechanisms'' paper, which is still under development to date. The procedures and functions of regional planning efforts such as the Ozone Transport Assessment Group and the Grand Canyon Visibility Transport Commission can serve as models for future voluntary regional planning efforts. The Subcommittee has also recognized the need for expanded monitoring networks, particularly chemical analysis of $PM_{2.5}$ for implementation of both PM NAAQS and regional haze programs. The Subcommittee has discussed key program elements related to regional haze, including the definition of ''reasonable progress,'' criteria for measuring progress, and control strategies for achieving such progress. The discussions covered issues related to how regional institutions should be involved in determining reasonable progress objectives and the need for a regional haze program to include a federal ''backstop'' for such objectives, as well as specific timeframes for setting objectives and periodically assessing progress.

3. Grand Canyon Visibility Transport Commission (GCVTC)

As noted, the GCVTC issued a report in June 1996 containing recommendations for visibility protection. Today's rulemaking addresses the Commission's recommendations to EPA.

The EPA established the GCVTC on November 13, 1991 (56 FR 57522, Nov. 12, 1991). Based on EPA's ''broad discretionary authority under section 169B(c) * * * to establish visibility transport regions and commissions,'' it expanded the scope of the GCVTC,

> to include additional Class I areas in the vicinity of the Grand Canyon National Park—what is sometimes referred to as the ''Golden Circle'' of parks and wilderness areas. This includes most of the national parks and national wilderness areas of the Colorado Plateau.[17]

The GCVTC was charged with assessing information about visibility impacts in the region and making policy recommendations to EPA to address such impacts. The Act called for the Commission to assess studies conducted under section 169B as well as other available information ''pertaining to adverse impacts on visibility from potential or projected growth in emissions for sources located in the * * * Region,'' and to issue a report to EPA recommending what measures, if any, should be taken to protect visibility.[18] The Act specifically provided for the Commission's report to address the following measures: (1) The establishment of clean air corridors,[19] in which additional restrictions on increases in emissions may be appropriate to protect visibility in affected Class I areas; (2) the imposition of additional new source review requirements in clean air corridors; and (3) the promulgation of regulations addressing regional haze.

In June 1996, the GCVTC issued its recommendations to EPA. The Act calls for EPA, taking into account the recommendations and other relevant information, to ''carry out [its] regulatory responsibilities under section [169A], including criteria for measuring 'reasonable progress' toward the national goal'' within eighteen months of receiving the recommendations.[20] Regulations issued under section 169A must provide guidelines to the States on appropriate techniques and methods for characterizing, modeling and controlling visibility impairment, and must require applicable SIPs to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal.[21] The EPA regulations issued after considering the Commission report must require affected States to revise their SIPs within 12 months.

The GCVTC recommendations covered a wide range of control strategy approaches, planning and tracking activities, and technical findings which address protection of visibility in the Class I areas of the Golden Circle. The primary recommendations of the GCVTC include: (1) Air pollution prevention and reduction of per capita pollution is a high priority; (2) Emissions growth should be tracked for its effect on clean air corridors; (3) Stationary source emissions should be closely monitored and regional targets should be established for sulfur dioxide emissions in 2000, with triggers for regulatory programs if targets are not met; (4) Focus should be given to emissions reductions in and near class I areas; (5) Mobile source emissions should be capped and national measures aimed at further reducing tailpipe emissions are supported; (6) Further assessment of the contribution of road dust to visibility impairment and its potential future impacts should be given high priority; (7) Further study is needed on emissions from Mexico; (8) Fire emissions are recognized as significantly impacting visibility, and programs should be implemented to minimize effects on visibility; and (9) A future regional coordinating entity is needed to follow through on the Commission's recommendations. The Commission also adopted an approach to ''reasonable progress'' that, consistent with the national visibility goal, is based on remedying existing impairment and preventing future impairment.

The EPA has taken the Commission's recommendations, as well as the body of technical information developed by Commission, into account in developing

[16] Clean Air Act Advisory Committee, Subcommittee on Ozone, Particulate Matter, and Regional Haze Implementation Programs, Initial Report on Subcommittee Discussions, April 1997.

[17] See 56 FR 57523.

[18] *See* CAA Section 169B(d).

[19] A clean air corridor is defined as a region that generally brings clear air to a receptor region, such as the Class I areas of the Golden Circle.

[20] *See* section 169B(e)(2).

[21] *See* section 169A(b).

the regional haze rules set forth in this proposal. The Commission's recommendations have components that contemplate implementation through a combination of actions by EPA, other Federal agencies, States and Tribes in the region, and voluntary measures on the part of public and private entities throughout the region. The Commission's recommendations also distinguish between recommended actions and policy or strategy options for consideration. The EPA has considered these factors in addressing the recommendations, discussed below.

a. Reasonable Progress. The EPA's proposed approach to ''reasonable progress'' is consistent with the Commission's approach. The Commission's report provides that ''[t]he overall goal of the Commission's recommendations is to improve visibility on the worst days and to preserve existing visibility on the best days, at Class I areas on the Colorado Plateau.'' Thus, the Commission highlights the importance of not only remedying existing impairment but preserving and protecting good visibility. The Commission's report further provides that ''[r]easonable progress towards the national visibility goal is achieving continuous emission reductions necessary to reduce existing impairment and attain steady improvement of visibility in mandatory Class I areas and managing emissions growth so as to prevent perceptible degradation of clean air days.'' [22]

The EPA's proposed criteria for measuring reasonable progress, the proposed reasonable progress target, has been informed by the Commission's report in several respects. EPA proposes both to improve visibility on the most impaired days and to prevent visibility degradation on the least impaired days.[23] Similar to the Commission's provision for ''steady improvement of visibility,'' EPA proposes a quantitative visibility target and proposes to require that progress toward the target be demonstrated and evaluated on an on-going periodic basis. Finally, EPA proposes to provide that State plans consider emissions reductions in evaluating whether the quantitative reasonable progress target has been achieved.[24]

b. Clean Air Corridors. The Commission concluded that a clean air corridor does exist for the Golden Circle region and that clean air corridors are key sources of clear air at Class I areas. At the same time, the GCVTC found that future growth in this area is not expected to perceptibly impact visibility in the Class I areas modeled, and that additional new source review requirements would not be needed in this area.[25] The GCVTC recommended careful tracking of emissions growth in these areas but did not recommend additional control measures beyond those required under current laws.

The EPA generally agrees that no special requirements need to be proposed for clean air corridors. Nevertheless, these corridors contain a significant number of mandatory Federal Class I areas, and the regional emissions control strategies necessary to ensure reasonable progress toward the national visibility goal will need to address sources of pollution in these areas.

c. Stationary Sources. The Commission found that continuing implementation of existing Clean Air Act requirements such as efforts to address visibility impairment under the current rules would, in the short-term, result in significant sulfur dioxide (SO2) emissions reductions in the region and corresponding improvements in visibility.[26] The Report specifically encourages States and Tribes to review the visibility impacts at Class I areas on the Colorado Plateau from uncontrolled pollution sources and to make expeditious determinations regarding the need for additional control. The Commission also provides for the establishment and tracking of progress toward an initial stationary source SO2 emissions target to be achieved by the year 2000. A long-term target for the year 2040 and provisions for interim targets were also recommended. Progress in complying with emission targets would be assessed periodically. Exceeding the targets would trigger a regulatory emissions reduction program (such as an emission cap and incentive-based market trading program).[27] The report indicates that State and Tribal participants will evaluate development of a regional emissions cap and trading regulatory program to achieve the emissions reductions. Finally, the report provides that the participants in the Commission process intend to design the emissions reduction strategy for EPA's consideration before it takes final regulatory action on the Commission's recommendations in order to create economic incentives for early reductions, and to provide flexibility and certainty to sources in planning future actions.

The EPA fully agrees with the importance of addressing existing visibility impairment in the Golden Circle parks and wilderness areas that is attributable to single or small groups of stationary sources. The EPA has retained its existing visibility protection program, and intends for States to continue making progress in addressing visibility impairment from such sources. The EPA is committed to working with States, Tribes, and Federal Land Managers to address such impairment.

Likewise, EPA is fully supportive of long-term efforts by the States in the region addressing regional haze in the Golden Circle to address visibility-impairing emissions from stationary sources. Indeed, a centerpiece of today's proposal is a long-term strategy, to be adopted by affected States throughout the country. The proposed long-term strategy requirements are intended to provide a flexible air quality planning framework to facilitate the interstate coordination necessary to reduce regional haze visibility impairment in mandatory Class I Federal areas nationwide.

The long-term strategy proposed herein would be due one year after issuance of this proposal as a final rule, estimated to be due in 1999. Implementation would occur in phases, with initial planning for additional monitoring, emissions tracking and modeling to begin in 1999, and identification of stationary sources and potential emissions reductions to occur by 2001. Emissions control strategies would be due in 2003, or 2005 for States preparing $PM_{2.5}$ nonattainment control strategy SIP revisions, and revised every three years thereafter. The planning schedule for the long-term strategy has been developed to facilitate integration with State planning for the PM and Ozone NAAQS. Similarly, EPA intends to address specific visibility emissions control strategies in more detail in conjunction with the PM and Ozone NAAQS control strategies.

In today's proposal, EPA has not included the Commission's specific stationary source emissions target and related provisions as regulatory requirements. However, the proposed rule in no way precludes the States in the GCVTC transport region from expeditiously adopting, on their own initiative, these control strategy provisions. These States are well-situated for achieving earlier reductions in light of the technical and policy groundwork established during the Commission's deliberations, and the importance of protecting visibility in the

[22] GCVTC Report, p. 26.

[23] See proposed definition of ''reasonable progress target,'' 40 CFR 51.301(z).

[24] *See* proposed 40 CFR 51.306(d).

[25] GCVTC Report, p. 87.

[26] GCVTC Report, p. ii and 32–37.

[27] GCVTC Report, p. 36.

premiere natural resources that comprise the Golden Circle. The EPA requests public comment on whether it should instead adopt, or adopt with modification, these specific recommendations.

d. Mobile Sources. The Commission determined that mobile source emissions are projected to decrease through about the year 2005 due to improved control technologies but was concerned that emissions would increase thereafter. The Commission recommended a number of national, regional and local strategies related to mobile sources.[28] Recognizing the problems with establishing a national mobile source control program based strictly on the impact of the Golden Circle, the Commission report ''promotes'' several national initiatives that may benefit air quality in the transport region.

The EPA agrees with the central policy embodied in the Commission's recommendations on mobile sources—that there are certain categories of pollution sources that especially lend themselves to national control strategies. The EPA administers and is developing programs under Title II of the Clean Air Act that address emissions from motor vehicles, highway and non-road heavy-duty engines, marine engines (including recreational outboard and personal watercraft), small gasoline engines and locomotives. The EPA will continue to implement these and other nationally-applicable programs, such as the new source performance standards and national emission standards for sources of hazardous pollutants, that provide important air pollution protection in the Commission Transport region and other areas of the country.

e. Prescribed Fire. The Commission made a number of recommendations related to minimizing the emissions and visibility impacts of both prescribed fire used by Federal land management agencies to maintain ecosystem balances and agricultural/silvicultural prescribed burning practices.[29] The recommendation directed at EPA suggested that EPA require all Federal, State, Tribal, and private prescribed fire programs to incorporate smoke effects in planning and application by the year 2000.

The EPA has long recognized that prescribed fire can have significant effects on visibility. The EPA's current visibility protection regulations require States to consider smoke management techniques for agricultural and forestry management purposes in developing long-term strategies.[30] This requirement would apply to the long-term strategies for addressing regional haze visibility impairment proposed in this notice. Further, EPA currently participates in an interagency forum on prescribed fire to support on-going efforts to address these issues.

f. Air Pollution Prevention, Future Regional Coordinating Entity, and Areas in Need of Additional Research. The Commission recommended a number of regional, State, and local policies for air pollution prevention including energy conservation, increased energy efficiency, promotion of the use of renewable resources for energy production, and enhanced public education and outreach.[31] The EPA strongly supports pollution prevention initiatives and has taken numerous steps to promote pollution prevention under the Pollution Prevention Act of 1990, the Emergency Planning and Community Right-to-Know Act, and other environmental statutes EPA administers. The EPA has carried out important voluntary pollution prevention programs, such as the Green Lights program. Under this program, EPA uses education and outreach to encourage businesses, public schools, and government agencies to reduce the amount of electricity used while maintaining lighting quality.

The Commission determined that there is a need for a group like the Commission to oversee, promote, and support many of its recommendations, and urged EPA to provide support for such an organization. States and Tribes in the Commission's transport region are currently discussing the formation of an organization to succeed the Commission. At the request of the States and Tribes, EPA has participated in and supported these efforts.

The Commission's report identified areas warranting further research and analysis, including the impact from emissions within and near the Golden Circle Class I areas, the contribution of road dust, and emissions from Mexico. EPA especially encourages the States and Tribes to address the informational deficiencies that would inhibit development of long-term strategies to address regional haze visibility impairment.

g. Conclusions. The preceding discussion addresses the key Commission recommendations to EPA. As discussed here and elsewhere in today's action, the Commission's recommendations have informed EPA's proposed rules. The EPA seeks public comment on the manner it has proposed to address the Commission's recommendations in this rulemaking, and EPA requests alternative suggestions for addressing the recommendations.

D. Overview of Proposed Revisions to Visibility Regulations

In developing the proposed revisions to the visibility regulations, EPA has tried to maintain as much of the existing regulatory language as possible, where such provisions appropriately apply to both reasonably attributable and regional haze visibility impairment. This approach is intended to minimize the level of effort needed for States to adopt new regulations and revise SIPs in order to address regional haze requirements, particularly for those States that have already adopted plans to implement the existing visibility program.

Several new elements of the visibility protection program are proposed in this notice. These elements are outlined below and discussed in greater detail in subsequent subsections of this notice.

- Expanded applicability of the regional haze program to all States, the District of Columbia, and certain territories.
- Establishment of presumptive reasonable progress targets.
- Requirements for periodic SIP revisions, including periodic demonstrations by States on whether reasonable progress targets are being achieved for each mandatory Class I Federal area.
- Analysis of sources contributing to regional haze impairment, including sources potentially subject to BART.
- Expansion of the current monitoring network as necessary to be representative of all mandatory Class I Federal areas.
- Development of strategies to reduce emissions of visibility impairing pollutants in conjunction with strategies to meet the new and revised NAAQS for $PM_{2.5}$ and ozone.

The current program for addressing reasonably attributable impairment remains in place, including, for example, requirements for BART and a long-term strategy to address ''reasonably attributable'' visibility impairment, State consultation with FLMs on SIP revisions, consideration of integral vistas, and visibility monitoring. Further, the program requires the review of new source impacts on visibility in mandatory Class I Federal areas to prevent future visibility impairment. The existing regulations have been in place for nearly seventeen years and EPA is not

[28] GCVTC Report, p. ii and 38–45.

[29] GCVTC Report, p. ii–iii and 47–50.

[30] *See* 40 CFR 51.306(e)(5).

[31] GCVTC Report, p. i and 28–31.

reopening those regulations for public comment in this rulemaking. However, EPA seeks public comment on the regulatory changes proposed in this action related to integrating the new regional haze provisions with the existing visibility regulations. For example, EPA seeks comment on its proposed revisions to 40 CFR 51.306(c) to integrate periodic long-term strategy revisions for regional haze with the periodic long-term strategy assessments for reasonably attributable visibility impairment. The EPA is also seeking comment on a revision to 40 CFR 51.306(a)(1) which requires the State to address any certification of reasonably attributable impairment that occurs 6 months before a long-term strategy is due in the next long-term strategy revision. This revision clarifies that the State has the same grace period in considering certifications of impairment as when the original visibility SIP was developed. Beyond specific revisions proposed today, comments on the existing regulations are generally outside of the scope of this proposal.

The EPA is proposing to make technical corrections to cross-references to other rules within the existing rule language to reflect changes in the numbering of Part 51. In addition, EPA is proposing to add ''light extinction'' to the list of indices (visual range, contrast, and coloration) currently used to define ''visibility impairment'' in 40 CFR 51.301(x) and referenced throughout the rule. Light extinction is the underlying physical property of the atmosphere that determines visual range. EPA is also proposing to coordinate the Federal Land Manager notification, consultation, and timing requirements for regional haze plan development and revision with those of the current program addressing reasonably attributable impairment. This approach will allow for efficient coordination between the State and Federal land managers on comprehensive visibility SIP submittals and revisions.

The proposed revisions establish a new framework for States to follow in revising their visibility SIPs. The key milestones of the proposed visibility program are contained in the table below:

Date	Activity
July 1997	Promulgation of revised ozone and PM NAAQS and proposal of revised visibility regulations.
February 1998	Promulgation of revised visibility regulations.
March 1998	Commence regional planning activities as necessary.
February 1999	States submit new/revised visibility SIPs, including monitoring plan, identification of potential BART sources, and schedule for assessing BART and associated emission reductions by February 2001, long-term strategy provisions (including procedures for future plan requirements), revisions as necessary to address section 110(a)(2) requirements relevant to regional haze, and provisions / procedures for State coordination with FLM.
February 2000	New monitoring sites online.
February 2001	State assessment of BART sources to be completed and available for use in regional modeling and control strategy development.
July 2003	SIPs due for emission reduction strategies for regional haze. First demonstration of progress in relation to reasonable progress targets due. One year monitoring reporting begins. (July 2005 for States preparing $PM_{2.5}$ nonattainment control strategy SIPs.)
July 2006 (and every 3 years thereafter).	Visibility SIP revision to demonstrate progress in relation to reasonable progress targets, and to adjust emission reduction strategies as necessary. (July 2008 for States noted above)

The following sections focus on proposed new elements of the visibility protection program.

E. Applicability

Section 51.300(b) of the existing visibility regulations addresses ''reasonably attributable'' impairment from relatively nearby sources and requires the 36 States containing mandatory Class I Federal areas to submit SIP revisions to assure reasonable progress toward the national visibility goal. A proposed 40 CFR 51.300(b)(3) would expand the applicability of the program to all States (excluding certain territories) for the purpose of addressing regional haze visibility impairment. This provision would require the following additional States to participate in the program: Nebraska, Kansas, Iowa, Wisconsin, Illinois, Indiana, Ohio, Mississippi, New York, Pennsylvania, Massachusetts, Rhode Island, Connecticut, Maryland and Washington, DC. The territories of Puerto Rico, Guam, American Samoa, and the Northern Mariana Islands would not be subject to the program because of their great distance from any mandatory Class I Federal area. However, Hawaii, Alaska, and the Virgin Islands would be subject to the regional haze provisions because of the potential for emissions from sources within their borders to contribute to regional haze impairment in mandatory Class I Federal areas also located within these States. These States would not need to participate in regional planning activities, but would be expected to implement programs to develop emission reduction strategies to achieve the reasonable progress targets established by these revised regulations.

Section 169A(b)(2) requires States containing mandatory Class I Federal areas or having emissions which ''may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area'' to revise their visibility SIPs in order to make reasonable progress toward the national visibility goal. Many scientific studies and technical assessments, including the 1990 report from the National Acid Precipitation Assessment Program, the 1993 NAS report, and the 1996 GCVTC report ''Recommendations for Improving Western Vistas,'' have shown that regional haze is frequently caused by fine particles that are transported significant distances, even hundreds or thousands of kilometers [32]. Modeling analyses have been conducted for EPA that use county-to-Class I area transfer coefficients for PM-fine to identify counties which may reasonably be anticipated to contribute transported PM-fine to mandatory Class I Federal areas. These studies by Latimer and Associates [33] and Environ International Corporation [34] suggest that, to varying degrees, emissions from each of the

[32] National Research Council, Protecting Visibility in National Parks and Wilderness Areas, 1993.

[33] Latimer and Associates, Particulate Matter Source-Receptor Relationships Between All Point and Area Sources in the United States and PSD Class I Area Receptors, Report prepared for EPA Office of Air Quality Planning and Standards, September 1996.

[34] ENVIRON International Corporation, Development of Revised Federal Class I Area Groups in Support of Regional Haze Regulations, Report prepared for EPA Office of Air Quality Planning and Standards, September 1996.

contiguous 48 States contribute to PM-fine loadings and associated visibility impairment in at least one mandatory Class I Federal area. Other analyses using the Regional Acid Deposition Model (RADM) have estimated that sulfate and nitrate deposition receptors are influenced by sources located up to 600–800 kilometers away.[35] These analyses, combined with the geographic distribution of large emission sources and mandatory Class I Federal areas, provide the basis for the expanded applicability of the visibility program to all States for the purposes of protecting against visibility impairment due to regional haze. In addition, the 1993 NAS report observed that the section 169A requirement for a State to revise its implementation plan if it ''may reasonably be anticipated'' to cause or contribute to impairment in any mandatory Class I Federal area[36] indicates that Congress intended that ''the philosophy of precautionary action should apply to visibility protection as it applies to other areas [such as the NAAQS].''

However, this expanded applicability should not be interpreted by the States to mean that they will necessarily have to adopt control strategies for regional haze immediately. Instead, it means that a State subject to the program first should participate in a regional air quality planning group to further establish and refine the relative contributions of various States to regional haze conditions in mandatory Class I Federal areas. Thus, it will be important for all States having emissions which may be reasonably anticipated to contribute to regional haze in mandatory Class I Federal areas to participate in the planning process employed to develop regional recommendations on State apportionment of emission reduction and control measure responsibilities. The States subject to the program will need to establish or identify existing SIP authorities enabling the State to take actions to address its contribution to visibility problems in other States and to carry out other proposed planning requirements. The EPA seeks public comment on the proposed applicability of the regional haze visibility protection program.

Regarding applicability for the purpose of addressing reasonably attributable impairment, the existing regulations continue to apply to the 36 States and territories in which at least one mandatory Class I Federal area is located. It should be recognized, the existing requirement in 40 CFR 51.300(b)(1), along with sections 110(k)(5) and 169A of the Act, provide EPA with general authority to request a SIP revision from any State (including those not having a mandatory Class I Federal area) in the event that information exists demonstrating that emissions from sources in the State are reasonably anticipated to contribute to ''reasonably attributable'' visibility impairment in a mandatory Class I Federal area located in another State.

F. Definitions

1. Deciview

The proposed reasonable progress targets are expressed in terms of the ''deciview'' metric, the definition of which is proposed in section 301(bb). The deciview is an atmospheric haze index that expresses uniform changes in haziness in terms of common increments across the entire range of conditions, from pristine to extremely impaired environments.[37] A one deciview change in haziness is a small but noticeable change in haziness under most circumstances when viewing scenes in mandatory Class I Federal areas. The deciview is a means of expressing atmospheric light extinction, just as visual range is an expression of atmospheric light extinction. All three of these visibility metrics are mathematically related. Just as in the case of atmospheric light extinction or visual range, deciview levels can also be calculated from ambient $PM_{2.5}$ and PM_{10} data using certain assumptions for average light extinction efficiency attributed to specific components of PM (such as sulfates, nitrates, elemental carbon, and so on). One can use these same assumptions to evaluate whether potential emission reduction strategies will lead to perceptible visibility changes in the future.

An advantage to using the deciview is that it can be used to express changes in visibility impairment linearly with human perception. The scales for light extinction coefficient and visual range do not express perception linearly. For example, a 5-mile change in visual range can in some cases be very significant, such as a change from 5 to 10 miles in an impaired environment, whereas it may be barely perceptible on a clearer day (such as from 95 to 100 miles). The EPA recognized the deciview as an appropriate metric for regulatory purposes in chapter 8 of the Staff Paper for the Particulate Matter NAAQS review.[38] The EPA proposes use of the deciview metric in the proposed definition of the reasonable progress target, at 40 CFR 301(z) of the proposed regulations, because of the importance that progress for visibility be measured in terms of ''perceptible'' changes in visibility, and due to the simplicity of its useful scale. In contrast, the sole use of a metric such as emission reductions or ambient particle mass would not directly relate to the visibility conditions since the composition of the ambient particle mass is key to its effect on visibility. Additionally, the atmospheric processes and transport that affect the way in which pollutant loadings translate into visibility impairment varies by location. The EPA requests comment on its proposed use of the deciview metric in EPA's visibility regulations.

The EPA is also proposing, as noted in the discussion below, to use the tracking of pollutant emissions to supplement the periodic evaluation of deciview changes in implementing the regional haze reasonable progress requirement. When calculating the ability of a SIP or Tribal plan[39] to demonstrate reasonable progress, the States or Tribes can consider other emissions reduction requirements (e.g., emission reductions meeting RFP for the NAAQS) toward meeting the reasonable progress target. However, given that other air quality progress measures rely on tracking emissions reductions of key pollutants, the EPA requests comments regarding appropriate methods for translating other program metrics into visibility changes.

2. Reasonable Progress Target

a. *Protection for Most Impaired and Least Impaired Days.* The proposed

[35] Dennis, Robin L. ''Using the Regional Acid Deposition Model to Determine the Nitrogen Deposition Airshed of the Chesapeake Bay Watershed,'' in *Atmospheric Deposition to the Great Lakes and Coastal Waters,* edited by Joel Baker, 1996.

[36] Clean Air Act, section 169A(b)(2).

[37] *See* Pitchford, M. and Malm, W. ''Development and Applications of a Standard Visual Index,'' *Atmospheric Environment,* v.28, no. 5, March 1994.

[38] U.S. Environmental Protection Agency. Air Quality Criteria for Particulate Matter. Research Triangle Park, NC: National Center for Environmental Assessment. Office of Research and Development. July 1996.

[39] EPA has referenced Tribal plans because section 301(d) of the Act calls for EPA to issue regulations specifying those provisions of the Act for which it is appropriate to treat Indian Tribes in the same manner as States. On August 25, 1994, EPA published its proposed rules. *See* 59 FR 43956. EPA has not yet issued final rules. However, the proposed rules would allow eligible Tribes that seek to be treated in the same manner as States to administer visibility implementation plans. *See* 59 FR 43966 and 43980. If the final rules addressing Tribal authority under the Clean Air Act are issued and similarly allow eligible Indian Tribes to administer visibility implementation plans, EPA may make conforming changes in the final visibility rules proposed here (in this action) to reflect such potential Tribal plans without providing additional opportunity for public comment.

definition in 40 CFR 51.301(z) for ''reasonable progress target'' sets forth presumptive quantitative objectives to be met in each mandatory Class I Federal area nationally. The proposed targets provide for progress toward the national visibility goal of reducing any existing and preventing any future impairment by perceptibly improving the days that are most impaired (i.e., the average of the 20 percent most impaired days over an entire year) and allowing no degradation in the ''cleanest'' or least impaired days (i.e., the average of the 20 percent least impaired days over an entire year). In deciding upon an appropriate characterization of the ''most'' and ''least'' impaired days, EPA considered the typical frequency of visibility monitoring in the IMPROVE network [40] (twice a week), and the number of samples that would be available for analysis annually (104 possible samples per year). The EPA determined that basing these targets on any fewer than 20 data points annually would allow an average value to be unduly influenced by a single anomalous data point. EPA's basis is consistent with the approach used by the GCVTC in its technical assessment work. The GCVTC also characterized the most and least impaired days as the average of the best and worst 20% days in a given year.

The approach of improving the most impaired days and preventing degradation of the least impaired days is also supported by the legislative history of the 1990 Clean Air Act Amendments and the reasonable progress definition used by the GCVTC. The legislative history provides that, ''At a minimum, progress and improvement must require that visibility be perceptibly improved compared to periods of impairment, and that it not be degraded or impaired during conditions that historically contribute to relatively unimpaired visibility.'' [41] The approach taken by the GCVTC, also emphasized improving the impaired days and protecting the clean days. The GCVTC interpreted the requirement for reasonable progress to be met by ''achieving continuous emissions reductions necessary to reduce existing impairment and attain a steady improvement in visibility in mandatory Class I areas, and managing emissions growth so as to prevent perceptible degradation of clear air days.'' [42] In establishing this definition, the GCVTC in effect set forth continuous emission reductions as a basic strategy for meeting the goals of improving the most impaired days and maintaining the least impaired days.

In today's rulemaking, EPA is similarly providing for ''attaining a steady improvement in visibility'' and ''preventing perceptible degradation of clean air days'' through its proposed definition of a reasonable progress target. Under the proposed rules, States meeting the reasonable progress target requirements would satisfy the reasonable progress requirements of section 169A for the purpose of addressing regional haze impairment. The EPA is setting forth proposed requirements for periodic reasonable progress demonstrations to be developed for all mandatory Class I Federal areas beginning as early as July 2003 and every 3 years thereafter.[43] These demonstrations should incorporate control strategies developed by each State, in conjunction with strategies developed for the NAAQS and other programs. Recognizing that many factors will determine if a State can develop and implement control measures to meet a specific increment of visibility change, EPA is also proposing in 40 CFR 51.306(d)(5) that States, in consultation with the Federal Land Managers and approval from EPA, may develop alternate reasonable progress targets. At the same time, the alternate target must be explained based on relevant statutory factors and may not allow for visibility degradation.[44] The relevant statutory factors are listed in section 169A(g)(1) and include the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements. Inclusion of the alternative reasonable progress provision is intended to recognize that the qualitative factors listed in the Act may influence what is considered ''reasonable progress'' in individual mandatory class I Federal area. In such cases consideration of these factors might lead a State to adopt an alternative target for a given mandatory Class I Federal area which might differ from targets of other mandatory Class I Federal areas within a larger planning region. Further discussion of the alternate progress target is included in Unit I.I. of this preamble below. The EPA requests public comment on the presumptive ''reasonable progress target'' proposed in this action as well as the proposal to allow alternative targets.

The proposed ''reasonable progress target'' has two elements: (1) For the most impaired days, a rate of improvement equivalent to 1.0 deciview over a 10-year or 15-year period; and (2) for the least impaired days, no increase in deciview as compared to the baseline conditions.[45] The EPA is proposing two options for the rate of improvement for the most impaired days. One option is 1.0 deciview improvement every 10 years, the second option is 1.0 deciview every 15 years. The EPA proposes to express the presumptive reasonable progress targets in terms of deciview changes to reflect perceptible changes for complex scenes like those found in mandatory Federal Class I areas. The EPA believes it is important to express progress measures for visibility in terms of ''perceptible'' changes.

EPA proposes the presumptive rate of progress for the most impaired days equivalent to a 1.0 deciview improvement over 10 to 15 years for three main reasons. The first reason is that tracking visibility over longer time periods, allows for better analysis of trends despite inter-annual changes in weather conditions, transport patterns, and variances in naturally occurring emissions of fine particles. Secondly, the 10 to 15 year time periods are consistent with the Clean Air Act requirement for each SIP to contain a long term strategy for visibility protection covering the next 10–15 years.[46] It logically follows that the public would expect a visibility strategy covering a 10 to 15-year period to actually result in a perceptible improvement in visibility over that period. Third, a gradual improvement in visibility conditions over a 10 to 15 year period is consistent with the GCVTC definition of reasonable progress, which is ''achieving continuous emission reductions necessary to reduce existing impairment and attain steady improvement of visibility in mandatory Class I areas * * *''

In considering the choice between the 10 and 15 year options, EPA notes the following. Both time periods are within the statutory provisions for long-term strategies of 10 to 15 years. However, while the 15-year option allows more time for States to plan and implement control strategies, a presumptive rate of 1.0 deciview in 15 years would take 50 percent longer to attain the national goal than a presumptive rate of 1.0 deciview in 10 years. Congress did not specify a time frame within which the national

[40] The IMPROVE network is described in Unit I.H. of this notice.

[41] 136 Cong. Rec. S2878 (daily ed. March 21, 1990) (statement of Sen. Adams).

[42] GCVTC Report, p. x.

[43] *See* proposed 40 CFR 51.306

[44] *See* CAA section 169A(g)(1) and 169A(g)(2).

[45] *See* proposed 40 CFR 51.301(z).

[46] *See* CAA Section 169A(b)(2)(B).

goal is to be achieved, but given the magnitude of current impairment in some areas, even with the more expeditious 10-year presumptive target, it will take a long time to achieve the national visibility goal in all mandatory Class I Federal areas. At the same time, the costs of the program may be substantial (see Unit II.A below). The more conservative 15-year presumptive target would allow these costs to be spread out over a longer time period. The EPA solicits comment on these two options for presumptive rate of improvement for the most impaired days.

With respect to the ''no degradation'' target (0.0 deciview change) for the least impaired days, EPA believes this target is consistent with the national goal of preventing future impairment, as well as with the GCVTC definition of reasonable progress (''* * * managing emissions growth so as to prevent perceptible degradation of clean air days'').

The EPA solicits comment on these and any other proposed options for reasonable progress targets for the most impaired and least impaired days. Commenters should address how alternative proposals would ensure reasonable progress toward the national visibility protection goal.

The proposed regulations require States to provide a demonstration of reasonable progress every 3 years. The EPA intends that a demonstration of compliance with the presumptive reasonable progress targets be the principal means of measuring reasonable progress with respect to regional haze impairment. Measures to achieve this progress must include measures to address Best Available Retrofit Technology requirements and other measures necessary to achieve such progress that are contained in State SIPs and long-term strategies.

b. Determining Baseline Conditions. The demonstration of compliance with the reasonable progress targets, beginning as early as 2003, will require States to determine the baseline conditions, for both the haziest days and the clearest days,[47] for all mandatory Class I Federal areas in the State. The EPA proposes that for each Class I area in the State, the State computes a simple annual average of the haziest and clearest days to establish a record over time. As noted in the previous section, the haziest and clearest days are to be represented by the average of the 20% highest and lowest deciview values measured each calendar year. Baseline values should be calculated based on a minimum of three years of monitoring data collected at the Class I area, or at a monitoring location that is determined to be representative of that Class I area. EPA would allow up to nine years of monitoring data collected prior to the first reasonable progress demonstration SIP submittal (due as early as 2003) to be used to establish baseline haziest and clearest conditions. Currently, there are 30 Class I sites with 8 consecutive years of visibility monitoring data (1988–95). A baseline established on more than three years of data may better account for inter-annual variability due to meteorology. However, a baseline established on more than three years of data also may not accurately represent current conditions if significant emission reductions have occurred during that time period. The EPA is considering allowing any State that establishes a baseline using only three years of data to call that baseline an interim baseline, and to be able to modify that baseline at the time of future reasonable progress demonstration SIP revisions so that up to nine years of data are used for establishing a final baseline. It should be noted that if there are substantial changes to regional emissions during this time period that affect visibility levels (e.g. large reduction in emissions from the acid rain program) then the State should demonstrate why use of that time period is appropriate for baseline determinations. The EPA solicits comment on this approach for setting baselines from which to track reasonable progress for the haziest and cleanest days, specifically on the use of the simple annual averaging of the twenty percent haziest and clearest days, on the three year minimum and nine year maximum number of years used in establishing current baseline conditions, and on the interim baseline concept.

It is proposed that tracking of the haziest and clearest days be maintained on a three year SIP review and revision cycle. The EPA is contemplating using a simple average of the 20 percent most impaired days and the 20 percent least impaired days for each year over a three year period as the indicator for determining whether the ''reasonable progress target'' is being met. Since a three year period may be subject to higher variation in both meteorological conditions and natural emissions that impair visibility than a ten-year period, EPA is considering supplementing the three year review of measured visibility progress with evaluation of the emissions reductions used to support the planned improvement in visibility during SIP development. This evaluation of planned emission reductions is based on the approach taken by the GCVTC in calling for continuous emissions reductions and tracking. Analysis of IMPROVE data collected since 1988 shows that some sites may not be meeting the proposed reasonable progress targets. If the monitoring data representing a Class I area does not track along the presumptive reasonable progress rate, the State would need to review emissions inventory estimates for both anthropogenic and natural emissions and anthropogenic emissions reduction assumptions, that were used in estimating compliance with the presumptive rate as part of the three year SIP revision process. If anthropogenic emissions tracked as planned, the State, using any additional visibility data (i.e., optical instrument measurements) and meteorological data, should demonstrate that current emissions strategies will make progress in the next 3-year planning period. A State would need to revise its SIP emission reduction strategies in order to bring the visibility conditions to a level at or below the reasonable progress target when anthropogenic emissions were shown to exceed levels used in planning to meet the reasonable progress target. The EPA solicits comment on this approach toward tracking the reasonable progress target, specifically on (1) approaches other than a simple block average, (2) the approach for compliance with the presumptive target supplemented by a check on anthropogenic emissions, and (3) on whether the compliance assessment should be set forth in the regulations proposed here or in guidance.

Under the proposed rules, once the visibility conditions for the haziest days in a mandatory Class I Federal area are within 1.0 deciview of natural conditions, the visibility SIP would be considered a type of maintenance plan. The reasonable progress demonstration would need to reflect no further degradation of visibility conditions for both the haziest and clearest days consistent with the national goal to prevent future impairment.

Due to the broad variety of scenic, atmospheric, and lighting conditions at the mandatory Class I Federal areas across the country, at any specific time a given area may contain vistas for which slightly more or less than one deciview above background conditions represents a perceptible impact for the components of the scene. For example, a view of a snow-capped mountain may be more sensitive to changes in air

[47] See proposed 40 CFR 51.306(d)(2).

quality than a view of a forest with the result that less than a 1.0 deciview change is perceptible for that portion of the scene. Conversely, in another scene a deciview change slightly greater than 1.0 may not be perceptible. The EPA proposes a one deciview increment above natural conditions to be perceived as sufficiently near to natural conditions for those sensitive scenes that are thought to exist in all mandatory Class I Federal areas. However EPA acknowledges that for specific scenes a greater or lesser deciview change can be perceived, and so requests comments on whether it would be more appropriate to establish a 0.5 deciview, 1.5 deciview, or 2.0 deciview cut point for determining when visibility planning should become exclusively preventative to assure maintenance of existing natural conditions.

This concern is less important for the presumptive reasonable progress target of 1.0 deciview improvement in the haziest days every ten to fifteen years contained in today's proposal. Generally, a rate of progress for the haziest days equivalent to 1.0 deciview every 10 or 15 years should result in a perceptible improvement across the range of complex views found in all Class I areas. If there are particular Class I areas for which a slight variation can be demonstrated, the adequacy of 1.0 deciview in realizing perceptible improvement may be a relevant consideration in evaluating an alternative reasonable progress target so that a perceptible improvement is the target for the planning period.

c. Protecting Vistas Seen From Within Class I Areas. The proposed presumptive reasonable progress targets are designed to improve visibility conditions in all mandatory Class I Federal areas. The scenic vistas enjoyed by visitors to many parks often extend to important natural features outside these parks. In developing the 1980 program addressing reasonably attributable impairment, the EPA afforded the Federal Land Managers the opportunity to account for specific impairment outside of the mandatory Federal class I areas by establishing ''integral vistas.'' Integral vistas are views perceived from within a mandatory Class I Federal area of a specific panorama or landmark located outside the Class I area boundary. These vistas are considered ''integral'' to the enjoyment of the Class I area and were afforded a level of protection similar to views contained within the Class I boundaries. With respect to regional haze, a monitoring station in or near the Class I area that is established as representing the regional haze conditions for that area may not be representative of all views that can be seen from that Class I area, many of which may have been critical to the reasons Congress established these protected areas. The EPA solicits comment on whether, under a regional haze program, such important views require special protection, what support under the Clean Air Act exists for establishment of such protection, and the appropriate mechanism for protecting such views outside Class I areas within requirements of a State implementation plan.

d. Calculating Changes in Deciviews. The revised rule proposes in 40 CFR 51.306(d) that every 3 years, States perform a comparison of actual or representative monitoring data to presumptive reasonable progress targets. The EPA expects that tracking of visibility conditions will be accomplished by measuring the particle constituents at representative monitoring sites using techniques developed and peer-reviewed, such as those used in the IMPROVE monitoring network. Progress is to be tracked in terms of deciviews. Deciviews can be calculated from light extinction values derived from speciated particle monitoring (known as reconstructed light extinction), or from optical measurements of light scattering (nephelometers) or light extinction (transmissometers). A deciview measure derived from reconstructed light extinction avoids the need of eliminating data for weather events which can obstruct optical monitoring devices and therefore allows for a consistent technique to be applied from year to year. The EPA solicits comments on using a reconstructed light extinction approach as the basis for calculating visibility changes in terms of deciview, whether this approach should be specifically included in the regulatory requirements, and on other approaches for calculating visibility changes using other monitoring information collected at Class I areas.

G. Implementation Plan Revisions

1. SIPs Due 12 Months After Promulgation

40 CFR 51.302 of the existing visibility regulations required States to revise implementation plans within 9 months of rule promulgation to include a long-term strategy for making progress toward the national goal, provisions for notification of Federal Land Managers for certain new source permits, a monitoring strategy, an assessment of visibility impairment in mandatory Class I Federal areas, and emission limitations representing BART. Under 40 CFR 51.306(c) in the existing regulations, long-term strategies are to be reviewed and revised as appropriate every three years.

Proposed section 40 CFR 51.302(a)(1)(ii) would require States to submit visibility SIP revisions for regional haze within 12 months of issuance of the final regional haze rules. This is consistent with section 169B(c)(2) of the Act and comparable to the time allowed for visibility SIP revisions under the 1980 regulations. Based on the current schedule, EPA plans to finalize this rule in February 1998, so the first visibility SIP revision would be due 12 months later, in February 1999.

The EPA is proposing that 40 CFR 51.302 of the existing regulations be revised to incorporate timing requirements for future SIP revisions and to outline additional plan elements required specifically to address regional haze impairment. Specifically, proposed 40 CFR 51.302(a)(1)(ii) requires that implementation plans be revised to require States to in the future revise SIPs in accordance with the proposed new timing requirements in proposed 40 CFR 51.306(c). In this proposed section, the next implementation plan revision is required 4 years later in order to coordinate implementation plan revisions with those for the NAAQS to the extent possible. Future visibility implementation plan revisions are required in proposed 40 CFR 51.306(c) every 3 years thereafter. These implementation plan revisions will include an assessment of whether reasonable progress targets have been met for all mandatory Class I Federal areas in the State, and emission reduction strategies as appropriate for meeting reasonable progress targets for each subsequent 3-year period.

Many of the 40 CFR 51.302 elements currently required in visibility SIPs for reasonably attributable impairment will also be needed in visibility SIPs to address regional haze impairment. These include provisions for coordination with FLMs as found in 40 CFR 51.302(b) of the existing regulations for which EPA is proposing revisions related to regional haze, and general implementation plan requirements for a long-term strategy and a monitoring strategy, as found in the existing 40 CFR 51.302(c).

In addition, implementation plan requirements due within 12 months that are specific to regional haze are proposed in 40 CFR 51.302(c)(5). The proposed revision identifies two principal new elements: identification of sources potentially subject to BART,

and revisions as necessary for the State to meet the requirements under section 110(a)(2) of the Act as they pertain to implementation of measures to address regional haze. These elements are discussed in greater detail in the next two sections below.

2. Plan Revisions To Address Best Available Retrofit Technology (BART)

The first new element in proposed 40 CFR 51.302(c)(5) requires States to identify, within the first 12 months after rule promulgation, sources located in the State that are potentially subject to BART (i.e., ''existing stationary facilities'' as defined in existing 40 CFR 51.301(e)). The list should include those sources potentially subject to BART that emit any air pollutant which may reasonably be anticipated to cause or contribute to regional haze visibility impairment in any mandatory Class I Federal area, and which meet certain specific criteria. These criteria require that potential BART sources are major stationary sources, including reconstructed sources, from one of 26 identified source categories which have the potential to emit 250 tpy or more of any air pollutant, and which were placed into operation between August 1962 and August 1977. The 26 source categories identified in existing 40 CFR 51.301(e) and section 169A(g)(7) of the Clean Air Act include sources such as electric utilities, smelters, petroleum refineries, and kraft pulp mills. The purpose of this requirement is to have the States identify early in the planning process the universe of sources potentially subject to BART so related information can be taken into account in developing future control strategies, both for the NAAQS and regional haze.

Several factors must be taken into consideration in determining BART, including the technology available, the costs of compliance, the energy and nonair environmental impacts of compliance, any pollution control equipment in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.[48] The provisions in the Act requiring BART appear to demonstrate Congress' intention to focus attention on this specific set of large existing sources, which are minimally controlling emissions, as possible candidates for emissions reductions needed to make reasonable progress toward the national visibility goal.

Note that the States are responsible for revising their SIPs to contain ''such emission limits, schedules of compliance, and other measures'' as may be necessary to make reasonable progress toward the national visibility goal.[49] Such implementation plan revisions are to include, at a minimum, provisions meeting the BART and long-term strategy requirements of the Act.[50] Thus, these SIPs can ensure reasonable progress by addressing emissions reductions from a wide range of existing emissions sources that may reasonably be anticipated to cause or contribute to regional haze impairment, some of which are specifically subject to the BART requirement and some of which are not.

Proposed 40 CFR 51.302(c)(5) also requires States to submit within 12 months a plan and schedule for evaluating BART for applicable sources within the next 3 years after rule promulgation (i.e., between February 1998 and February 2001). A three-year time frame has been proposed for this requirement so that possible emission limits and associated emission reductions for all applicable BART sources can be integrated into future regional modeling and control strategy development activities for attainment of the PM2.5 and ozone standards as well. In this way, States can assess the degree to which reductions from sources subject to BART will also benefit other air quality problems, and vice versa. In this way, States can explore ways to integrate control strategies for ozone and PM with the requirement for BART. It is expected that control strategy options will be analyzed by States as part of regional technical assessments.

The EPA believes that because regional haze is the cumulative product of emissions from many sources over a broad area, the test for determining whether a single source ''may reasonably be anticipated to contribute'' to regional haze in a mandatory Class I Federal area should not involve extremely costly or lengthy studies of specific sources. The National Academy of Sciences report supports this recommendation, stating that ''it would be an extremely time-consuming and expensive undertaking to try to determine, one source at a time, the percent contribution of each source to haze.'' While one of the factors to consider in determining BART is ''the degree of improvement in visibility which may reasonably be anticipated,'' EPA believes this factor should be evaluated to reflect the degree of improvement in visibility that could be expected at each class I area if BART requirements are implemented for applicable BART sources. This evaluation would be similar to developing attainment strategies for the NAAQS, and could be accomplished using a basic technique, such as a speciated rollback approach,[51] or a more complex technique, such as a regional model (like REMSAD or MODELS3).[52] Thus, while the other BART factors would be evaluated for each source that is reasonably anticipated to contribute to regional haze in a mandatory Class I Federal area, EPA proposes that the degree of visibility improvement expected to result would be evaluated in the context of the overall emissions reduction strategy. As the descriptive name ''regional haze'' implies, regional haze is characterized by regional or region wide impairment of mandatory Class I Federal areas. The EPA requests public comments on this proposed approach for the BART assessment process for regional haze.

By comparison, under the existing visibility regulations, the BART process is triggered by the Federal land manager. The FLM may certify to the State at any time that impairment exists in any mandatory Class I Federal area. *See* existing 40 CFR 51.302(c)(1). State implementation plans must provide for a BART analysis for any existing stationary facility that may cause or contribute to ''reasonably attributable'' impairment in any Class I area identified by the Federal land manager. In determining BART, the State must consider the various factors listed in section 169A(g)(2), including costs of compliance and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology on a specific source. *See* existing 40 CFR 51.301(c).

The proposed approach to evaluating potential improvements in regional haze visibility impairment due to BART differs from the current approach for reasonably attributable impairment in that the degree to which visibility is expected to improve in a mandatory

[48] *See* CAA section 169A(g)(2).

[49] *See* CAA section 169A(b)(2).

[50] See CAA section 169A(b)(2). The legislative history also explains that at a minimum, visibility SIPs are to include two principal elements: BART and the long-term strategy. H.R. Rep. No. 564, 95th Congress, 1st Sess. at 154 (1977).

[51] The 1993 report of the National Research Council, Protecting Visibility in National Parks and Wilderness Areas, provides an example, using a speciated rollback model, of the apportionment of anthropogenic light extinction among source types in the eastern, southwestern, and northwestern United States. This example illustrates some of the key issues that arise in any apportionment of visibility impairment.

[52] REMSAD and MODELS3 are regional-scale computer models under development that will predict particulate matter and visual air quality based on emissions, transport, and atmospheric chemistry.

Class I Federal area would take into account the emission reductions from the multiple sources affecting that Class I area. An alternative approach would be to evaluate the degree of improvement in regional haze impairment expected from each specific BART source. Under this approach, a single source's contribution to regional haze visibility impairment in a Class I area would be assessed. Section 169A(b)(2)(A) provides that BART is required for applicable sources that emit air pollution that is reasonably anticipated to contribute to any visibility impairment in a Class I area.

Thus, the ''degree of improvement'' estimated under section 169A(g)(2), which in most cases may be less than perceptible, would be based on the improvement projected from a single BART source. The concern with this approach is the substantial technical difficulty in establishing source-specific receptor relationships for a regional transport environmental effect. The National Academy of Sciences Committee on Haze in National Parks and Wilderness Areas has expressed doubt that such source specific attributions could be the basis for a workable visibility protection program. However, allowing assessment of BART sources on a source-specific basis would not preclude States from including controls on BART sources in their long-term strategy in order to achieve the applicable reasonable progress targets, even if source-specific impairment could not be demonstrated. This option would likely give States greater flexibility in developing the most cost-effective means to address the BART and long-term strategy requirements. The EPA requests comment on these alternative approaches to implementing the BART and long-term strategy requirements to address regional haze visibility impairment.

In the proposed 40 CFR 51.306(d)(3), this action also sets forth the timing requirement for States to include provisions to address the BART requirement in their implementation plans due in July 2003 except as discussed in Unit I.I. This approach is consistent with recommendations of the Clean Air Act Advisory Committee (CAAAC) and its Subcommittee to integrate control strategies across programs to the greatest extent possible. The CAAAC's Subcommittee on Ozone, Particulate Matter, and Regional Haze Implementation Programs is currently discussing a number of issues related to control strategies, and EPA intends to consider any CAAAC recommendations in future implementation guidance.

Finally, with respect to proposed regulatory changes related to BART, EPA notes that the existing 40 CFR 51.302(c)(4)(iv) of the existing visibility regulations requires BART to be implemented no later than five years after ''plan approval.'' EPA proposes to clarify this provision to read ''plan approval or revision'' consistent with section 169A(g)(4) of the Act.

The EPA requests comment on all of the proposed BART requirements discussed above including whether additional regulatory revisions beyond those addressed here are necessary. While EPA requests comment on possible emission reduction strategies to be used for implementing BART and long-term strategy requirements under the regional haze program, EPA also expects to address more specific control strategy options for BART and the long-term strategy requirements for regional haze in later guidance.

3. Plan Revisions for Section 110(a)(2) Requirements

The second element of proposed 40 CFR 51.302(c)(5) relates to SIP revisions necessary to meet the various requirements under section 110(a)(2) of the Act. Section 169B(e)(2) provides for EPA to require States to revise their section 110 implementation plans within 12 months to contain ''such emission limits, schedules of compliance, and other measures as necessary'' to carry out these regulations. In addition, visibility protection is specifically provided for in section 110(a)(2)(J).

The elements of section 110(a)(2) are critical to establishing a strong foundation for ongoing implementation of the visibility protection program. The EPA believes that during this initial 12-month period, the States should focus first on plan requirements providing for adequate future planning activities in conjunction with other States.

Important planning activities include development of enhanced emission inventories and emissions tracking systems, monitoring network deployment, and refinement of regional models. The EPA encourages all States to participate in regional planning activities. This planning will then facilitate the future assessment of regional strategies to achieve reasonable progress targets, and will also provide beneficial data and tools needed for attainment of the new ozone and PM NAAQS.

States will need to address each of the section 110 elements needing revision to support implementation of the revised visibility program. The EPA believes that the following sections should be closely reviewed for meeting the needs of a regional haze program.

- Section 110(a)(2)(D) requires the State plan to contain adequate provisions to prohibit interstate transport that contributes significantly to nonattainment in or interferes with maintenance by other States with respect to the NAAQS or interferes with measures in other States to protect visibility. This provision is highlighted to emphasize the critical role of transport in dealing with visibility issues and to serve as an incentive to regional planning and cooperation among States.
- Section 110(a)(2)(K) requires SIPs to provide for air quality modeling for the NAAQS and collection of necessary emissions inventory information to use as input to the models. Many primary and secondary PM and ozone emissions (VOC, NO_X, SO2, ammonia, primary PM, elemental carbon, organic carbon) also result in visibility impairment, so developing enhanced statewide emission inventories for these pollutants will benefit all three programs. Further, sections 110(a)(2)(F), 110(a)(2)(A), and 169A(b) provide specific authority for emissions inventory requirements and general authority to require measures necessary to protect visibility. It will be important for States to develop inventories both for sources potentially subject to BART, and for other sources that are reasonably anticipated to contribute to regional haze visibility impairment. The inventories can then be used as inputs to regional models and possibly as the basis for regional pollutant trading programs, as suggested by the GCVTC. Integrated modeling tools such as MODELS3 are under development which will be able to predict ozone and PM concentrations, as well as the resulting regional haze, using the enhanced inventory data. It is anticipated that emission inventory inputs to regional modeling will be needed in the 1999–2000 time frame. The need for enhanced inventory development and expanded regional modeling capabilities has been greatly emphasized by a number of organizations, including the GCVTC and CAAAC.
- Section 110(a)(2)(B). Expansion of the existing visibility monitoring network to provide for representative monitoring of all Class I areas is the third major technical task for State emphasis. Proposed revisions related to monitoring are more fully discussed in Unit I.H. of this action.
- Section 110(a)(2)(A) requires States to submit enforceable emission limits and compliance schedules. The EPA

believes that, in general, enforceable ''emission limitations'' and ''schedules of compliance'' as required under sections 169A and 169B of the Act should be appropriately incorporated into SIPs after assessment of regional strategies can be coordinated with the ozone and PM implementation programs. However, it is important to recognize that regional haze ''areas of concern'' (i.e., mandatory Class I Federal areas) are already defined, and modeling work can begin early in the planning process to define the areas of influence affecting them. In addition, there may be some parts of the country that have no nonattainment areas (or areas of violation) for which the assessment of regional strategies for haze could proceed earlier, but these modeling activities would be dependent upon completion of inventory enhancements and availability of adequate regional models.

Timing requirements for future SIP revisions after the ''12-month SIP'' are included in proposed section 40 CFR 51.306(c). The proposal states that the next SIP revision will be due 4 years after the first SIP revision is required, in July 2003, except as noted below. By doing this, EPA seeks to allow for integration of planning activities and control strategy development to the maximum extent possible. The EPA recognizes that the implementation schedule for the Ozone and PM NAAQS may change in light of monitoring data availability and other factors related to development of a SIP attainment strategy.

In light of EPA's intent to foster coordinated planning and implementation of the regional haze requirements proposed and the new $PM_{2.5}$ while still addressing the need to ensure reasonable progress in addressing visibility impairment, EPA is also proposing to allow States preparing nonattainment plans for fine particulate matter ($PM_{2.5}$) to submit their regional haze emissions control strategy SIP revisions by but not later than the required date for submittal of the State's $PM_{2.5}$ attainment control strategy SIP revisions. *See* proposed 40 CFR 51.306 (d)(3) and (d)(6). This approach would allow the initial emissions management measures portion of the regional haze long-term strategies to be developed in conjunction with the first round of $PM_{2.5}$ nonattainment actions. EPA also takes comment on how to appropriately balance coordination among SIP requirements with the potential delay in ensuring reasonable progress toward the national visibility protection goal.

The proposed 40 CFR 51.306(c) also states that visibility SIPs are to be revised every 3 years thereafter (e.g., 2006, 2009, etc.) This requirement is consistent with the overall need to track reasonable progress over time, as well as with the 3-year requirement for long-term strategy review and revision in the current rules. The EPA has clarified this provision by proposing to remove reference to periodic review and revision ''as appropriate.'' The EPA proposes to require a SIP revision every 3 years, and proposes that the process for developing the plan revision include consideration of a ''report'' outlining progress toward the national goal. The EPA believes that a requirement for regular SIP revisions will result in a more effective program over time and provide a focus for demonstrating ongoing progress and making mid-course corrections in emissions strategies.

To the extent possible, the EPA will endeavor to coordinate timing requirements for RFP submittals for the NAAQS with long-term strategy revisions for visibility. The timing of progress reviews for RFP for the NAAQS will be addressed in future guidance.

Instead of periodic SIP revisions every three years, the EPA is also considering requiring that the SIPs be revised every 5 years after the initial visibility long-term strategy SIP (e.g., 2008, 2013, etc.). This would allow more time for collection of visibility data to be used in assessing compliance with the visibility target. This longer time period would also be less influenced by unusual meteorological conditions than a three-year period. Periodic five-year revisions would also reduce the administrative burden on the States. However, a five-year period may not as easily allow for mid-course corrections in sufficient time to ensure meeting the progress target over a 10-year or 15-year period. A 5-year revision period would also be inconsistent with the 3-year timing for long-term strategy revisions for reasonably attributable visibility impairment in the existing rules. The EPA requests public comment on the frequency of periodic SIP revisions. In particular, EPA seeks public input on whether a five-year periodic SIP revision schedule would be more appropriate. In considering a 5-year review period for regional haze, the EPA also seeks comment on whether it should revise current rules to adopt a 5-year SIP revision schedule for ''reasonable attributable'' impairment SIP requirements to allow for administrative efficiency.

H. Visibility Monitoring

Visibility monitoring is authorized under the section 169A(b)(1) provision for issuing guidelines to the States on monitoring, the section 169A(b)(2) provision requiring SIPs to address ''other measures as may be necessary,'' as well as the section 110(a)(2)(B) authority requiring State implementation plans to provide for the monitoring of ambient air quality. Since 1986, visibility monitoring (using aerosol, optical, and photographic techniques) has been coordinated through the IMPROVE program, a cooperative, multi-agency approach with participation by EPA, the FLMs, and States. Each of the participants in the IMPROVE Steering Committee contributes funding for the purchase and operation of monitoring equipment, and participates in resource and siting decisions. Speciated fine PM data and reconstructed light extinction data has been collected since 1988 for 30 sites, and more than 60 sites have at least 1 year of data collected using IMPROVE protocols. The IMPROVE protocols and quality assurance procedures that have been enhanced over the years are the basis for forthcoming EPA guidance.

EPA believes that continued coordination of visibility monitoring is critical due to the common responsibilities of States, FLMs, and EPA for visibility protection. Proposed in 40 CFR 51.305(b) are various monitoring requirements for implementation of the regional haze program, including a requirement that development of monitoring strategies be coordinated with the FLMs and other agencies, such as EPA, that are involved in existing visibility monitoring efforts.

Proposed 40 CFR 51.302(c)(2)(iv) requires States to submit monitoring strategies (revisions for those States with existing strategies) as part of their implementation plans within 12 months of promulgation, and proposed section 40 CFR 51.302(c)(2)(v) requires revisions of these strategies four years later (in 2003), and every 3 years thereafter, at the same time that long-term strategy revisions would be required.

A central element of each State's visibility program will be the demonstration every 3 years of current trends in visibility compared to reasonable progress targets for each mandatory Class I Federal area in the State. This demonstration must rely on historical monitoring data to the greatest extent possible. Since visibility monitoring does not exist at all 156 mandatory Class I Federal areas, it will be essential for each State to develop a monitoring strategy, in conjunction with the appropriate FLMs and other States, which ensures that ''representative'' monitoring has been or will be

established for each mandatory Class I Federal area in the State.

Proposed 40 CFR 51.305(b)(2) requires that additional monitoring sites be established within 12 months of plan submittal as necessary to ensure that progress in relation to the reasonable progress targets can be determined. The EPA recognizes that due to resource limitations, it would be difficult to establish monitoring sites at all 156 mandatory Class I Federal areas. This section, in conjunction with the proposed new provisions in 40 CFR 51.305(b)(1) and (b)(3), call for the establishment of additional monitoring sites such that monitoring can be considered representative of all Class I areas. The EPA believes that several additional sites are needed to more effectively characterize regional transport of haze on a national basis. However, the concept of a ''representative'' network will likely be the subject of much discussion, and ultimately it will need to incorporate both technical and policy concerns of the States and FLMs. The EPA encourages the States and FLMs to discuss this issue in depth, possibly using the IMPROVE Steering Committee as a forum for further discussion. EPA takes comment on whether 12 months from plan submittal is an adequate amount of time for installation of new sites.

In the strategy, the participants in the monitoring network should address the following questions:

—For areas with monitoring funded solely by one agency, will such monitoring remain in place until the next progress demonstration?

—For an area without existing monitoring, is there a monitoring site nearby that can be considered ''representative'' of this area? If not, the strategy should implement the addition of a site to the network.

—For which mandatory Class I Federal areas in the State will new visibility or fine particle monitoring be initiated within the next 3 years?

The EPA plans to issue a visibility monitoring guidance document in the near future that will be designed to assist the States in developing this monitoring strategy. The document will provide guidance for determining ''representative'' sites and will include technical criteria and procedures for conducting aerosol, optical, and scene monitoring of visibility conditions in Class I areas. The procedures currently used in the IMPROVE network will be included in this guidance. For the purpose of assuring that monitoring data will be complete in assessing and modifying long-term strategies, States should review the existing monitoring strategy with the FLMs and other participating agencies to assess the need for additional monitoring sites or modifications to existing ones on the same periodic basis as the long-term strategy revisions.

States should emphasize the coordination of the design of monitoring networks for $PM_{2.5}$ and visibility to the greatest extent possible in order to optimize resources. In some situations, existing visibility monitoring sites can be used to meet Part 58 requirements to characterize regional $PM_{2.5}$ levels. However, States needing to establish new $PM_{2.5}$ monitoring sites to characterize regional levels should consider siting new monitors at or near a mandatory Class I Federal area that currently has no monitoring. Reconstructed light extinction can be calculated for any $PM_{2.5}$ site collecting aerosol data that undergoes compositional analysis. This information can help fill certain spatial gaps and can be used for calibration of regional models for PM and visibility, as well as for assessments of visibility nationally under the secondary particulate matter standard.

Proposed 40 CFR 51.305(b)(4) requires the States to report to EPA all visibility monitoring data on at least an annual basis. The characterization of visibility trends is one important reason for this requirement. It will be important for States to track annual trends in relation to the reasonable progress targets. Annual trend data can provide the States with an early indication of the effectiveness of current strategies in meeting presumptive reasonable progress targets for specific mandatory Class I Federal areas before the triennial long-term strategy review comes due. Annual consolidation of this data will also enable EPA to better characterize national and regional visibility trends in its annual air quality trends report.

Another important reason for this requirement is to provide for the ultimate integration of monitoring data from the new $PM_{2.5}$ monitoring network and the visibility monitoring network, both of which will include $PM_{2.5}$ and PM_{10} mass as well as compositional analysis by aerosol species. Class I area particle mass and speciation data can fill important data gaps in defining regional concentrations for air quality modeling analyses. As noted above, EPA seeks for these two monitoring networks to be developed in a complementary manner.

Due to the well-established quality assurance procedures and accessibility of data collected through the IMPROVE network, EPA does not expect this reporting requirement to be exceptionally burdensome. The electronic transfer of data should facilitate the process as well. The EPA requests public comment on its proposed requirement for reporting of data, and on the other proposed revisions to the visibility monitoring requirements.

I. Long-Term Strategy

The existing long-term strategy provisions in 40 CFR 51.306 require several basic elements:

—A strategy for making reasonable progress in improving visibility in all mandatory Class I Federal areas in the State. Specifically, the strategy should include measures necessary to remedy any reasonably attributable impairment certified by a FLM. The strategy should specify emission reduction measures for sources subject to BART requirements, and for other sources causing or contributing to such visibility impairment in these areas. The strategy should also include measures necessary for reasonable progress to be achieved in other mandatory Class I Federal areas located outside the State that may be affected by emissions within the State.

—A SIP assessment every 3 years, including a review of progress made and a revision of the long-term strategy as appropriate, including consultation with the FLM and a report to EPA and the public.

—Provisions for review of new source impacts on visibility.

—Coordination with existing plans and goals, including those of FLMs.

The basic framework for the long-term strategy provisions in 40 CFR 51.306 remains the same. The proposed revisions do not affect the on-going requirement for States to continue to address reasonably attributable impairment while adding new provisions to address regional haze impairment. The EPA has specifically revised the regulation to preserve the requirements in the existing visibility program for addressing reasonably attributable impairment. These requirements are to continue to be implemented independent of whether the State is currently meeting reasonable progress targets or not. Proposed 40 CFR 51.306(a)(1) has been revised to address this point. This proposed revision requires the State to first identify whether there is an active certification of reasonably attributable impairment for any Class I area in the State. If an active certification is pending, the long-

term strategy needs to address the progress made in assessing BART pursuant to this certification and other related activities. This proposed section provides that all other visibility impairment will be considered as regional haze and be addressed in accordance with other provisions in 40 CFR 51.306, including the proposed 40 CFR 51.306(d).

The proposed 40 CFR 51.306(d) (1) and (2) set forth requirements for the State, within 12 months to develop a procedure that will, by a date 5 years from rule promulgation, determine current visibility conditions for every mandatory Class I Federal area. The procedure should provide for coordination with the FLMs and use appropriate data available or planned for under the monitoring plan. Current conditions are to be defined (or estimated for mandatory Class I Federal areas without monitoring at the time of promulgation of these revisions) for the average of the 20 percent most impaired days and 20 percent least impaired days, using the deciview scale. The State should use all years where monitoring data are available or estimation and apportionment techniques noted in Agency guidance can be applied. As mentioned in the discussion of the baseline in Part E. above, a minimum of three years of monitoring data should be used. Adjustments to a baseline using 3 years of data can be made using more ambient data up to nine consecutive years.

In addition, proposed 40 CFR 51.306(d)(1) requires the State to establish a procedure in consultation with the FLMs by which levels of naturally-occurring PM-fine and visibility will be established within five years. Estimates from NAPAP 1990 and developed by Trijonis ($PM_{2.5}$: 1.5 $\mu g/m^3$ in west, 3.3 $\mu g/m^3$ in east) may be converted to deciview and used as a default as necessary. After the SIP revision due in 2003, these assessments will then be required every 3 years. The periodic assessment of natural and current conditions should take into consideration new findings from the research community, improved emissions estimates for wildfire, prescribed fire and windblown dust, and any future policies for ecosystem management, prescribed fire, and so on.

The proposed 40 CFR 51.306(d)(3) also requires that the regional haze long-term strategy submitted within 1 year of the final promulgation of these rules include provisions for requiring that for each Class I area with existing anthropogenic impairment greater than 1 deciview, the State shall within 5 years of rule promulgation (except in the case of States concurrently preparing nonattainment control strategy SIP revisions for $PM_{2.5}$) adopt measures and revise its SIP to include emission reduction strategies that would meet the reasonable progress targets within the next 3-year period. These measures are to address the best available retrofit technology requirement, as well as other necessary measures from non-BART sources to ensure that reasonable progress targets are achieved. Such measures should include a combination of local and regional measures. Regional measures recommended through the multistate implementation process are expected to take regional modeling efforts into consideration. States will take these assessments into account, but will be the ultimate authority responsible for control strategy development and implementation. The types of analyses conducted by the GCVTC to identify and assess the various source categories contributing to regional haze on the Colorado plateau can serve as a model for regional approaches to develop strategies for making reasonable progress. Although the GCVTC process did not emphasize analysis of sources potentially subject to BART, EPA believes it is important that States make such an analysis a primary component of the long-term strategy.

The proposed timing for required emission reduction strategies for regional haze is designed to allow sufficient time to conduct technical assessments on a regional scale. The EPA also proposes that emission reduction strategies for visibility be revised every 3 years thereafter in order to meet the reasonable progress targets for any mandatory Class I Federal areas located in the State. These revised strategies are to be implemented through SIP revisions.

Section 51.306(f) of 40 CFR specifies a number of factors, currently set forth in 40 CFR 51.306(e), in considering the need for visibility-specific measures, including the measures being implemented for other programs. It is possible that for some areas of the country, such as parts of the Eastern U.S., emission reductions achieved for the acid rain program could be sufficient to meet the presumptive reasonable progress targets initially. The EPA has proposed revisions that would require the State to address the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the next 10–15 years when developing emissions strategies that will meet the reasonable progress requirements. In some areas, these changes in emissions would be expected primarily from population growth, while in others emissions changes may result from potential new industrial, energy, natural resource development, or land management activities.

The proposed 40 CFR 51.306(d)(3)(ii)(B) would require SIPs to explicitly address the contribution by each State needed to meet reasonable progress targets. This section provides that such strategies should be consistent with strategies recommended through regional planning processes conducted for related air quality issues. This provision should serve as an incentive for States to participate in regional planning activities. The EPA believes that multi-state planning, modeling, and control strategy assessment will be important in addressing regional haze. At the same time, each State is ultimately responsible for determining its contribution to ensure reasonable progress in mandatory Class I Federal areas affected by its emissions sources and implementing appropriate emissions control strategies. In evaluating visibility SIP revisions, the EPA will consider the information submitted by the State as well as any relevant regional planning analysis.

The proposed 40 CFR 51.306(d)(4) sets forth requirements to be addressed by the State in the implementation plan revision if it has not met the presumptive reasonable progress targets over the past 3-year period. This provision requires the State to first determine whether targeted emissions reductions planned for in its previous long-term strategy revision were achieved. This approach follows from the GCVTC definition of reasonable progress as ''continuous emission reductions.'' This step would involve reviewing emissions sources, inventories, and other data used as the ''baseline'' for any modeling assessments or assumptions used in developing the strategy. If such reductions were found to have been actually achieved, the State must then evaluate other factors, such as meteorological conditions, that were responsible for not achieving the targets. This assessment must be provided to EPA as part of the implementation plan revision process. If planned emission reductions were not achieved, then the State must revise its emissions reduction strategies to enable it to meet over the next 3-year period the presumptive reasonable progress targets that would have been required if the targets had been achieved initially. This 3-year submittal, review and adjustment of emission reduction strategies is similar to the tracking of reasonable

further progress for the NAAQS. Additional discussion on achieving reasonable progress targets is found in Unit I.F.2.b., Determining Baseline Conditions, of this action.

The proposed 40 CFR 51.306(d)(5) introduces requirements for States to follow in developing ''alternate progress targets.'' A State would pursue development of such targets if it can demonstrate that achievement of the presumptive targets would not be reasonable due to the factors found in section 169(A)(g)(1) of the Act that are to be considered in developing long-term strategies. These factors include the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any affected source or equipment therein. This section requires the State to provide to EPA a satisfactory justification for any alternate progress target. The State should consult with other States whose emissions may contribute to regional haze in the Class I area, the appropriate Federal Land Manager, and EPA in development of an alternative reasonable progress target for any Class I area. This provision recognizes that consideration of these factors may lead a State to adopt alternative reasonable progress targets for a mandatory Class I Federal area that differ from those of other mandatory Class I Federal areas within a planning region. However, the proposed rules prohibit States from interpreting the alternative target to allow a degradation of visibility conditions due to human-caused emissions. At a minimum, for any three year period between long-term strategy revisions, the State's plan should provide maintenance of current conditions for the most and least impaired days. The alternative target and corresponding justification must be submitted as part of the State visibility SIP revision process. Any alternative reasonable progress target submitted by the State will be reviewable through public hearings on the SIP revision and will be subject to approval by EPA.

The EPA seeks public comment on all aspects of its proposed regulatory revisions to the visibility long-term strategy requirements in 40 CFR 51.306 as well as all of the other proposed policies and regulatory revisions related to regional haze SIP requirements set forth in this action.

II. Regulatory Requirements

The discussion below addresses requirements of the Regulatory Flexibility Act, Unfunded Mandates Reform Act, Paperwork Reduction Act, Executive Order 12898, and Executive Order 12866 for purposes of the proposed regional haze rule.

A. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether a regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and other requirements of the Executive Order. The order defines ''significant regulatory action'' as one that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

In view of its important policy implications, the proposed regional haze rule has been judged to be a ''significant regulatory action'' within the meaning of the Executive Order, and EPA has submitted it to OMB for review. The drafts of proposed rules submitted to OMB, the documents accompanying such drafts, written comments thereon, written responses by EPA, and identification of the changes made in response to OMB suggestions or recommendations will be documented in the public docket and made available for public inspection at EPA's Air and Radiation Docket Information Center (Docket No. A–95–38).

The EPA has prepared and entered into the docket a Regulatory Impact Analysis (RIA) entitled Regulatory Impact Analysis for Proposed Ozone and Particulate Matter National Ambient Air Quality Standard and Regional Haze Rule. This RIA assesses the costs, economic impacts, and benefits associated with the implementation of the current and several alternative NAAQS for ozone and PM and the regional haze rule. As discussed in the RIA, there are an unusually large number of limitations and uncertainties associated with the analyses and resulting cost impacts and benefit estimates. Furthermore, the assumptions regarding implementation are necessarily speculative in nature. Under the proposed regional haze rule, States bear the primary responsibility for establishing control requirements for assuring reasonable progress toward the national visibility goal. Until such time as States make decisions regarding control measures, EPA may only speculate as to which sources may be regulated and as to what types of control requirements or emission limits may be required.

The proposed regional haze rule establishes presumptive targets for visibility improvements in mandatory Class I Federal areas, but also provides discretion to the States to establish alternate targets where warranted. The EPA has prepared a RIA that analyzes the costs and benefits of implementing a regional haze program to achieve 2 different presumptive targets for visibility improvement: one target equal to a rate over 10 years, the other over 15 years. The targets can be attained by taking into account emissions reductions achieved under other air quality programs, including implementation of the new ozone and particulate matter standards. The RIA analysis estimates that annual costs over the period 2000–2010 would likely result in the expenditure by State, local, and tribal governments and the private sector, in aggregate, of over $100 million per year for both presumptive options.

It is important to note, however, that there is significant uncertainty in these cost estimates for a number of technical reasons specific to the analysis, but more importantly because of the flexibility that States have in establishing alternate targets and in developing emissions control strategies to meet the target. The EPA has no way of estimating the number of States that may seek to establish alternate progress targets for any of the 156 mandatory Class I Federal areas required to make progress or in predicting the actual control measures that will be employed. For this reason, the costs associated with the presumptive target options in the RIA may be significantly overstated. As stated in the RIA, total annual costs of the rule in 2010 would be zero if all States adopted alternative reasonable progress targets which imposed no additional controls beyond those required for the PM NAAQS, $2.1 billion if all States adopted the proposed presumptive reasonable progress target of 1.0 deciview improvement in the most impaired days over 15 years, and $2.7 billion if all States adopted the proposed presumptive reasonable progress target of 1.0 deciview improvement over 10 years. Nevertheless, it is likely that they would exceed the $100 million threshold in any event.

Total annual benefits in 2010 under these three alternative scenarios would be $0, $1.3 to $3.2 billion, or $1.7 to $5.7 billion respectively. Since it is likely that some States will adopt the presumptive targets and some will adopt alternative targets for mandatory Class I Federal areas, actual costs and benefits would probably fall within these ranges. These benefits are incremental to the visibility benefits, including those for mandatory Class I Federal area visibility improvement expected from implementation of the PM and Ozone NAAQS recently promulgated on July 18, 1997 (62 FR 38652 and 38856). There are important benefits to human health and welfare, and to the environment from improving air quality in these important natural areas by reducing emissions of fine particles (the main contributors to visibility impairment).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., provides that, whenever an agency is required to publish a general notice of rulemaking for a proposed rule, the agency must prepare regulatory flexibility analyses for the proposed and final rule unless the head of the agency certifies that it will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small governments (e.g., cities, towns, school districts), and small non-profit organizations. The regional haze rule being proposed today applies to States, not to small entities. It proposes to establish presumptive visibility protection goals for certain national parks and wilderness areas that States may modify, where appropriate, based on a review of specific criteria related to the degree of visibility impairment, the costs of controlling emissions and other relevant information, after consultation with the Federal Land Managers. In addition, the rule proposes planning, monitoring and progress reporting requirements that would apply to States to assure that States are making progress toward the national visibility goal for mandatory Class I Federal areas.

Under the proposed rules, States would decide how to obtain sufficient emissions control measures through State-level rulemakings. In developing emission control measures, section 169A of the Clean Air Act requires States to address best available retrofit technology requirements (BART) for a select list of major stationary sources defined by the Clean Air Act section 169A(g)(7). Before any such major stationary source would be subject to BART for regional haze, however, the State would have to make a determination which involves some State discretion in considering a number of relevant statutory factors set forth in section 169A(g)(2), including the costs of compliance, any existing control technology in use at the source, the remaining useful life of the source, the energy and nonair quality environmental impacts of compliance, and the degree of visibility improvement that may reasonably be anticipated. Further, EPA is seeking public comment on the potential for alternative approaches to addressing the BART requirement, as discussed earlier in this action. For BART and for other measures the State may adopt to meet the requirements of a regional haze rule, EPA will also be exploring further policy issues in a future implementation guidance. The potential consequences of today's proposal are thus speculative at this time. Any requirements for emission control measures, like the SIP process for attaining national ambient air quality standards, will be established by State rulemaking. Because the States will exercise substantial intervening discretion in implementing the proposed rule, EPA certifies that the regional haze rule being proposed today will not, if promulgated, have a significant economic impact on a substantial number of small entities within the meaning of the RFA. The legal reasoning supporting this certification is analogous to the reasoning explained in certifying the recent NAAQS rulemakings for ozone and particulate matter; a full statement of this reasoning was published previously in the **Federal Register** as part of the Notices of Final Rulemaking on July 18, 1997, for those two NAAQS rulemakings (62 FR 38652 and 38856).

The EPA's finding that today's proposed regional haze rule will not have a significant economic impact on a substantial number of small entities also entails that the small-entity provisions in section 609 of the RFA do not apply. Nevertheless, EPA undertook small-entity outreach activities modeled on these provisions on a voluntary basis. These activities include conducting a review panel, following RFA procedures, to solicit advice and recommendations from representatives of small businesses, small governments, and other small organizations. This panel review resulted in a final report entitled ''Final Report of the Review Panel Convened to Consider EPA's Planned Phase I Guidance on Implementation of New or Revised Ozone and Particulate Matter NAAQS and Proposed Rule on Regional Haze'', dated June 10, 1997. A copy of the report has been placed in the docket for this rulemaking. The EPA has also added a number of additional small-entity representatives to its CAAAC Subcommittee on NAAQS and regional haze implementation.

The goal of this outreach activity is to work with the small-entity representatives to find implementation approaches that minimize impacts on small entities, and to help and encourage the States to use these approaches as they develop their State Implementation Plans for NAAQS attainment and regional haze reduction. It should be noted that the principal way States can minimize small-entity impact is by their choices of control strategies. While development of control strategies will be required in order for States to fully implement a regional haze program, EPA plans to address coordination of regional haze and NAAQS-related implementation strategies in future guidance. However, the small-entity review panel felt that it was important to share whatever information available with the States, so that states can begin thinking about small-entity impacts as part of their early planning. Therefore, the panel recommended that EPA develop and publish a guidance memorandum to the States which will summarize current knowledge on approaches to minimize small-entity impacts. The EPA has accepted that recommendation, and will publish such a memorandum shortly after today's action appears. Included in the guidance memorandum will be a preliminary list of various actions that States might take to alleviate adverse implementation impacts on small business while at the same time assuring that air quality goals are achieved. This list will then continue to be refined as part of the process to develop the future guidance.

C. Impact on Reporting Requirements

The information collection requirements in this proposed rule relating to State requirements for the protection of visibility in specially-protected national parks and wilderness areas have been submitted to OMB for review under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq. An Information Collection Request document has been prepared by EPA (ICR No. 1813.01 and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW (Milked 2137); Washington, DC 20460 or by calling (202) 260–2740.

This collection of information has an estimated reporting burden for the fifty

States and District of Columbia, averaging 623 hours per year per State. The Agency expects the Federal burden will be approximately 216 hours per year. The Agency anticipates annual States costs of about $1.0 million, approximately $25,000 per State. The Agency estimates the annual Federal costs to be approximately $7000. These estimates include time for reviewing requirements and instructions, evaluating data sources, gathering and maintaining data, and completing and reviewing the collection of information.

Send comments by October 20, 1997 regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (Mailcode 2137), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final rule will be accompanied with responses to OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Agency must prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and any disproportionate budgetary effects of the mandate; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Agency's prior consultation with elected representatives of State, local, and tribal governments and a summary and evaluation of the comments and concerns presented. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely impacted by the rule. Section 204 requires the Agency to provide for an effective process for State, local, and Tribal officials to provide meaningful and timely input in the development of regulatory proposals containing significant intergovernmental mandates.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative, for State, local, and tribal governments and the private sector, that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or unless the selection of this alternative is inconsistent with law.

This rule is being developed under the Federal Clean Air Act. The RIA, discussed in Unit II.A. above, contains an assessment of the costs and benefits of this proposed rule. Federal funds are available to meet some of the largely administrative costs to State, local, and Tribal governments through grants provided by EPA under the authority of section 105 of the Clean Air Act.

As reflected in the RIA, the rule is expected to have a greater effect initially on the private sector in the western United States than the eastern U.S. because certain emissions control measures under the Clean Air Act acid rain program are already under way to reduce sulfur oxides emissions in the eastern U.S., a major precursor to sulfate particles, the dominant fine particle constituent in the eastern U.S. Phase II of the acid rain trading program will continue through 2007. The rule is not expected to have any disproportionate budgetary effects on any State, local, or tribal government, or urban or rural or other type of community. The rule is not expected to have a material effect on the national economy.

In developing the proposed rule, EPA has provided numerous opportunities for consultation with interested parties, including State, local, and tribal governments. These opportunities include meetings and discussions under the Clean Air Act Advisory Committee, Subcommittee on Ozone, Particulate Matter, and Regional Haze Implementation Programs, and the Grand Canyon Visibility Transport Commission. The EPA's consideration of the recommendations from these two groups is discussed extensively in Unit I.C. of the preamble. The principal comments of State, local, and Tribal groups are also documented in the Subcommittee's Initial Report on Subcommittee Discussions (April 1997) and the GCVTC's Recommendations on Improving Western Vistas. Being comprised of State and Tribal governments, the GCVTC issued recommendations on a wide range of topics, including emission management alternatives, technical findings, and areas for further research. The EPA also will have a public comment period of at least 60 days on the proposed rule, as well as a public hearing, in order to allow for additional meaningful input into the development of the regulation.

The Agency is considering two main options for presumptive reasonable progress targets in developing the rule. EPA believes that because the rule also includes the flexibility for States to propose alternate reasonable progress targets based on certain criteria, one of which is the costs of compliance, the proposed rule meets the UMRA requirement in section 205 to select the least costly and burdensome alternative in light of the statutory mandate to issue regulations that make reasonable progress toward the national visibility protection goal. EPA also has provided a technical rationale in the preamble for defining the presumptive reasonable progress target rate equal to 1.0 deciview improvement in the most impaired days over 10 or 15 years.

E. Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. These requirements have been addressed to the extent practicable in the RIA cited above.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

Dated: July 18, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 is revised to read as follows:

Authority: 42 U.S.C. 7410, 7414, 7421, 7470–7479, 7491, 7492, 7601, and 7602.

Subpart P—Protection of Visibility

2. Section 51.300 is amended as follows:

a. Adding a colon at the end of the words ''this subpart are'' in paragraph (a) introductory text and adding a semicolon in place of the comma at the end of paragraph (a)(1).

b. Revising ''§ 51.24'' to read ''§ 51.166'' in paragraph (a)(2);

c. Adding a sentence to the end of paragraph (a)(2);

d. Adding a heading to paragraph (b)(1) and revising paragraph (b)(1) introductory text;

e. Revising paragraph (b)(2) introductory text;

f. Adding a new paragraph (b)(3), to read as follows:

§ 51.300 Purpose and applicability.

(a) * * *

(2) * * * This subpart sets forth requirements addressing visibility impairment in its two principal forms: ''reasonably attributable'' impairment (i.e., impairment attributable to a single source/small group of sources) and regional haze (i.e., widespread haze from a multitude of sources which impairs visibility in every direction over a large area).

(b) * * * (1) *General applicability*. The provisions of this subpart pertaining to implementation plan requirements for assuring reasonable progress in preventing any future and remedying any existing visibility impairment are applicable to:

* * * * *

(2) The provisions of this subpart pertaining to implementation plans to address reasonably attributable visibility impairment are applicable to the following States:

* * * * *

(3) The provisions of this subpart pertaining to implementation plans to address regional haze visibility impairment are applicable to all States as defined in section 302(d) of the Clean Air Act except Guam, Puerto Rico, American Samoa, and the Northern Mariana Islands.

3. Section 51.301 is amended as follows:

a. Adding the words ''(or the Secretary's designee)'' after the word ''area'' to paragraph (g);

b. Revising ''§ 51.24'' to read ''§ 51.166'' in paragraph (p);

c. Adding the words ''light extinction,'' after the phrase ''in terms of'' in paragraph (q);

d. Adding the words ''light extinction,'' to the beginning of the parenthetical ''(visual range, contrast, coloration)'' in paragraph (x);

e. Adding new paragraphs (z) through (cc), to read as follows:

§ 51.301 Definitions.

* * * * *

(z) *Reasonable progress target* means for the purposes of addressing regional haze visibility impairment: an improvement in the average of the twenty percent most impaired days each year, equivalent to an improvement (decrease) of [Option A: 1.0 deciview per 10 years or Option B: 1.0 deciview per 15 years], and no degradation (less than 0.1 deciview increase) in the average of the twenty percent least impaired days each year.

(aa) *Regional haze visibility impairment* means any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions that is caused predominantly by a combination of many sources, over a wide geographic area. Such sources include, but are not limited to, major and minor stationary sources, mobile sources, area sources, fugitive emissions, and forestry and agricultural practices.

(bb) *Deciview (dv)* means the metric, based on light extinction, used for an atmospheric haze index, such that uniform changes in haziness correspond to the same metric increment across the entire range from pristine to highly impaired haze conditions. Deciview values are calculated by multiplying by 10 the natural logarithm of 1/10th of the atmospheric light extinction coefficient expressed in units of inverse megameters.

(cc) *State* means *State* as defined in section 302(d) of the Clean Air Act.

4. Section 51.302 is amended as follows:

a. Revising paragraph (a)(1);

b. In paragraph (a)(2)(i) by revising ''§ 51.4'' to read ''§ 51.102'';

c. Revising ''§ 51.4'' to read ''§ 51.102'' in paragraph (a)(2)(ii);

d. Adding the word ''revision'' after the word ''plan'' at the end of paragraph (a)(2)(ii);

e. Revising ''§ 51.5'' to read § 51.103'' in paragraph (a)(3);

f. Revising paragraph (b);

g. Adding the words ''reasonably attributable'' after the word ''exists'' in paragraph (c)(1);

h. Revising paragraph (c)(2) introductory text;

i. Adding the phrase '', including a schedule'' after the word ''measures'' in paragraph (c)(2)(i);

j. Adding paragraphs (c)(2)(iv) and (c)(2)(v);

k. Adding the words ''reasonably attributable'' after the phrase ''For any existing'' in paragraph (c)(4) introductory text;

l. Adding the words ''or revision'' after the word ''approval'' at the end of the sentence in paragraph (c)(4)(iv);

m. Adding a new paragraph (c)(5), to read as follows:

§ 51.302 Implementation control strategies.

(a) * * *

(1) (i) Each State identified in § 51.300(b)(2) must have submitted, not later than September 2, 1981, an implementation plan revision meeting the requirements of this subpart pertaining to reasonably attributable visibility impairment.

(ii) Each State identified in § 51.300(b)(3) must submit, by [date one year from publication of final rule revisions to this subpart], an implementation plan revision meeting the requirements set forth in this subpart addressing regional haze visibility impairment, including provisions for submittal of future implementation plan revisions in accordance with § 51.306(c), with the exception of requirements related to reasonably attributable visibility impairment in paragraphs (c)(2)(iii) and (c)(4) of this section, § 51.304 and § 51.305(a).

* * * * *

(b) *State and Federal Land Manager coordination*. (1) The State must identify to the Federal Land Managers, in writing and by [date 30 days from the date of publication of the final rule revisions to this subpart], the title of the official to which the Federal Land Manager of any mandatory Class I Federal area can submit a recommendation on the implementation of this subpart including but not limited to:

(i) Identification of reasonably attributable and regional haze visibility impairment in any mandatory Class I Federal area(s);

(ii) Identification of elements for inclusion in the visibility monitoring strategy required by § 51.305; and

(iii) Identification of elements for inclusion in the long-term strategy and its periodic revisions required by § 51.306.

(2) The State must provide opportunity for consultation, in person

and at least 60 days prior to holding any public comment on proposed implementation plan revisions, with the Federal Land Manager on the proposed SIP revisions required by this subpart. This consultation must include the opportunity for the affected Federal Land Managers to discuss their:

(i) Recommendations on the methods for estimating natural conditions and levels of impairment of visibility in any mandatory Class I Federal area; and

(ii) Recommendations on the development and implementation of the long-term strategy.

(3) The plan or plan revisions must provide procedures for continuing consultation between the State and the Federal Land Manager on the implementation of the visibility protection program required by this subpart.

(c) * * *

(2) The implementation plan must contain the following to address reasonably attributable and regional haze visibility impairment:

* * * * *

(iv) A monitoring strategy as required in § 51.305.

(v) A requirement for revision of the plan, including revisions to the monitoring strategy required in § 51.305 and the long-term strategy required in § 51.306, no later than four years from the date of the plan revision required in paragraph (a)(1)(ii) of this section, and no later than every 3 years thereafter.

* * * * *

(5) *Plan revisions for regional haze visibility impairment.* The implementation plan due pursuant to paragraph (a)(1)(ii) of this section by [date one year from the date of the **Federal Register** publication of the final rule] must contain:

(i) A list of existing stationary facilities in the State, and a plan and schedule for evaluating, by [date 3 years from the date of **Federal Register** publication of the final rule], the best available retrofit technology and corresponding potential emission reductions for those existing stationary facilities the State determines may reasonably be anticipated to contribute to regional haze visibility impairment in any mandatory Class I Federal area located within or outside the State.

(ii) Revisions as necessary for the State to meet the requirements of section 110(a)(2) of the Clean Air Act as they pertain to implementation of measures to address regional haze visibility impairment.

5. Section 51.305 is amended as follows:

a. Revising the first sentence in paragraph (a) introductory text;

b. Redesignating existing paragraph (b) as paragraph (c);

c. Adding new paragraph (b), to read as follows:

§ 51.305 Monitoring.

(a) For the purposes of addressing reasonably attributable visibility impairment, each State containing a mandatory Class I Federal area where visibility has been identified as an important value (i.e., each State identified in § 51.300(b)(2)) must include in the plan a strategy for evaluating visibility in any mandatory Class I Federal area by visual observation or other appropriate monitoring techniques. * * *

(b) For the purposes of addressing regional haze visibility impairment, the State must include in the plan required under § 51.302(a)(1)(ii) a monitoring strategy for characterizing regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the State. The strategy must be revised no later than four years from the date of the plan revision required in § 51.302(a)(1)(ii), and no later than every three years thereafter. The strategy must be coordinated as appropriate with Federal Land Managers, other States, and EPA, and must take into account such guidance as is provided by the Agency.

(1) The plan must provide for establishment, within 12 months, of any additional monitoring sites needed to assess whether reasonable progress targets are being achieved for all mandatory Class I Federal areas within the State.

(2) The plan must include a requirement to assess the relative contribution to regional haze visibility impairment at each mandatory Class I Federal area in the State by emissions from within and outside the State.

(3) A State required to submit a plan under § 51.302(a)(1)(ii) and having no mandatory Class I Federal areas must include in its plan procedures by which monitoring data will be used to determine the contribution of emissions from within the State to regional haze visibility impairment in any mandatory Class I Federal area.

(4) The plan must provide for the reporting of all visibility monitoring data to EPA at least annually for each mandatory Class I Federal area in the State having such monitoring. The State should follow reporting procedures found in applicable EPA guidance. To the extent possible, reporting of visibility monitoring data shall be accomplished through electronic data transfer techniques.

* * * * *

6. Section 51.306 is amended as follows:

a. Adding introductory text to paragraph (a);

b. Revising paragraph (a)(1);

c. Revising paragraphs (c) introductory text, (c)(1), (c)(2) and (c)(4);

d. Redesignating paragraphs (d) through (g) as new paragraphs (e) through (h);

e. Adding new paragraph (d);

f. Amending the newly redesignated paragraph (e) by adding the words ‘‘on reasonably attributable impairment and regional haze impairment’’ after the word ‘‘impacts’’ in the first sentence, by revising ‘‘§ 51.24’’ to read ‘‘§ 51.166’’, and by revising ‘‘§ 51.18’’ to read ‘‘§ 51.165’’;

g. Amending newly redesignated paragraph (f)(5) by removing the word ‘‘and’’ at the end of the paragraph;

h. Amending newly redesignated paragraph (f)(6) by removing the period at the end of the paragraph and adding ‘‘, and’’ in its place;

i. Adding a new paragraph (f)(7);

j. Revising newly redesignated paragraph (g), to read as follows:

§ 51.306 Long-term strategy.

(a) For the purposes of addressing reasonably attributable visibility impairment and regional haze visibility impairment:

(1) Each plan required under § 51.302(a)(1) (i) and (ii) must include a long-term (10–15 years) strategy for making reasonable progress toward the national goal specified in § 51.300(a). This strategy must cover any existing reasonably attributable visibility impairment the Federal Land Manager certifies to the State at least 6 months prior to plan submission, or 6 months prior to the due date for subsequent long-term strategy revisions as required by this section, unless the State determines that this impairment is not reasonably attributable to a single source or small group of sources. Any impairment determined by the State not to be reasonably attributable impairment must be addressed as regional haze impairment according to the provisions in this section. The long-term strategy must address any integral vista which the Federal Land Manager has adopted in accordance with § 51.304.

* * * * *

(c) The plan must provide for periodic revision of the long-term strategy no later than four years from the date of the plan revision required in § 51.302(a)(1)(ii), and no later than every three years thereafter. This process for developing the periodic plan revision must include consultation with the appropriate Federal Land Managers, and

a State report to the public and the Administrator on progress toward the national goal, including:

(1) The progress achieved in remedying existing impairment of visibility in any mandatory Class I Federal area, including an evaluation of whether the reasonable progress target was achieved for each mandatory Class I Federal area addressed by the plan since the last plan revision;

(2) The ability of the long-term strategy to prevent future impairment of visibility in any mandatory Class I Federal area, including an evaluation of whether the reasonable progress target will be achieved for each mandatory Class I Federal area addressed by the plan until the next plan revision;

* * * * *

(4) Additional measures, including the need for SIP revisions, that may be necessary to assure reasonable progress toward the national goal and achievement of the reasonable progress target for any mandatory Class I Federal area;

* * * * *

(d) *Regional haze long-term strategy*. The plan required under § 51.302(a)(1)(ii) must include a long-term strategy that addresses regional haze visibility impairment for each mandatory Class I Federal area within the State and for each mandatory Class I Federal area located outside the State which may be affected by emissions within the State, including provisions requiring the following:

(1) Not later than [date 12 months from the date of **Federal Register** publication of final rules] the State, in consultation with the appropriate Federal Land Managers, must define the procedure to be used for estimating the visibility under natural conditions expressed in deciviews, in each mandatory Class I Federal area, for the average of the twenty percent most impaired days and for the average of the twenty percent least impaired days for a representative year. In the long-term strategy revision due after determination of the procedure, the State must complete the procedure and establish the natural conditions estimate. For each long-term strategy revision due after establishment of the natural conditions estimate, the State shall consider, in consultation with the Federal Land Manager, any new data since the last long-term strategy revision that would alter the established estimate of natural conditions and propose appropriate changes as part of the plan revision.

(2) Not later than [date 12 months from the date of **Federal Register** publication of the final rules], the State, in consultation with the appropriate Federal Land Managers, must determine for each mandatory Class I Federal area a procedure for establishing current visibility conditions expressed in deciviews, for the average of twenty percent most impaired days each year, and for the average of the twenty percent least impaired days each year using the existing visibility monitoring network taking into account the monitoring techniques described in EPA guidance. For mandatory Class I Federal areas without representative data, the plan shall identify procedures to be followed to establish current visibility conditions not later than [date 5 years from **Federal Register** publication of final rules].

(3) No later than [date 5 years from the date of **Federal Register** publication of final rules] and as part of each long-term strategy revision due thereafter, the State must:

(i) Identify visibility under representative natural conditions for the average of the twenty percent most and least impaired days for each mandatory Class I Federal area;

(ii) For any mandatory Class I Federal area where current conditions for the average of 20 percent most impaired or 20 percent least impaired days exceed natural background by one deciview or more, include, in the plan, emission management strategies to meet the reasonable progress target for the period covered by the long-term (10–15 years) strategy. At a minimum, these emission management strategies must include:

(A) Provisions to address the BART requirement for those existing stationary facilities determined to be causing or contributing to regional haze visibility impairment, in accordance with § 51.302(c)(4) (ii) through (v).

(B) Other measures necessary to obtain the portion of emission reductions from sources located within the State, developed based upon all available information, to achieve the reasonable progress target for each mandatory Class I Federal area in the State or affected by emissions from the State. These measures should be consistent with strategies developed in conjunction with other States through regional planning processes to address related air quality issues and clearly identify the emissions changes expected to occur that will produce the expected improvement in visibility. The portion of emissions contribution being addressed by a State's plan revision and the technical basis for the apportionment should be clearly specified.

(4) States not achieving the reasonable progress target for any mandatory Class I Federal area over the three year time period since establishment of the strategy or the prior plan revision (i.e., State more than 10 percent deficient in meeting the reasonable progress target for either the most or least impaired days) must provide in the plan revision a review of emissions reduction estimates relied on in the development of the prior long-term strategy revision. If expected emissions reductions occurred, then the State must at a minimum provide an assessment of meteorological conditions, completeness of emissions sources subject to strategies, and other factors that likely influenced the relationship between emissions and visibility conditions. If expected emissions reductions were not achieved, the State shall revise emissions management strategies as appropriate to achieve the presumptive reasonable progress target.

(5) For establishment of an alternate reasonable progress target for a mandatory Class I Federal area, the State must provide a justification for the alternate target demonstrated to the satisfaction of EPA. Any justification for an alternate reasonable progress target must address the following factors: the availability of source control technology, the costs of compliance with the reasonable progress target, the energy and non-air quality environmental impacts of compliance, the existing pollution control measures in use at sources, the remaining useful life of sources, the degree of improvement of visibility which may reasonably be anticipated to result from application of control technologies or other measures. In no event shall an alternate progress target allow visibility to degrade over the planning period covered. The State shall consult with the Federal Land Managers and all other States the emissions from which may reasonably be anticipated to cause or contribute to visibility impairment in the affected mandatory Class I Federal area in considering development of an alternate target.

(6) States preparing nonattainment plans for fine particulate matter ($PM_{2.5}$) may submit the plan requirements under paragraph (d)(3) of this section by but no later than the required date for submittal of the State's $PM_{2.5}$ attainment control strategy plan.

* * * * *

(f) * * *

(7) The anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the next 10–15 years.

(g) The plan must explain why the factors in paragraph (f) of this section and other reasonable measures were or were not evaluated as part of the long-term strategy.

* * * * *

§ 51.307 [Amended]

8. Section 51.307 is amended as follows:

a. Revising ''§ 51.24'' to read ''§ 51.166'' in paragraph (a) introductory text;

b. Revising ''§ 51.24'' to read ''§ 51.166'' in paragraph (a)(2);

c. Revising ''§ 51.24'' to read ''§ 51.166'' in paragraph (c).

9. In addition to the previous amendments, in the sections listed in the first column remove the reference listed in the middle column and add the reference listed in the third column in its place:

Section	Remove	Add
51.301(v)	section 303	§ 51.303.
51.302(c)(2)(i)	section 305	§ 51.305.
51.302(c)(2)(i)	section 306	§ 51.306.
51.302(c)(2)(i)	section 300(a)	§ 51.300(a).
51.302(c)(4)(i)	section 304(b)	§ 51.304(b).
51.303(a)(1)	section 302	§ 51.302.
51.303(c)	section 303	§ 51.303.
51.303(d)	section 303	§ 51.303.
51.303(g)	section 303	§ 51.303.
51.303(h)	section 303	§ 51.303.
51.304(c)	section 306(c)	§ 51.306(c).
51.306(c)(6)	section 303	§ 51.303.
51.306(e)	section 307	§ 51.307.
51.307(b)(1)	section 304	§ 51.304.
51.307(b)(1)	section 304(d)	§ 51.304(d).
51.307(c)	section 300(a)	§ 51.300(a).

[FR Doc. 97–19546 Filed 7–30–97; 8:45 am]

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federal register

Thursday
July 31, 1997

Part III

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards for Idaho; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–5864–2]

Water Quality Standards for Idaho

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is promulgating water quality standards applicable to the waters of the United States in the State of Idaho. These standards supersede certain aspects of Idaho's water quality standards that EPA disapproved in 1996. EPA disapproved those standards after concluding they were inconsistent with the Clean Water Act and EPA's implementing regulations. The proposal to this rulemaking was published in the **Federal Register** on April 28, 1997. EPA is promulgating new use designations for 5 specified waterbodies in the state of Idaho, as well as a variance procedure that may be used to obtain relief from those use designations. Today's rule also establishes temperature criteria applicable to bull trout spawning and rearing in specified waterbodies. Finally, EPA is promulgating a federal rule to supersede the state's excluded waters provision. EPA is not promulgating certain other aspects of the proposed rule, due either to further analysis by EPA or to state action which addressed these issues. These and other changes from the proposal are addressed in detail in the body of this preamble and in the response to comments document included in the administrative record for this rulemaking.

EFFECTIVE DATE: September 2, 1997.

ADDRESSES: The administrative record for today's final rule is available for public inspection at EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington, 98101, between 8:00 a.m. to 4:30 p.m. For access to the docket materials, call Lisa Macchio at 206–553–1834 for an appointment. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Lisa Macchio at U.S. EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington, 98101 (telephone: 206–553–1834), or William Morrow in U.S. EPA Headquarters at 202–260–3657.

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A. Potentially Affected Entities

Citizens concerned with water quality in Idaho may be interested in this rule. Entities discharging pollutants to waters of the United States in Idaho could be indirectly affected by this rule since water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities which may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to surface waters in Idaho.
Municipalities	Publicly-owned treatment works discharging pollutants to surface waters in Idaho.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also potentially be affected by this action. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in § 131.36 of Title 40 of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in **FOR FURTHER INFORMATION CONTACT** section.

B. Background

1. Statutory and Regulatory Authority

The preamble to the April 28, 1997 proposal provided a general discussion of EPA's statutory and regulatory authority to promulgate water quality standards. See 62 FR 23004–23005. EPA incorporates that discussion by reference here. Commenters questioned EPA's authority to promulgate certain aspects of the proposal. EPA is responding to those comments in the appropriate sections of this preamble, and in the response to comments document included in the administrative record for this rulemaking. Where appropriate, EPA's responses expand upon the discussion of statutory and regulatory authority found in the proposal.

2. Factual Background

EPA also incorporates by reference the factual background provided in the

preamble to the proposal, which covered Idaho's 1994 submittal of its water quality standards package, EPA's disapproval of certain aspects of this package, and the District Court's decision in *ICL* v. *Browner* ordering EPA to promulgate standards to supersede those that had been disapproved. See 62 FR 23005.

Shortly before the April 28, 1997 proposal, Idaho submitted the results of temporary rulemaking actions to address certain aspects of EPA's June 25, 1996 disapproval. This March 23, 1997, submittal includes permanent rules that had been adopted by the State Board of Health and Welfare in November of 1996 (addressing, among other things, antidegradation) and temporary rules adopted February of 1997 (addressing use designations for Lindsay Creek and West Fork Blackbird Creek). Because of the proximity of this submittal to EPA's court-ordered deadline for proposing federal water quality standards, EPA was not able to act on this submission prior to proposal. On May 27, 1997, EPA approved the State's new antidegradation policy and conditionally approved the use designations for Lindsay and West Fork Blackbird Creeks subject to completion of consultation required under section 7 of the Endangered Species Act (ESA). For the Lindsay and West Fork Blackbird Creek designations, final approval is also contingent upon completion of steps necessary to convert the state rulemaking from temporary to permanent status.

On June 19, 1997, Idaho adopted another temporary rule addressing unclassified waters, mixing zones, temperature criteria for bull trout, and use designations for 29 specific waterbodies that had been the subject of EPA's June 25, 1996 disapproval. On June 25, 1997, Idaho submitted a package for EPA's approval that included these temporary rulemakings, as well as use attainability analyses for certain other waterbodies addressed in the June 25, 1996 disapproval. On July 15, 1997, EPA issued a letter conditionally approving the unclassified waters, mixing zone, and use designation aspects of the state's submittal subject to both the completion of ESA section 7 consultation and the state taking the steps necessary to convert the rule from temporary to permanent status. Both the May 27, 1997, and the July 15, 1997, approval letters are included in the docket for today's rulemaking. The rationales for these approval actions are discussed in detail below.

3. Responses to Comments on Procedural Issues

EPA received comments on a number of issues related to the procedural aspects of this rulemaking. Because these comments relate to all aspects of the rule, they will be addressed first.

Comment: Many commenters complained about the brevity of the comment period. Commenters requested extensions of varying length, asserting that the short public comment period means that the proposed rule will not receive the public review it deserves. Some commenters objected to the form of notice used by EPA, claiming that publication in the **Federal Register** is not adequate.

Response: None of the comments included a showing that the 30 days comment period provided was inadequate as a matter of law. While EPA strives to accommodate requests for reasonable extensions to the extent practicable, a 30 day extension was not feasible here, given both the statutory deadline for final promulgation and the Court's order requiring a final rule by July 21, 1997. The inflexible deadline for promulgation meant that any extension of time for the comment period would necessarily shorten the time available for EPA to review comments received. Since comments received from the public are only meaningful to the extent the Agency has time to review them, EPA decided that a 30-day comment period was optimal in this case. EPA believes that the significant turnout at the public hearing, the volume of written comments, and the diverse interests represented by the commenters demonstrate that meaningful public review was available on the proposal.

To maximize the utility of the 30 days which EPA was able to provide, the agency issued an advance notice in the **Federal Register** that it planned to propose water quality standards to address the Idaho standards it had disapproved in June 1996, issued press statements at the time of the advance notice and the proposal, and put a copy of the proposal on the Internet. At the hearing, EPA also made available a fact sheet which explained how to find the proposal on the Internet.

EPA acknowledges that this rulemaking raised complicated technical issues, and that it is likely that information relevant to today's rule will continue to surface. EPA has attempted to provide streamlined mechanisms, such as the provisions for modification of the bull trout temperature criterion and variance provisions for use designations, that facilitate EPA's ability to address new information.

As to the assertion that a **Federal Register** notice does not provide adequate notice, EPA notes that under the Administrative Procedure Act, the **Federal Register** is the required mechanism for providing notices of proposed rulemaking, and as a matter of law the public is deemed to be on notice of matters which have been so published. However, to enhance public awareness, EPA issued press statements at critical times, and is aware of at least one newspaper article publicizing the hearing.

Comment: The Idaho Department of Environmental Quality (IDEQ) commented that despite numerous requests by DEQ to EPA over the past year for EPA to identify which state waters required more stringent temperature criteria to protect bull trout, DEQ did not learn of the breadth of EPA's proposal to designate thousands of waters in Idaho for bull trout until publication in the **Federal Register** notice in late April. This, IDEQ claimed, did not allow sufficient time to respond.

Response: One of the two sources EPA used for identifying bull trout streams was a list compiled by a state agency, Idaho Department of Fish and Game (IDFG). The waters in the other source, the data base complied by the interagency Interior Columbia Ecosystem Management Project, overlapped substantially with the waters on the list. Accordingly, although the state may not have known the exact list to be proposed by EPA until it appeared in the **Federal Register**, the state should have been generally aware of the potential magnitude of bull trout distribution in Idaho.

Comment: Commenters argued that there was inadequate opportunity for oral comment because EPA held only one hearing a mere two weeks after publication of notice in the **Federal Register**.

Response: EPA held two sessions, one during the day, and one during the evening, to accommodate people with different work and travel schedules. While the formal 2 week notice of the hearing was dictated by the extremely short schedule imposed by the District Court (a schedule which EPA sought unsuccessfully to have modified), EPA did take the extra steps described above to alert the public to the rulemaking. EPA scheduled the hearing at the middle, rather than the end, of the public comment period in order to provide an opportunity for the public to ask questions about the rule to facilitate their final, written comments. The vast

majority of commenters at the public hearing later submitted more detailed written comments.

Comment: Commenters stated that the administrative record should have been made available in Boise, as well as Seattle. Commenters recounted that, at one of the public hearings, an EPA employee represented that a copy of the record would be made available in Boise, and that an index of the record would be available to those who requested it, but that no notice was given to the public of such availability. This, the commenters claimed, violated the spirit, if not the letter, of the Administrative Procedure Act. The commenters requested that EPA extend the comment period to allow the public to review the record in Boise.

Response: The administrative record upon which the proposal was based was assembled and available to the public in EPA's Region X office in Seattle at the time of publication of the proposed rule in the **Federal Register**. Region X is the EPA region which is responsible for matters involving the state of Idaho. There is nothing in the APA which specifies where an administrative record must be made available. Indeed, in many EPA rulemakings, the administrative record is maintained at EPA Headquarters in Washington, DC; where an EPA rulemaking concerns a particular state or single location, the record is typically maintained in the offices of the regional office with responsibility for that state.

In the present case, an EPA employee stated at the hearing that EPA would also make a copy of the administrative record available in Boise shortly after. In accordance with that offer, a copy with an index was made available to the public in EPA's Boise Operations Office approximately a week after the hearing. While EPA had indicated at the hearing a willingness to mail a copy of the index in the meanwhile, it turned out that the administrative record itself (including an index) could be made available as quickly as an index could be mailed out, so there was no need to mail out the index alone as an interim measure.

Comment: Commenters argued broadly that the proposed rulemaking violates due process. A commenter also argued specifically that the proposed rulemaking does not comply with EPA's public participation rules (40 CFR part 25).

Response: For the reasons stated above, EPA believes that its rulemaking in this case provided ample notice, formal and informal, to the public of what EPA was proposing, why it was proposing, and the basis for the proposal, and that it provided adequate time for public comment.

EPA was required to shorten the time periods for public notice and comment from those cited by the commenter because of the Court's order. As the proposal explained, EPA's regulations allow exceptions to the otherwise applicable time periods in such circumstances. See 40 CFR 25.2(d): ''Specific provisions of court orders which conflict with this part, such as court-established timetables, shall take precedence over the provisions of this part.'' While the commenter is correct that the Court's order did not itself specifically direct EPA to limit the public comment period, the order did establish a specific timetable for proposal and promulgation which indirectly required such a result. EPA notes that the Court's original February 20, 1997, order directed EPA to issue a final rule by April 21 and thus did not allow time for *any* comment period. In response to EPA's motion for reconsideration which sought an extension to allow development of a proposed rule and cited 40 CFR Part 25, the Court directed the agency to propose a rule by April 21, and to promulgate a final rule by July 21, 1997. Within the constraints of the schedule imposed by the Court, EPA did take what steps it could to enhance the public's ability to comment, through its advance notice and the like. *See* responses to previous comments.

4. Indian Country Issues

Today's promulgation does not apply to waters in Indian country. Although the proposal did not address the applicability of designated uses or the bull trout temperature criteria to waters in Indian country, it was never EPA's intent to establish such uses or criteria for waters in Indian country by this rule. As explained in the discussion below, today's rule clarifies that the temperature criteria do not apply to waters located in Indian country. Regarding the use designations for specific water bodies, EPA found after the proposal that certain proposed use designations would affect waters in Indian country. For the reasons set forth below, EPA has excluded these from the final rule.

C. Unclassified Waters

1. Proposal

On April 28, 1997, EPA proposed to promulgate a default use designation for unclassified waters for the state of Idaho which provided for the protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water. Specifically, EPA proposed cold water biota and primary contact recreation beneficial uses for unclassified waters. EPA proposed such standards because EPA had determined that Idaho's designated beneficial use for unclassified waters was incomplete and therefore inconsistent with the CWA and EPA's implementing regulations at 40 CFR part 131 (see 62 FR 23005).

2. Recent Idaho Actions

On June 19, 1997, Idaho revised its unclassified waters designated beneficial use to provide for the protection of cold water biota and primary or secondary contact recreation. (The revised provision also changes the terminology from ''unclassified'' to ''undesignated'' for clarity.) On July 15, 1997, EPA approved Idaho's revised beneficial use for unclassified waters as being consistent with the CWA and EPA's implementing regulations.

Idaho's revised designated beneficial use for unclassified waters provides the same level of protection for aquatic life that EPA had proposed, cold water biota. This is consistent with EPA's findings that the majority of native Idaho fish are classified as cold water species and the presence of these species occurs throughout the entire State (62 FR 23006).

With respect to recreation, Idaho's revised designated beneficial use for unclassified waters affords the state some discretion as to whether to which recreational use—primary or secondary contact recreation—to apply to any specific unclassified water. EPA determined this flexibility was acceptable because Idaho's bacteria criteria for secondary contact recreation is equivalent to EPA's bacteria criteria for primary contact recreation. EPA believes that maintaining water quality sufficient for primary contact recreation meets the minimum requirements of the CWA regardless of whether or not a water body is actually designated for primary contact recreation. For example, there may be situations where primary contact recreation is undesirable (e.g., streams used as a source for public drinking water) or unsafe (e.g., streams with high velocity and large rocks), yet the state may want to maintain water quality sufficient for primary contact (e.g., because incidental swimming does occur or because a downstream segment is designated for primary contact recreation.

In addition, Idaho established in its unclassified waters beneficial use designation a process by which the state can designate undesignated waters. Idaho's process at IDAPA

16.01.02.101.01. b. and c. specifies that the state may reexamine relevant data to substantiate a specific use designation for a specific water body when reviewing activities for consistency with water quality standards. This provision essentially codifies the existing state process for moving a water body from the undesignated waters category (16.01.02.101.) to the waters with specific use designations (16.01.02.110–160) category. Idaho's process for establishing beneficial use designations for specific water bodies includes, among other things, public participation, and a change to the state's water quality standard. Whenever a state revises its water quality standards, those revisions are subject to EPA review and approval. On July 15, 1997, EPA approved this aspect of Idaho's unclassified waters beneficial use designation as being consistent with the CWA and EPA's implementing regulations at 40 CFR part 131.

Because Idaho has adopted a revised unclassified waters beneficial use designation which EPA has determined to be in accordance with the Act, a federal designated beneficial use for unclassified waters is no longer required under section 303(c)(4).

D. Stream Segments With Specific Beneficial Use Designations

EPA had proposed to promulgate use designations for specific water body segments which lacked the ''fishable/swimmable'' goal uses established in the CWA. Specifically, EPA proposed coldwater biota for 35 segments, salmonid spawning for 5 segments, and primary contact recreation for 44 segments. EPA proposed such uses because EPA had determined that Idaho's designated beneficial uses for these water body segments were incomplete and therefore inconsistent with the CWA and EPA's implementing regulations at 40 CFR part 131. See 62 FR 23007 for a more detailed discussion of EPA's proposal.

1. Primary Contact Recreation

i. Proposal

In EPA's Proposed Rule (62 FR 23003), primary contact recreation was a proposed designated beneficial use for 44 waterbody segments which were lacking a use designation of primary contact recreation. The State had already designated secondary contact recreation for those 44 water body segments. Although EPA had determined that Idaho's water quality criteria for the protection of secondary contact recreation are as stringent as EPA's recommended criteria for the protection of primary contact recreation (see EPA's May 27, 1997, approval letter), EPA proposed primary contact recreation as it believed it was required to by the terms of the District Court's order. The proposal solicited comment on the option of accepting Idaho's secondary contact recreation use as protective of swimming.

ii. Comments

Several commenters supported promulgating primary contact recreation as the ''swimmable'' use in Idaho. Other commenters objected to primary contact recreation as a designation but supported secondary as the ''swimmable'' use. EPA believes that where a state's secondary contact recreation criteria are stringent enough to protect primary contact recreation, the choice between secondary and primary contact recreation use designations should be left to the State's discretion. Although section 510 of the CWA does not preclude states from adopting standards which are more stringent than required by the Act, EPA's implementing regulations do not require states to do so. EPA has determined that in light of the state's bacteriological criteria, Idaho's secondary contact recreation use is sufficient and is consistent with the CWA.

iii. Final Rule

EPA's water quality standards regulation at 40 CFR 131.11 requires, in part, that in establishing criteria, States must adopt criteria with sufficient coverage of parameters and of adequate stringency to protect the designated use. States may adopt criteria published by EPA under section 304(a) of the CWA, criteria modified to reflect site specific conditions, or criteria based on other scientifically defensible methods. States are not required to have criteria more stringent than section 304(a) criteria unless it is determined that such criteria do not protect the designated uses. Except for fecal coliform bacteria, the same criteria are applicable to primary contact recreation and to secondary contact recreation. EPA has determined that Idaho's secondary contact recreation bacteriological criteria are as stringent as the recommended section 304(a) Guidance for the protection of swimming, i.e., primary contact recreation, and are consistent with the CWA and the requirements at 40 CFR 131.11. Therefore, a federal designated beneficial use of primary contact recreation for those waters already designated for secondary contact recreation is no longer required under CWA section 303(c)(4). For these reasons, EPA is not designating primary contact recreation for those 44 water body segments identified in the proposed rule.

2. Cold Water Biota

i. Proposal

In June of 1996, EPA determined that Idaho had not assigned an aquatic life use for 35 waterbody segments (62 FR 23008–23009). In EPA's proposed rule, EPA proposed designating cold water biota as the appropriate beneficial use. EPA determined that a cold water biota use designation, as defined in the State's water quality standards, is an aquatic life use category appropriate for those streams. See 62 FR 23008 for a more detailed discussion of EPA's proposal. EPA solicited comment on whether this held true for the 35 specific waterbodies.

ii. Recent Idaho Actions

To date, Idaho has revised the designated beneficial uses for the majority of the 35 waterbody segments lacking cold water biota designations. On February 11, 1997, the state adopted a temporary rule designating cold water biota for West Fork Blackbird Creek (SB–4211). By letter dated June 25, 1997, the State submitted to EPA additional revised water quality standards which were adopted as a temporary rule by the Idaho Board of Health and Welfare and became effective on June 20, 1997. As part of this revised rule, the State designated 29 of the 35 waterbody segments for cold water biota. By letter dated May 27, 1997, EPA conditionally approved the cold water biota uses for West Fork Blackbird Creek as being in accordance with the CWA and EPA's implementing regulations at 40 CFR 131.10. On July 15, 1997, EPA likewise conditionally approved the June 20, 1997 temporary rule addressing 29 segments. Therefore EPA is not promulgating cold water biota for these segments.

Although these revisions meet the substantive requirements of 40 CFR part 131, the State has not completed certain administrative requirements (e.g., public notice and comment). In addition, the State's Legislature must also review the revised water quality standards before the standards become final. If these designated beneficial uses are adopted as final without modification by the Board or Legislature, EPA's approval will become unconditional. If they are modified, EPA's approval will no longer be applicable, and Idaho will have to resubmit the revised standard to EPA for review and approval. Because EPA's approval is not yet unconditional, the

Agency is not withdrawing the proposal for these segments.

Idaho's June 25, 1997, submission included a Use Attainability Analysis (UAA) for Soda Creek (BB 310) to support its decision not to designate an aquatic life use (cold water biota) for Soda Creek. Because of the expedited schedule dictated by the court order, and because the UAA did not fully explain its conclusions EPA was unable to conclude its review of the State's UAA. Therefore EPA is maintaining the cold water biota use designation in today's final rule. If after such review, EPA is able to conclude that the State's UAA supports the unattainability of aquatic life for this segment, EPA will initiate rulemaking to withdraw the federal use designation for Soda Creek.

iii. Comments

While EPA received some general comments that cold water biota was not uniformly appropriate across the State, we received no data specific to Shields Gulch, Canyon Creek, or Blackfoot River for which a cold water biota beneficial use is being designated. In addition the State commented that they had no water quality data for Shields Gulch or Blackfoot River.

One commenter stated that cold water biota was not an ''existing'' use for the South Fork Coeur d'Alene River. EPA defines existing uses at 40 CFR 131.3(g) as ''those uses actually attained in the waterbody on or after November 28, 1975.'' Information and data obtained from the Idaho Division of Environmental Quality supports cold water biota as an existing use for the South Fork Coeur d'Alene River. EPA received no data to refute this. As for Canyon Creek, although EPA did not receive information from any commenters which would indicate that cold water biota is unattainable is this water body segment, information EPA had on water chemistry in Canyon Creek showed that some parameters are exceeded. However, based on this information EPA was unable to conclude that cold water biota use is unattainable. An appropriate evaluation of use attainability considers physical and biological as well as chemical indicators.

In addition, none of the commenters specifically contended that a cold water biota use was unattainable on any of the five streams at issue on account of compliance costs. To the extent that commenters did raise cost concerns, EPA's cost methodology indicates that the costs (which are not direct costs in any event) would be less than predicted by the commenters. See Section K of the preamble.

iv. Final Rule

Because the State has designated cold water biota for 29 of the waters in the proposed rule, EPA's final rule addresses only 5 of the original segments proposed. As stated in the proposed rule, in designating beneficial uses, EPA is relying on the rebuttable presumption implicit in the CWA and EPA's regulations at 40 CFR part 131, that in the absence of data to the contrary, ''fishable'' uses are attainable. As discussed above, the record supports the reasonableness of this presumption, and none of the comments rebutted it with respect to any of the water bodies for which EPA is promulgating designated uses. In the future, if additional data indicate that the promulgated uses are not appropriate, EPA's final rule can be revised and/or withdrawn.

For the reasons described above, EPA is promulgating cold water biota as a designated beneficial use for the following 5 segments: Canyon Creek (below mining impact)—PB 121S, South Fork Coeur d'Alene River (Daisy Gulch to mouth)—PB 140S, Shields Gulch (below mining impact)—PB 148S, Blackfoot River—USB 360, and Soda Creek—BB 310.

3. Salmonid Spawning

i. Proposal

In conferring with National Marine Fisheries Service prior to EPA's April 28, 1997, proposed rule, EPA obtained preliminary data indicating that for West Fork Blackbird Creek, Grasshopper Creek, Little Bear Creek, Blackbird Creek and Panther Creek, salmonid spawning was an appropriate designated beneficial use to ensure ''fishable'' water quality for these five water body segments. The data indicated the presence of salmonids and therefore EPA concluded salmonid spawning was an existing use. Based on this information EPA proposed salmonid spawning as a designated beneficial use for these segments.

ii. Recent Idaho Actions

On February 11, 1997, Idaho designated salmonid spawning biota for West Fork Blackbird Creek (SB–4211). By letter dated May 27, 1997, EPA conditionally approved this use designation. As part of Idaho's June 20 temporary rule (by letter dated June 25, 1997) salmonid spawning was also designated a beneficial use for Little Bear Creek, Blackbird Creek and Panther Creek. The State did not designate Grasshopper Creek for salmonid spawning as data it had for this creek indicated that salmonid spawning was not an appropriate use.

With regard to Panther Creek, EPA understands that the State intended to designate this creek for salmonid spawning but that, because of a typographical error, the chart in the temporary rule did not reflect salmonid spawning for this segment. By letter dated July 10, 1997, Idaho explained that on July 22, 1997 the Idaho Board of Health and Welfare will be requested to amend the temporary rule to correct this error. This error is expected to be corrected shortly.

On July 15, 1997, EPA conditionally approved salmonid spawning use designation for Little Bear Creek and Blackbird Creek. Because EPA's approval is not yet unconditional, the Agency is not withdrawing the proposal for these segments.

iii. Comments

EPA received additional information since the proposed rule which indicates that salmonid spawning is not an appropriate use for Grasshopper Creek. EPA determined that although Grasshopper Creek may have the potential to support salmonid spawning as a future designated beneficial use, insufficient data exist to justify this use designation at this time. Therefore neither the State's revisions nor EPA's final rule designates salmonid spawning for Grasshopper Creek.

4. Waters Located in Indian Country

After the proposal was published, EPA ascertained that certain streams that EPA disapproved on June 25, 1997, were located in Indian country. EPA's National Indian Policy recognizes Tribal governments as the primary parties for setting standards and for making environmental policy decisions affecting their reservation environments, consistent with Agency standards and regulations. In a memorandum by President Clinton dated April 29, 1994, each executive agency is instructed to operate within a government-to-government relationship with federally recognized tribal governments. EPA is to consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. The President's memorandum also states that executive departments and agencies shall assure that tribal government rights and concerns are considered during the development of plans, programs, and activities affecting tribal trust resources. EPA determined that promulgation of these designated uses could be viewed as such an action, and

so sought consultation before proceeding. After consultation with the relevant tribal governments, EPA determined that it would not be appropriate to proceed with the designation of uses for these streams at this time.

In this case, the proposal to designate uses on streams wholly or partially in Indian country was unintentional and inadvertent, done without forethought towards either the desires of the tribal authorities or how these designated uses would have functioned in the absence of a complete set of water quality standards (e.g., accompanying criteria, an antidegradation policy). The tribal authorities were unanimous in their wish that EPA not proceed with designating these beneficial uses, preferring instead to approach the water quality standards in a holistic manner and within a time frame that accommodates other tribal priorities.

As a result of this consultation process, portions of Hangman Creek (PB 450S), Three Mile Creek (CB 1321), Cottonwood Creek (CB 1322), Blackfoot River (USB 360) and Bannock Creek (USB 430), which are partially located in Indian country are being excluded from this rule, as well as the entirety of Plummer Creek (PB 340S), Cottonwood Creek (CB 152) and Rock Creek (PB 451S). If not in Indian country, Plummer Creek and Cottonwood Creek (CB 152) would have been excluded because the state has adopted acceptable uses for them.

E. Temperature Criteria for Threatened and Endangered Species

1. Bull Trout

i. Temperature Criteria

a. Proposal. The temperature criteria in Idaho's 1994 submittal applicable to the cold water biota use classification (22°C or less with a maximum daily average of 19°C) and salmonid spawning use classification (13°C or less with a maximum daily average of 9°C) does not provide an adequate level of protection for bull trout. Therefore, on June 25, 1996, EPA disapproved Idaho's temperature criteria applicable within geographic ranges where bull trout occur.

EPA derived the proposed temperature criteria for Idaho streams designated as bull trout habitat using EPA's temperature criteria guidance (*Temperature Criteria for Freshwater Fish: Protocol and Procedures;* U.S. EPA, 1977). The EPA protocol recommends expression of temperature criteria in two forms: (1) a short-term maxima (protection against lethal conditions, usually for a duration of 24 hours), and (2) a mean temperature value (expressed as the maximum weekly average temperature) that is designed to protect critical life stage functions such as spawning, embryogenesis, growth, maturation and development. Sufficient data were available to derive temperature criteria as maximum weekly average temperatures (MWAT) that EPA determined would be protective of various bull trout life stages, including spawning, egg incubation, juvenile rearing and adult migration. Because of the complex life history of bull trout, EPA proposed temperature criteria which would span a calendar year, but that would vary depending on the presence and thermal tolerances of various bull trout life stages. See 62 FR 23012 for a more detailed discussion of EPA's proposal.

b. Recent Idaho Actions. On June 20, 1997, Idaho adopted a temporary rule with revised temperature criteria for bull trout. The State's rule established a seven-day moving average of 12°C based on daily average water temperatures, or shall not exceed a seven-day moving average of 15°C based on daily maximum water temperatures during July, August and September.

Although Idaho has revised the temperature criteria applicable to bull trout, the State did not provide information explaining the scientific basis for the criteria. The Water Quality Standards Regulations at 40 CFR 131.11(a) state, in part, that states must adopt criteria to protect designated uses and that such criteria must be based on ''sound scientific rationale.'' EPA was unable to determine, based on the State's submission or other information available to EPA, what the scientific rationale was for Idaho's 1997 temperature. Therefore, EPA was unable to determine that Idaho's 1997 temperature criteria are protective of bull trout spawning and rearing.

Because EPA was unable to determine that Idaho's criteria are protective of bull trout spawning and rearing, EPA disapproved Idaho's 1997 temperature criteria for bull trout on July 15, 1997. Therefore, EPA is proceeding with a federal promulgation of temperature criteria for bull trout as required by § 303(c) of the CWA. If at a later date, Idaho submits a scientific rationale in support of the 1997 criteria, and EPA is able to determine that the technical basis is consistent with 40 CFR 131.11, then EPA will initiate rulemaking to withdraw the federal criteria in today's rule.

c. Comments. Comment: Commenters asserted that EPA lacks authority to disapprove Idaho's temperature criteria as they relate to bull trout, and hence lacks authority to promulgate federal temperature criteria for bull trout. According to these commenters, under 40 CFR 131.5, EPA's limited role in overseeing state WQS is to ensure that states designate uses and establish criteria to protect the designated uses. Because Idaho had designated a use of ''cold water biota,'' and had criteria protective of that use, EPA lacks authority to disapprove Idaho's temperature criteria as they relate to bull trout. One commenter cited language in the preamble to the 1983 revisions to part 131 which the commenter claimed evidenced that EPA did not intend to second guess states on their choices of designated uses. Commenters argued that, in setting temperature criteria for bull trout, EPA was essentially creating a new beneficial use, which would be a subcategory of cold water biota, and that it is beyond EPA's authority to designate subcategories of uses. Commenters also asserted that it has been EPA's longstanding position that protection of specific species within the fishable use designation is left solely to the discretion of the state.

Response: EPA agrees that its role in reviewing state water quality criteria is to ensure the criteria are protective of designated uses. However, EPA must also ensure that the state has designated uses consistent with the goals of the CWA, including the ''fishable/swimmable'' goals. EPA therefore does not agree with the commenters'' implication that a state has unfettered discretion in how it designates uses. Section 131.10(a) provides that ''[e]ach State must specify *appropriate* water uses to be achieved and protected,'' taking into account the various goals of the CWA (emphasis added). It follows that EPA must disapprove a state's use designations if they are not appropriate in light of those goals.

The commenters' argument that a state has absolute discretion concerning when to designate subcategories of uses misconstrues the intent of EPA's regulations. These commenters point to § 131.10(c), which provides that ''[s]tates may adopt sub-categories of a use.'' It is true that a state need not adopt subcategories. However, the regulations require a state to designate appropriate uses given the goals of the CWA, and to adopt criteria protective of those uses. So, for instance, if the weight of evidence shows that salmonid spawning is an appropriate use, a state must adopt criteria protective of that use. In such a situation, a state may choose whether to designate subcategories of uses applicable to

particular waters, so that criteria protective of salmonid spawning can be narrowly targeted to those areas where they are needed, or in the alternative to designate only one ''fishable'' use and apply it throughout the state. However, if it is the latter, the criteria accompanying that use would have to be protective of salmonid spawning, because a state could not designate a single ''fishable'' use and then adopt criteria protective of some fish but not others. For this reason, most states in such a situation would be likely to designate subcategories of uses even though not required to by EPA's regulation. See also EPA's response to the next comment below.

As explained in EPA's June 25, 1996 disapproval letter, the state failed to do either of these fully. While Idaho had a salmonid spawning subcategory with criteria intended to be protective of bull trout, it did not apply this subcategory to all bull trout waters. At the same time, cold water biota temperature criteria, which do apply to, among other things, all bull trout waters, were not stringent enough to protect bull trout. EPA is promulgating more stringent temperature criteria to protect bull trout in those waters where they are present. It is clearly within EPA's authority to promulgate standards meeting the requirements of the Act that support this use.

Regarding the assertion that it is EPA's longstanding policy to defer to state's designation of uses, EPA believes this is incorrect to the extent it implies that EPA will defer to use designations that do not meet the requirements of the CWA. EPA notes that these commenters did not offer any specifics to support their claim. In the preamble to the 1983 revisions to 40 CFR Part 131 EPA stated that, ''for EPA to mandate certain levels of aquatic life protection within a use would override the primary authority of the state to adopt use classifications and supporting criteria through public hearings.'' 48 FR 51410. This and other statements were made in response to comments urging EPA to adopt national minimum levels of protection for water quality. EPA's 1983 preamble response is generally reflective of the structure and purpose of section 303, which contemplates that the duty to establish water quality standards lies with the state in the first instance. However, it is just as apparent from the structure of the Act and EPA's regulations that EPA's oversight role carries with it an obligation to act so that the requirements of the Act are met. The commenters' argument that EPA must always defer to a state's choices regarding designation of uses and levels of protection is clearly contrary to this oversight responsibility.

Comment: A number of commenters questioned EPA's authority to promulgate temperature criteria for bull trout. Several commenters pointed out that, since bull trout have not yet been listed as endangered or threatened, EPA could not rely on the authority of the ESA to support its action. Commenters also argued that, in setting temperature criteria for bull trout, EPA is attempting to designate ''critical habitat'' under the ESA without following proper ESA procedures. Commenters noted a number of alleged failures to follow proper ESA procedure for bull trout. Commenters also argued that, the ESA aside, EPA lacks authority under the CWA to promulgate temperature criteria for bull trout. These commenters asserted that the CWA does not require states to protect the most sensitive species under the ''fishable'' use, and that likewise, the CWA does not authorize EPA to promulgate criteria protective of the most sensitive species of fish.

Response: EPA acknowledges that the proposal's explanation of statutory authority to promulgate temperature criteria focused on the ESA rather than the CWA, when it should have given equal standing to both statutes. This confusion occurred because two of the species being addressed, snails and sturgeon, have been listed pursuant to the ESA. For bull trout, EPA is relying on its CWA authority to promulgate criteria protective of appropriate uses. Some commenters apparently inferred this anyway, as several commented extensively on the authority under the CWA to promulgate criteria protective of bull trout. Because EPA is relying on CWA authority for bull trout criteria, it follows that adherence to ESA procedures for bull trout are not at issue here.

In developing criteria for bull trout, EPA has used the best available information to determine the location of bull trout spawning and rearing, and has developed temperature criteria protective of spawning and rearing based upon its review of the literature and the comments received. EPA believes this analysis, described in detail above, follows the mandate of section 131.11(a)(1) that water quality standards criteria ''be based on sound scientific rationale and [ ] contain sufficient parameters or constituents to protect the designated uses.''

EPA believes the CWA and EPA's regulations require that criteria be protective of the most sensitive species within the ''fishable'' use. Protecting a use category such as ''fishable,'' or a subcategory such as ''cold water biota,'' plainly must mean protecting all of the species-specific activities that occur within that category, including the most sensitive. The position advocated by commenters—that not all species or activities within a use category need to be protected—would lead to results that are obviously contrary to the goals of the Act. These commenters do not explain how they would resolve the question of which species within a use category would have to be protected and which not. Presumably, the commenters's approach would allow states to pick and choose which species within a use category are deserving of protection. It would therefore allow a state to establish criteria protective of only the least sensitive aquatic species, while ignoring the rest. EPA believes, to the contrary, that the only reasonable reading of the Act and EPA's regulations requires that water quality standards protect for all aquatic life that are present or normally expected to be present, to the extent supported by the factual record. Today's promulgation helps to fulfill this requirement by establishing criteria protective of bull trout to the extent supported by sound scientific rationale.

Comment: One commenter suggested that EPA's criteria should be consistent with the four-state region in which bull trout are found, with specific reference to Oregon's recently adopted criteria. Other commenters also referenced Oregon's criteria as an acceptable option.

Response: As EPA works with each state during the triennial review process, information on the approaches utilized by adjacent states is shared and considered. EPA reviewed Oregon's temperature criteria and technical support documents during the development of this rule. Following further review of the literature, EPA is adopting a criteria equivalent to that recently adopted by the State of Oregon.

Comment: Several commenters challenged EPA's use of the maximum weekly average temperature (MWAT). These commenters asserted that the criteria, measured as average daily temperatures, was not adequately protective. They indicated that by allowing a weekly mean it is feasible that the daily temperature regime could be 10°C +/−5°C. One suggested that it would be more biologically defensible for EPA to find a means to limit maximum temperatures or diel fluctuations at the same time as ensuring that MWAT does not exceed fixed limits. Several of the commenters suggested using a 7-day average of daily maximum temperatures, some

commenters favoring this approach because it would provide greater protection, others for the relative ease and practicality of implementation.

Response: EPA has revised its proposal to account for potential impacts from diurnal fluctuations and is promulgating a maximum weekly maximum temperature (MWMT) criterion, based on an average of the daily maximum for a moving consecutive 7-day period. EPA's criteria guidance documents, which were followed in the development of the proposed criteria, recommend that an instantaneous maxima be adopted in association with the MWAT to provide, in part, protection from diurnal fluctuations. EPA was unable to determine from the literature and field data a fixed instantaneous maxima and therefore did not include a maxima criterion in the proposed rule. Following consideration of comments and the literature, it was determined that protection from maximum temperatures was needed to protect the species. Therefore, EPA modified the proposed rule and is changing from the proposed MWAT approach to the MWMT adopted in this rule. The MWMT is believed to provide greater protection over temperature maxima compared to the MWAT and is consistent with other temperature criteria recommended for bull trout.

Comment: Several commenters suggested that EPA needed to modify the bull trout criteria to account for natural conditions and the natural variability.

Response: In reviewing data on temperature and bull trout presence/absence, EPA found streams supporting bull trout populations where summer maxima temperatures exceeded 10°C and where summer maxima were somewhat cooler. However, most commenters only provided data on presence and absence of bull trout and did not provide data on the health of these populations. EPA was therefore unable to conclude based on this data that bull trout are fully supported at temperatures above 10°C. Presence and absence data may be best suited for establishing the limits of bull trout distribution. However, data on presence and absence, without supporting information on abundance or population health, does not enable definitive determinations of criteria that will be protective. Protection of optimal conditions is essential if a species is to be protected with an adequate margin of safety, and is also desirable because bull trout have been proposed to be listed as a ''threatened species'' under the Endangered Species Act. Maintenance of optimal conditions is considered important in the restoration of the population.

Nevertheless, EPA acknowledges the difficulties and uncertainty that exists in defining absolute, numeric temperature criteria that account for all types of natural and site-specific variability in stream temperatures (both spatially and temporally) found among Idaho streams. For example, availability of cold water refugia may ameliorate the impacts of suboptimal temperatures under some circumstances and might result in supporting bull trout populations. However, sufficient data was not available to determine exactly how much cold water refugia must be available (and when and how long it must be available) to support bull trout populations experiencing otherwise suboptimal conditions. The promulgation of a single criterion necessarily rests on assumptions about the consistency of conditions among Idaho streams. EPA believes the assumptions made here are reasonable, and are in any case unavoidable in this instance, due to the lack of site-specific data. In addition, to address concerns about the site-specific nature of temperature criteria for bull trout, EPA has included a provision in today's rule providing a streamlined mechanism for modifying the promulgated criterion on a site-specific basis.

Comment: Several commenters requested that EPA modify the criteria and suggested summer criteria values of 15°C, 12°C and 10°C, expressed as a seven-day average of daily maximum temperatures (or in some cases seven-day average of daily average temperatures), as a more appropriate criteria. Several of these commenters cited literature to support their case that the proposed criteria was either over-or under-protective and that EPA should either raise or lower the proposed criteria.

Response: EPA has reviewed the literature and available field data to support its derivation of appropriate temperature criteria for bull trout. Based on this review, EPA decided to modify its proposed temperature criteria to reflect criteria for the protection of spawning and juvenile rearing, bull trout life stages considered most critical and most at risk from thermal impacts. Based on temperatures judged to be required for maintaining optimal juvenile growth and rearing, and the initiation of adult spawning, EPA established a criterion of 10°C expressed as a consecutive seven-day average of daily maximum temperatures for June, July, August and September. EPA acknowledges that juvenile bull trout can be found in streams with temperatures reported to be higher than 10°C, but that available information suggests that temperatures approaching 15°C reflect suboptimal conditions for juvenile rearing and growth and that optimal conditions are closer to 10°C. Furthermore, available data indicates that temperatures at or below 9–10°C are required to initiate spawning, which can begin in mid-to late-August.

Comment: Several commenters suggested that EPA's criterion should only apply to those periods where temperature conditions are critical to bull trout; late summer and fall. Several of these commenters suggested that, due to the predictable pattern of stream temperatures over a year in a given channel, that a standard which addresses stream temperatures at the most critical time of the year would also adequately address stream temperature throughout the rest of the year. One commenter suggested that such a change was necessary to account for the natural variations which are present from year to year.

Response: EPA agrees with the commenters and is promulgating a criterion which is to be applied during June, July, August and September, as these times are defined in the literature as critical period for spawning and juvenile rearing of bull trout. Such criteria enable greater flexibility due to natural variability and focus on the life stages considered most critical and vulnerable to high temperatures.

Comment: Several commenters suggested that EPA should, to various degrees, rely on the Governor's Bull Trout Conservation Plan for the protection and recovery of bull trout. Other commenters supported EPA in not relying on the Governor's Bull Trout Conservation Plan.

Response: EPA has reviewed the Governor's Bull Trout Conservation Plan and has determined that although this plan sets forth a strategy towards the maintenance and restoration of the complex interacting groups of native bull trout populations throughout Idaho it falls short of meeting the requirements of section 303(c) of the Clean Water Act. Specifically, the plan does not adopt a temperature criterion protective of bull trout nor does it specifically identify waters in which bull trout are present.

Comment: One commenter suggested that the proposal was oversimplified and did not account for the migratory characteristics of bull trout or the need for healthy riparian habitat. Several other commenters also mentioned that EPA should expand the scope of the rule to also address the habitat requirements of the bull trout.

Response: The only portion of Idaho's criterion, relative to the protection of bull trout, which was disapproved in EPA's June 25, 1996 disapproval letter was the temperature criteria in place to protect bull trout. Since EPA's authority to promulgate is limited to those items which are submitted to EPA for review and approval/disapproval and which EPA disapproves, EPA does not have the authority to promulgate habitat criteria under this rule.

Comment: Two commenters suggested that the current cold water biota criteria are not protective of the adult life stages of bull trout and thus a temperature criteria applicable to adult life stages should also be promulgated. One commenter suggested that this criteria be established at 12° C and another suggested an annual maximum temperature criteria of 15° C.

Response: Available information indicates that juvenile rearing and adult spawning are the life stages that most limit bull trout (and other salmonid) production. Available data also suggests that bull trout distribution is best defined by maximum summer temperatures and that these life stages are currently most vulnerable to increased temperatures in the summer and early fall. In general, less information is known about the temperature requirements and locations of adult bull trout and migratory corridors compared to other life stages. EPA concluded that the information available was not sufficient to support going forward with temperature criteria for adult bull trout at this time. Therefore, given the importance of juvenile and spawning life stages to bull trout production and EPA is promulgating temperature criteria designed specifically for the protection of natal juvenile rearing and spawning areas. EPA believes that if these criteria are met, natural variability in stream temperatures will result in attainment of appropriate temperatures during other times of the year.

Comment: Several commenters noted that the proposed criteria were unrealistic and were not achievable.

Response: The bull trout temperature criteria adopted under this rule were determined based on EPA's evaluation of the literature and available field data. EPA recognizes that there are streams where bull trout are present at higher temperatures than those adopted under this rule but in most cases, information was not available to determine the relative health of these populations. However, because several factors can act to alter temperature impacts on bull trout which can vary on a site-specific basis (e.g., availability of cold water refugia), EPA has provided a streamlined mechanism through which criteria for specific streams may be modified. This mechanism should provide relief in streams which do support bull trout populations yet the criteria adopted under this rule are unachieveable.

d. Final Rule. In order to provide the level of protection required under the Clean Water Act, EPA is promulgating a site-specific temperature criterion for those waterbody segments where bull trout spawn and juvenile bull trout rear. EPA's action supersedes the State's temperature criterion only for the specific waterbodies listed in § 131.33(a)(2) of the final rule.

As indicated in the rule language itself, the bull trout temperature criterion does not apply to waters located in Indian country, to the extent any may be implicated in the waters listed in § 131.33(a)(2). Although the proposal did not address this possibility, it was never EPA's intent to promulgate temperature criteria for waters in Indian country. The purpose of this rulemaking is to promulgate standards for waters that are outside of Indian country and for which certain State standards were found to be inadequate. EPA has consulted with the appropriate tribal authorities. All affected tribal governments requested that EPA allow the Tribes to develop their own standards for their reservations and thus not include tribal waters in today's promulgation. See section D.4 above.

Because the data indicate there may be aberrational segments where bull trout have slightly different temperature ranges, and because future information may make it possible to refine the list of waterbodies where bull trout spawn and juvenile bull trout rear, the final rule provides a mechanism for adjusting the bull trout temperature criterion on a site-specific basis. This provision is discussed in more detail below.

This Rule establishes a maximum weekly maximum temperature (MWMT) criterion of 10 °C for the months of June, July, August and September for the protection of bull trout spawning and juvenile rearing in natal streams, expressed as an average of daily maximum temperatures over a consecutive 7-day period. This criterion are focussed on reproduction (adult spawning) and juvenile rearing life stages because these have been cited as critical life stages or ''ecological bottlenecks'' limiting the production of salmonids, including bull trout (Goetz, 1989; McPhail and Murray, 1979). Furthermore, high temperatures during summer have most often been reported as a factor limiting the distribution and abundance of bull trout, with juvenile rearing and adult spawning being considered as the life stages most at risk from high summer and fall temperatures (Buchanan and Gregory, 1997; ORDEQ, 1995; Shepard et al., 1984; Fraley and Shepard, 1989; Goetz, 1989; Riehle, 1993). EPA believes that these criteria are adequately protective of bull trout in that they provide explicit protection for the most critical and vulnerable life stages. Further, EPA believes that during other times of the year, natural seasonal variability in stream temperatures and temperature controls established to meet summer maximum criteria, if operated, will likely result in attainment of adequate temperatures during the remainder of the year. These criteria are also consistent with other temperature criteria that have been established or recommended to protect bull trout (Buchanan and Gregory, 1997; ORDEQ, 1995; and the U.S. Forest Service's Inland Native Fish Strategy).

For several reasons, EPA decided to express the final temperature criteria for bull trout as a consecutive seven-day average of daily maximums (MWMT) rather than a consecutive seven-day average of daily averages (MWAT) as originally proposed. Greater diurnal fluctuations around the mean daily temperature can be one effect of intensive watershed management (e.g., loss of riparian vegetative cover). For this and other reasons, EPA's Guidelines for deriving temperature criteria recommend both longer-term average criteria (MWAT) and short-term maximum criteria. However, after reviewing the literature on bull trout temperature requirements and considering comments on EPA's proposed bull trout temperature criteria, EPA concludes that the available data were insufficient to derive temperature criteria to be protective of short-term temperature extremes (e.g., daily maxima). As asserted by several commenters, use of a MWAT without some control on the daily maxima might not adequately reflect such increases in diurnal variability where the mean temperatures do not change substantially. Therefore, EPA agrees that greater control over thermal maxima is desired and that while use of the two-number criterion is most desirable (i.e., weekly average and daily maximum), in the face of insufficient data, use of a MWMT is appropriate. In addition, use of the MWMT is consistent with other temperature criteria that have been established or recommended to protect bull trout (Buchanan and Gregory, 1997; ORDEQ, 1995; and the U.S. Forest

Service's Inland Native Fish Strategy). EPA's expression of the criterion in terms of a consecutive seven-day average of daily maximums, however, will provide for a mean daily temperature that are somewhat below (possibly several degrees) the maximum, depending upon stream hydrology and watershed characteristics.

Maintenance of this criterion for spawning and juvenile bull trout rearing in their natal streams in the summer months (June, July, August and September) should result in attainment of appropriate thermal conditions for other life stages (i.e., adult holding and migration) during the remainder of the year. The restrictions on lowering water quality provided for in the Tier 2 provisions of Antidegradation will serve as further insurance.

EPA has considered the comments and data submitted, evaluated the literature, and conferred with fisheries scientists from the Idaho Department of Fish and Game, U.S. Fish and Wildlife Service, U.S. Forest Service (USFS), U.S. Bureau of Land Management (BLM) and the Interior Columbia River Basin Ecosystem Management Project (USFS, BLM) in revising the proposed criterion to be protective of bull trout spawning and juvenile rearing and meet the goals of the Clean Water Act.

This revised criterion is within the range of maximum summer temperatures associated with optimal juvenile bull trout rearing (higher densities when known) in watersheds in Idaho, Oregon, Montana, British Columbia and Alberta. Protection of optimal conditions is desirable because Columbia River Basin bull trout populations have recently been proposed by the U.S. Fish and Wildlife Service for listing as a ''threatened species'' under the Endangered Species Act. It is recognized that some authors have found sites with juvenile bull trout present, which have warmer summer maxima (Fraley and Shepard, 1989; Saffel and Scarnecchia, 1995; Adams, 1994; Thurow and Schill, 1996), while others have noted sites with cooler summer maxima (McPhail and Murray, 1979; Ratliff, 1992; Riehle, 1993). In many such studies, information on thermal conditions supporting optimal densities is lacking.

The literature indicates that bull trout may be one of the most intolerant species of salmonids to warm temperatures. Buchanan and Gregory (1997) summarized that, to provide adequate protection for cold water species like bull trout, water temperature criteria must be substantially lower than traditional criteria, and must accommodate seasonal requirements of specific life history stages. Also, they suggested that slight increases in water temperature can tip the balance of competitive interactions to the detriment of coldwater species, even though temperature criteria would be well within the thermal requirements of the species. Rieman and McIntyre (1993) suggested that water temperature is likely to be an important and inflexible habitat requirement for bull trout.

Cavender (1977) noted that bull trout have an affinity for cold waters fed by mountain glaciers and snowfields. Also, Rich (1996) found that bull trout were more likely to occur in mountain streams with northerly aspects. Rieman and McIntyre (1995) found juvenile bull trout at elevations as low as 1520 m, but the frequency of juvenile bull trout occurrence increased sharply at about 1600 m, from this observation they assumed that 1600 m is the lower limit of spawning and initial juvenile rearing of bull trout in the Boise River, and suggested that this was influenced by stream temperature.

Pratt (1992) also noted that water temperature may be an important feature of juvenile bull trout habitat. Bull trout spawn in late summer through fall (late August–November) and have a long egg incubation period (typically lasting from early fall to April). High temperatures, therefore, are a concern for inhibiting spawning, as well as limiting its success in the late summer and early fall. Saffel and Scarnecchia (1995) indicated that high temperatures may be physiologically constraining on juvenile bull trout. Shephard et al. (1984) found that fish growth decreased during the warmer summer months despite increased primary productivity.

EPA's establishment of this criterion for bull trout spawning and juvenile rearing is consistent with other temperature management objectives and criteria recently adopted by state and federal natural resource management agencies, as noted in the following examples:

(1) The State of Idaho, through the Governor's 1996 Bull Trout Conservation Plan, recently recognized the unique temperature requirements for all life stages of bull trout. The Plan indicated that bull trout require temperatures between 9 and 15°C, with spawning success increasing at temperatures less than 10°C and optimum spawning temperatures being 2 to 4°C.

(2) The U.S. Forest Service's Inland Native Fish Strategy (1995) for its Intermountain, Northern and Pacific Northwest Regions contains Interim Riparian Management Objectives for desired conditions for fish habitat of inland native fish, which includes bull trout. The interim objective for water temperature is a maximum water temperatures below 59°F (15°C) within adult holding habitat and below 48°F (9°C) within spawning and rearing habitats, measured as a 7-day moving average of daily maximum temperatures. These temperatures were recommended and supported by the U.S. Fish & Wildlife Service, a full partner in the development of the Strategy and its Environmental Assessment.

(3) The Oregon Department of Environmental Quality (ODEQ) recently conducted an extensive evaluation of the effect of water temperature on bull trout in its *Final Issue Paper—Temperature, 1992–1994 Water Quality Standards Review* (ODEQ, 1995). The State of Oregon adopted the following:

> An absolute numeric criterion of 10°C (50°F) based on a 7-day average of the maximum daily temperature for waters of Oregon determined by Department of Environmental Quality to support or to be necessary to maintain the viability of native bull trout. If temperature exceed 10°C (50°F), the stream and riparian conditions would be required to be restored or allowed to return to the most unaltered condition feasible for the purpose of attaining the coldest streams temperature possible under natural background conditions.

Buchanan and Gregory (1997), as members of the temperature technical subcommittee for the above water quality standards revisions, found that the literature supported an optimal temperature range for both bull trout spawning and juvenile rearing of 4–10°C. This was presented in Figure 2–3, Bull Trout Temperature Requirements by Life History Stage and Time Period as Reported in the General Literature, for the Final Issue Paper—Temperature (ODEQ, 1995).

I. Spawning.

Based on EPA's review of the literature, a stream temperature range of 4–10°C appears to be necessary to maintain successful bull trout spawning, although it appears that bull trout do seek out colder temperatures. A number of authors have noted the temperature appears to be a critical factor with the initiation of spawning migrations occurring at 9–10°C. A temperature range of 6–8°C is believed to approximate the optimum spawning temperatures of bull trout (Idaho Department of Fish and Game).

Heimer (1965) noted that areas with cooler water temperatures (9–10°C) in the Clark Fork River, Idaho, attracted

bull trout during the spawning season, and that there was especially high spawning use in these areas with groundwater upwelling. The average daily maximum temperature during peak redd construction in the Flathead River, Montana tributaries was 8–9°C, although some spawning activity was observed in water temperatures as high as 12°C (Flathead River Basin Steering Committee, 1983). Fraley and Shephard (1989) found in the Flathead River drainage that the initiation of spawning appeared to be related largely to water temperatures of 9–10°C. This temperature was also described by McPhail and Murray (1979) as the threshold temperature for the initiation of spawning in Mackenzie Creek in British Columbia. Shepard et al. (1984) found that bull trout spawning activity began when maximum daily water temperatures dropped below 9°C.

Swanberg (1996) suggested that bull trout begin their upriver migrations in the fall in the Blackfoot River, Montana, as a result of spikes in a fluctuating temperature regime, and that these migrations are done in order to seek refuge in cooler tributaries. Other authors have made similar observations in Rapid River, Idaho drainage where bull trout initiated upriver migrations to spawn when water temperatures reach 10°C or above (Elle et al., 1994; Elle, 1995). Schill *et al.* (1994) also noted in Rapid River that at the start of spawning season pairing behavior began after the average water temperature dropped sharply from 10°C–6.5°C.

II. Egg Incubation.

EPA has reviewed the literature and examined temperature data from several bull trout streams in Idaho, Oregon, and Montana and has found that, if summer temperatures, June to September, meet EPA's temperature criterion, late fall and winter temperatures should provide for successful bull trout egg incubation. Incubation of bull trout eggs requires temperatures ranging from 1 to 6°C and occurs at optimum temperatures of approximately 4°C (ODEQ, 1995; Weaver and White, 1985; McPhail and Murray, 1979; Carl, 1985).

Fraley and Shephard (1989) reported water temperatures of 1.2–5.4°C for the successful incubation of bull trout embryos. McPhail and Murray (1979) noted that bull trout egg-to-fry survival varied with different water temperatures of 0–20%, 60–90% and 80–95% of the eggs survived to hatching in water temperatures of 8–10°C, 6°C and 2–4°C, respectively. Weaver and White (1985) report 4–6°C as being needed for egg incubation of bull trout embryos in Montana streams. Hatching of eggs generally occurs 100 to 145 days after spawning, with bull trout alevins requiring at least 65 to 90 days after hatching to absorb their yolk sacs (Pratt, 1992). As such, incubation occurs from late fall to early spring, a period in which the temperatures in the headwater streams in which bull trout spawn will be low due to natural seasonal water temperature patterns. Weaver and White (1985) observed stream temperatures of 1.2 to 5.4°C during the incubation period of October to March.

III. Juvenile Rearing.

Goetz (1989) noted that the maximum summer temperature is a controller of juvenile bull trout distribution. Temperatures less than 12°C appear to be most suitable for juvenile rearing, with optimal conditions for rearing and growth occurring between 4 and 10°C (ODEQ, 1995). Based on field observations of the presence of juvenile bull trout in Idaho streams, 12°C also appears to be a maximum temperature where juveniles are found (Idaho Department of Fish and Game).

Pratt (1985) found juvenile bull trout predominately in the upper and middle reaches of Lake Pend Oreille tributaries. Saffel and Scarnecchia (1995) observed that the density of juvenile bull trout was negatively related with the maximum summer temperature in six tributaries of Lake Pend Oreille. They found the highest number of juvenile bull trout in streams where the summer maxima ranged from 7.8 to 13.9°C. Juveniles will reside in their natal streams for two to five years (Carl, 1985).

Pratt (1984) observed only juvenile bull trout in habitats with temperatures of 5–12°C influenced by cold springs (5°C). Shepard et al. (1984) also observed the highest densities of juvenile bull trout in stream reaches in the Flathead River basin which were associated with cold perennial springs. Bonneau and Scarnecchia (1996) found that juvenile bull trout predominately (94%) chose the coldest water available (8–9°C) in a plunge pool, which contained a strong side-to-side thermal gradient (8–15°C) at the confluence of Sullivan Springs and Granite Creek, tributary to Lake Pend Oreille. These juvenile bull trout were observed to avoid the remaining pool habitat area (76%), which had temperatures of 9.1–15°C. Similarly, juvenile bull trout were observed only in the middle reach of Sun Creek, Oregon, where heavy influxes of groundwater more than doubled the stream flow (Dambacher et al., 1992). The middle reach of Sun Creek reported August temperatures ranging from 5.6–10°C.

Shepard et al. (1984) reported the highest densities of bull trout in Montana streams at temperatures of 12°C and below, some presence of bull trout at 15–18°C, and complete absence of bull trout in streams with temperatures exceeding 19°C. Adams (1994) observed various life stages of bull trout in four streams in the Weiser River, Idaho, drainage where the average daily temperatures were from 2–12°C, and summer maxima as high as 20°C, although some groundwater influxes did provide cool water sanctuaries, but the extent was unknown. These high temperatures were suggested to limit downstream distribution for bull trout.

Fraley and Shepard (1989) noted that juvenile bull trout were rarely observed in streams with maximum water temperatures at or above 15°C, and were found close to the substrate at those temperatures. Also, they found that juvenile bull trout migrated upstream in their natal stream to grow, and many of these upper stream reaches were not utilized by adult spawners. Thurow (1987) also found higher densities of juvenile bull trout in the headwater (colder) stream reaches of the South Fork Salmon River, Idaho. Thurow and Schill (1996) did record summer water temperatures of 9–13.5°C in Profile Creek, tributary to the South Fork Salmon River, while observing the diel behavior of juvenile bull trout. Elle (1995) observed in Rapid River that the out migration of juvenile bull trout occurred when the stream temperatures dropped below 10°C.

Based on the above, EPA has determined that its final criterion for bull trout temperature is reasonable and reflects sound science.

ii. Distribution

a. Proposal. At the time of EPA's disapproval action, EPA had not identified the exact geographic areas inhabited by bull trout. In deriving a list of water bodies where revised temperature criteria are needed in order to protect bull trout for the proposal, EPA relied upon bull trout distribution data from the Interior Columbia Basin Ecosystem Management Project (ICBEMP) as well as bull trout distribution data from the Idaho Department of Fish and Game. See 62 FR 23013 for a more detailed discussion of EPA's proposal.

b. Recent Idaho Actions. On June 19, 1997, Idaho adopted a temperature criteria for bull trout but did not indicate which water bodies the criteria apply. On July 15, 1997, EPA disapproved this new criteria because EPA was unable to determine that the criteria was protective of bull trout

spawning and rearing. In order to protect an aquatic life species, the water quality criteria must have a point of application. Idaho's temperature criteria specified only that the criteria would be applied to known bull trout spawning and juvenile rearing stream segments as identified by the Department based on best available data or as specifically designated under the Idaho Water Quality Standards. The implementation components of a criterion (e.g., point of application) are considered along with the numeric values themselves to determine if the criteria as a whole are sufficient to protect the use (40 CFR 131.11). To date, no stream segments have been specifically designated as a bull trout spawning and juvenile rearing stream, nor has any reference to a specific list of waters been provided to EPA. Therefore, in order to ensure that bull trout spawning and rearing will be protected, EPA has included a list of stream segments as part of the bull trout criteria in today's rule (§ 131.33(a)(1)).

c. Response to Comments. Comment: Commenters objected to EPA's approach to designating waterbodies where the temperature criteria for bull trout spawning and rearing would apply. The strongest objectors took the view that water quality standards should not be tied to specific stream segments. Rather, the applicability of designated uses should be left to another process, such as the Governor of Idaho's bull trout plan. These commenters based their practical objection in part on the fact that, under the proposal, a rulemaking would be required each time the temperature criteria needs to be modified to reflect new information. The more moderate objections pointed to the over inclusiveness of the proposal, and asserted that EPA can not apply temperature criteria to waterbodies where the presence of bull trout has not been verified. These commenters pointed out that, by its own terms, the list encompasses ''known, suspected and/or predicted'' spawning and rearing areas, and argued that EPA can not apply criteria to waters beyond those that are ''known'' to host these activities. Commenters objected to the fact that the rule included migratory corridors merely because EPA could not determine how to exclude these. Another commenter argued generally that inclusion of waterbodies other than headwaters is inappropriate because waters at lower elevations have higher natural temperatures to which bull trout have adapted.

Response: EPA disagrees with the commenters who argue that waterbodies do not need to be specified for bull trout temperature criteria. A water quality standard cannot be implemented unless it applies to a specified location. Moreover, the mechanism for determining where the criteria apply must have regulatory effect (e.g., cannot exist only in guidance), to be the basis for imposing requirements through subsequent regulatory actions, such as issuance of an NPDES permit. EPA has done that here by naming in the regulation the specific waterbodies where the criteria apply, and providing a streamlined mechanism for modifying the list.

As described above, EPA has substantially modified its approach to designating waterbodies where bull trout temperature criteria will apply from that found in the proposal. This has occurred, in part, as a response to the comments received. The proposal acknowledged that its approach to applying bull trout temperature criteria might be over inclusive to some extent. EPA believes this modified approach substantially reduces the likelihood that waters that do not contain bull trout will be regulated by this rule. In addition, EPA has modified the proposal by adding a streamlined procedure for removing waterbodies where it can be shown that bull trout do not in fact exist. This responds to those commenters who wish to avoid future rulemakings in the event new information becomes available.

Regarding the comment that EPA may not designate waterbodies other than those where bull trout have been confirmed as present, EPA disagrees that this is the only reasonable way to designate applicable waters. EPA agrees that it would be arbitrary and capricious to designate waters merely on the basis of conjecture. However, the ICBEMP data base relied upon by EPA in this rulemaking to predict the presence of bull trout spawning and rearing is based on sound scientific methodology that results in a high degree of predictive accuracy. The ICBEMP data base focuses on a number of parameters known to correlate to the presence of bull trout, and predicts the presence of bull trout elsewhere only where those parameters are known to be present. EPA combined the ICBEMP data base with that developed by the Idaho Department of Fish and Game. The IDFG data base lists waters where bull trout are known to be present, and also includes waters where bull trout are suspected to be present based on the best professional judgement of Department officials. EPA believes that since the Idaho Fish and Game Department is the agency with the most expertise and the most current information regarding the location of bull trout, it is appropriate to defer to its judgement and to include waters where, according to the Department, bull trout are either known or suspected to be present.

If EPA were constrained to using a method of designating waterbodies that relied only upon direct human observations of the presence of bull trout spawning and rearing, the result would most certainly be under inclusive, and therefore under protective of the species. EPA believes the approach that is most reasonable and most consistent with the goals of the CWA is to identify those waterbodies where spawning and rearing have been observed to exist and then expand upon this using accurate modeling techniques or the best professional judgement of officials for an agency such as the Idaho Fish and Game Department. When it can be shown this approach errs in the direction of overprotection, the streamlined procedures for deleting waterbodies from the list should provide an adequate corrective mechanism.

In the final rule, EPA believes it has succeeded in excluding waterbodies that would be used only for migration and not for spawning and rearing. Additionally, by excluding river main stems, EPA has drastically reduced the number of low elevation waterbodies affected by this rule. This is responsive to the comments suggesting that spawning and rearing occur only in headwaters.

Comment: Several commenters requested that individual streams either be removed from or added to the list of streams covered under this rule. Very few of these commenters submitted factual data to support their request, although several noted that they had data available or referred to sources where the data may be available.

Response: Due to the short court-ordered time frame for development of this rule, EPA was unable to pursue the acquisition of data not provided directly to EPA during the comment period. However, EPA has provided opportunity within the rule to modify the list of streams to which the rule applies and encourages these commenters to pursue such modification where they have the factual data to indicate presence/absence of bull trout in specific waters. Additionally, several of the streams which commenters requested be removed from the list were removed during our review and modification of the proposed list. These streams include the Boise River below Lucky Peak Reservoir and the Snake River near Lewiston.

d. Final Rule. The final rule includes a list of waterbodies for which site-specific temperature criterion are needed to protect bull trout spawning and juvenile rearing. In deriving this list, EPA has relied on bull trout distribution data from the 1994–5 Interior Columbia Basin Ecosystems Management Project (ICBEMP) (Quigley and Arbelbide, in press) ''Key Salmonid'' database for known and predicted bull trout spawning and juvenile rearing, and the updated version (April 1997) of the Idaho Department of Fish and Game (IDFG) Digital Bull Trout Distribution database.

The merging of these two databases resulted in a list of streams designated specifically for bull trout spawning and juvenile rearing, as well as some streams utilized for all life stages, and other streams used only as migratory corridors. In order to exclude those streams used only for life stages other than spawning and juvenile rearing (i.e., migratory corridors, adult rearing, etc.), the following steps were taken to modify the list of streams:

(1) The entire IDFG data set, which addresses all life stages, was overlaid with certain portions of the ICBEMP data set. The portions of the ICBEMP database which were used included ''known'' bull trout spawning and juvenile rearing, ''predicted'' spawning and juvenile rearing, and ''predicted present'', i.e., migratory or seasonal habitats that could include some spawning and juvenile rearing streams. Known migratory corridors were not included.

(2) Based on statements made by IDFG staff, EPA concluded that the IDFG data set on bull trout habitat contained recently updated information that was not included in the ICBEMP data set. Therefore, EPA determined that the majority of the IDFG data set, especially tributaries, should be retained in the rule in order to utilize the most recent information.

(3) Those areas denoted by ICBEMP as ''predicted present'' bull trout habitat used by all life stages which do not overlap with areas listed by IDFG for all life stages were assumed to have less of a probability of being spawning and juvenile rearing streams. Therefore, these waterbodies were deleted from the list of streams to which the rule would apply.

(4) Based on the literature reviewed and comments received, EPA assumed that bull trout do not use main stem river systems for spawning and juvenile rearing habitat, because of elevated water temperatures and the lack of appropriate spawning substrate. The main stem rivers are utilized by bull trout principally as migratory corridors and adult holding habitat. This is due to the naturally higher water temperatures and greater food abundance. Bull trout are almost exclusively piscivorous. Therefore, only the headwater portions of main stem rivers were retained in the rule. All other segments of the main stem rivers were deleted, regardless of whether they were denoted by either the IDFG, ICBEMP, or both.

The list represents EPA's attempt to compile a comprehensive list of streams in Idaho utilized for bull trout spawning and juvenile rearing without including waters utilized only for adult migration and rearing or streams in which bull trout are not likely to occur. The resulting list for which site-specific temperature criteria are being promulgated can be found in subsection (a)(2) of today's rule.

iii. Modifications to Bull Trout Criteria and Distribution

Although the promulgated list of waterbodies where bull trout temperature criteria apply represents the best information now available, EPA believes it is appropriate to have some measure of flexibility to modify this list as new information on bull trout distribution arises. This is important in light of ongoing monitoring activities by the State of Idaho and several Federal agencies. Therefore, EPA has modified the proposal by adding a procedure whereby listed waterbodies can be removed or temperature criteria modified through a determination of the Region 10 Regional Administrator (RA). EPA believes this procedure can provide expeditious relief from the requirements of these temperature criteria when such a change is supported by an adequate factual record. Although the procedure for making a determination under paragraph (a)(3) is not a rulemaking, each determination would be a final agency action, and would therefore be subject to consultation pursuant to section 7 of the ESA as appropriate.

Section 131.33(a)(3) sets forth procedures for modifying, on a site-specific basis, either the temperature criterion in paragraph (a)(1) or the list of waterbodies in paragraph (a)(2). Paragraph (a)(3)(i) allows the RA to remove a waterbody, or a portion of a waterbody, from the list if a finding can be made that bull trout spawning and rearing is not an existing use at a specified location. Paragraph (a)(3)(ii) allows the RA to modify upwards the temperature criterion of paragraph (a)(1) if a finding can be made that bull trout would be fully supported at the higher temperature at a specific waterbody or portion thereof. EPA wishes to emphasize that these findings must be based on an adequate factual record. Since these determinations essentially modify a site-specific criterion, the record must be complete and compelling enough to support a site-specific criterion in the first instance, and must also effectively rebut whatever information was used to support today's promulgation for the specific waterbody. It is also important to note that EPA expects any requests for a modification under section (a)(3) to be accompanied by a complete and adequate supporting record that is consistent with EPA's existing policies and procedures for developing site-specific criteria. This burden for a complete and adequate supporting record falls upon the person requesting the modification. EPA does not intend to supply information lacking from a request, and will not act on any request that is missing critical information or otherwise deemed incomplete.

EPA expects that support for the removal of a waterbody pursuant to paragraph (a)(3)(i) will normally consist of documentation that bull trout are not currently present. While bull trout may constitute an ''existing use'' if it has been present since 1975, a requestor under paragraph (a)(3)(i) will not normally carry the burden of demonstrating that this is not the case. Unless there is information to the contrary, EPA will assume that the current absence of bull trout also indicates a historical absence. However, where there is information of a historical presence that qualifies as an ''existing use,'' that information would have to be rebutted.

The procedures of paragraph (a)(3) are designed to ensure that the public will have adequate input on any determination. Paragraph (a)(3)(iii) provides that the public will have notice of and an opportunity to comment on any proposed determination. If this notice can be combined with another concurrent and related process, such as action on an NPDES permit, EPA will endeavor to do so. Paragraph (a)(3)(iv) requires the RA to make publicly available any proposed determination and the factual record supporting it, and to make publicly available the record of past decisions.

EPA plans to develop a mailing list to facilitate public awareness of final determinations to modify stream listing or temperature criteria under these procedures. Persons wishing to be notified of such determinations should send their names and addresses to Lisa Macchio at U.S.EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle,

Washington, 98101 (telephone: 206–553–1834).

The procedures in paragraph (a)(3) provide a mechanism for removing a waterbody from the list, or for modifying the temperature criterion upwards. That is, paragraph (a)(3) can only be used to modify today's rulemaking in a less stringent direction. EPA recognizes that new information might also support, for instance, the addition of a waterbody to the list. While it would have been desirable to provide a similar streamlined mechanism for modifying the list in a more stringent direction, EPA was concerned that a procedure that could increase the scope of today's promulgation through a process less rigorous than formal notice and comment rulemaking might not be consistent with the Administrative Procedures Act. However, paragraph (a)(3)(v) makes clear that EPA can promulgate additional site-specific criteria for bull trout through rulemaking.

2. Sturgeon

i. Proposal

EPA proposed temperature criteria for the Kootenai River from Bonners Ferry to Shorty's Island to protect for critical spawning and egg incubation life stages for white sturgeon. EPA proposed a minimum weekly average of 8 °C followed by an 8-week time period (which was to begin no later than May 21) where the maximum weekly average does not exceed the upper spawning temperature limit of 14 °C. Due to the limited time available prior to the proposal, EPA was able to look at only a small subset of the temperature data for the Kootenai River. Based on this limited analysis, as well as preliminary discussions with FWS and Army Corps of Engineers (COE), EPA had concluded that the 8 °C minimum could be attained by May 21 and that a 14 °C maximum temperature was reasonable. See 62 FR 23010 for a more detailed discussion of EPA's proposal.

ii. Recent Idaho Actions

Idaho adopted revised water quality standards which were issued as a temporary rule by the Board of Health and Welfare and became effective on June 20, 1997. This revised rule establishes a 14•C maximum seven day moving average water temperature (based on daily average temperatures) within the Kootenai River from Bonners Ferry to Shorty's Island from May 1 through July 1.

EPA reviewed the state's revised criteria, the scientific literature, and additional temperature data for the Kootenai River provided during the comment period. EPA again conferred with FWS in evaluating temperature criteria which would provide adequate protection of sturgeon spawning.

EPA received comments from COE which indicated water temperature at Bonners Ferry is controlled by several factors other than outflows at Libby Dam. These factors include tributary inflow volume and temperature, water depth and local hydrometerological conditions. Consequently, these factors and inputs may have a greater role in controlling the onset of the timing of sturgeon spawning than EPA originally believed. These factors along with the multi-agency efforts for the recovery of Kootenai River white sturgeon, which includes experimentation of flow releases at Libby Dam by the COE, may define more precisely the optimal conditions needed for sturgeon spawning and egg incubation. Although available information suggests that 14°C is a reasonable upper temperature limit, the current optimal conditions for Kootenai River white sturgeon spawning and egg incubation, as well as the temperature ranges and flow regimes which would provide for these conditions, are not entirely certain.

The State's 1997 standard establishes a 14°C maximum temperature criteria for the two month spawning period. This time period and upper temperature limit is consistent with the literature EPA has reviewed. Partly because of the uncertainty in defining optimal spawning conditions for Kootenai River white sturgeon, along with (1) influences other than flow releases at Libby Dam and (2) COE and FWS efforts in experimentation with operational guidelines at Libby Dam, EPA determined that establishing a 14°C maximum criteria from May 1 through July 1 without establishing a minimum temperature criteria, would provide for the necessary temperature (thermal) protection for spawning and egg incubation as well as temporal flexibility as over times when such life stages can occur. EPA will continue to track this issue as more information becomes available.

Therefore, by letter dated July 15, 1997, EPA conditionally approved the State's temporary temperature criteria as being in accordance with the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA's approval eliminates the need for federal criteria to protect sturgeon. Because EPA's approval is not yet unconditional, the Agency is not withdrawing the proposal for these criteria at this time.

3. Snails

i. Proposal

EPA proposed a maximum daily average temperature of 18°C in the Middle Snake River from river mile 518 to river mile 709. Given the limited time EPA had to develop the proposed rule and the limited data available at the time, EPA's proposed temperature criteria appeared to be reasonable. See 62 FR 23011 for a more detailed discussion of EPA's proposal.

ii. Comments

Although no additional data on the temperature requirements for these snails was obtained during the comment period, EPA did receive several comments with regard to the proposed temperature criteria for snails.

One commenter noted that the FWS recovery plan recommends an annual average temperature of 18°C, and that EPA was proposing a daily average. This commenter questioned how EPA converted a suggested 18°C annual average temperature to a maximum daily average. EPA proposed this because it had determined that an annual average temperature did not make sense for the protection of the species since it would allow the low winter time temperatures to offset the high summer temperatures. Without further information at the time of proposal, EPA's sense of FWS's recommendation for temperature criteria in the recovery plan, was they were targeting a temperature lower than the current Idaho temperature criteria applicable to cold water biota. Therefore a daily average of 18°C was proposed. As discussed below, EPA has since concluded that it could not be confirmed that Idaho's existing temperature criteria are inadequate to provide the temperature protection recommended in the recovery plan.

Another commenter questioned whether it was reasonable and appropriate to establish an 18°C temperature criteria throughout a significant portion of the river (rivermile 518 to 709) because snails are isolated in specific habitats within the river. Therefore the criteria should only apply to those specific portions where snails are known to exist, not all segments as EPA proposed. Based on the information available, EPA is unable to determine the precise locations of all snail habitat. In addition, EPA has determined that available data do not confirm that Idaho's existing temperature criteria are inadequate to protect snails.

Another commenter stated snail populations are more abundant than

first assumed in 1992 and good populations of certain listed snails were found in river and reservoir habitats where the proposed standard is exceeded during the summer. However, data was not provided to show the correlation between presence, health of species and temperature requirements. Presence of snails does not necessarily indicate temperature threshold for optimal conditions of the species. Upon the availability of relevant information on snail requirements, EPA will further evaluate appropriate numeric criteria.

Several commenters stated that they believed the proposed 18°C standard is essential to the survival of the Snake River mollusks but provided no additional data to justify this. EPA does not have the information to determine whether or not this may be true.

One commenter believed that until further data are available, the standard for the snails should be lowered to 14°C to accommodate the Banbury Springs lanx. EPA lacks the appropriate data to support lowering the temperature criteria to 14°C.

iii. Final Rule

After a more thorough evaluation of available data and information on the temperature requirements of these snails, EPA has been unable to confirm that Idaho's existing temperature criteria are inadequate to protect the snails. Therefore EPA is withdrawing its disapproval of Idaho's criteria and is not promulgating final temperature criteria for aquatic snails in the Middle Snake River. EPA will continue to work with FWS on this issue as more information becomes available and will revisit this issue in future triennial reviews.

F. Antidegradation Policy

EPA's June 25, 1996 letter disapproved part of Idaho's antidegradation policy because it did not protect Tier III waters (Outstanding Resource Waters) from point sources. The State revised its antidegradation policy to refer to point sources as well as nonpoint sources, and submitted this revision to EPA. The commenters generally expressed the view that under the circumstances a federal promulgation was unnecessary. EPA approved this revision on May 27, 1997 as satisfying our objection and meeting the requirements of the Clean Water Act. Because section 303(c)(4) of the CWA does not require EPA to promulgate a standard in these circumstances, today's final rule does not include an antidegradation policy.

G. Mixing Zone Policy

1. Proposal

On April 28, 1997, EPA proposed to amend Idaho's mixing zone policy for point source discharges. EPA had determined that Idaho's exemption of certain narrative criteria from applying to water quality within a mixing zone was inconsistent with the CWA and EPA's implementing regulations at 40 CFR part 131 (see 62 FR 23014). EPA's proposed amendment to Idaho's mixing zone policy would apply Idaho's existing narrative surface water quality criteria at 16.01.02.200. to water quality within a mixing zone.

2. Recent Idaho Actions

On June 19, 1997, Idaho revised its mixing zone policy to delete the exemption from narrative surface water criteria at 16.01.02.200. EPA approved Idaho's revised mixing zone policy on July 15, 1997, because it addressed EPA's objection and meets the requirements of the CWA and EPA's implementing regulations at 40 CFR Part 131. Therefore, a federal promulgation for water quality within a mixing zone is no longer necessary.

H. Excluded Waters Provision

1. Proposal

IDAPA 16.01.02.101.03. of Idaho's standards excludes from water quality standards those unclassified waters which are ''outside public lands but located wholly and entirely upon a person's land.'' EPA disapproved this section and proposed a modification to ensure that any waters of the United States which fell within this exclusion would be covered by the standards applicable to unclassified waters. EPA explained that this modification was necessary because all waters of the United States must be protected by water quality standards. It is possible that some waters ''located wholly and entirely upon a person's land'' could be waters of the United States. In such instances, those waters would be protected by the CWA.

2. Comments

Comment: A number of commenters objected to the scope of EPA's definition of waters of the United States or asked for clarification of the definition. Some suggested that the statutory phrase ''navigable waters'' be used instead.

Response: The CWA uses the term ''navigable waters'' but defines that term in section 502 to mean ''the waters of the United States, including the territorial seas.'' Because the phrase ''navigable waters,'' taken out of context, can be confusing and erroneously imply that navigability is the key to CWA jurisdiction, EPA chose to use the term ''waters of the United States'' for this rulemaking.

EPA's regulations define waters of the United States to include isolated waters:

The use, degradation or destructive of could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes: or

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) Which are used or could be used for industrial purpose by industries in interstate commerce * * *

The definition also provides that waste treatment systems are generally not waters of the United States.

Because of questions about isolated waters, EPA published in the preamble to its section 404 state program regulations a fuller explanation of this part of the definition {53 FR 20765 (June 6, 1988)}. The discussion provides some additional examples of the ways in which the interstate commerce requirement could be satisfied, i.e., if waters are or would be used as habitat by certain migratory birds, are or would be used as habitat by endangered species, or are used to irrigate crops sold in interstate commerce. (With respect to the latter, as explained below, if such irrigation waters are man-made waterways, they are outside the scope of today's rulemaking, even if waters of the United States, because they are not addressed by the state's excluded waters provision but rather protected under a different state provision.)

EPA's definition of waters of the United States has been in place in substantially its current form for approximately 20 years, and has been upheld and applied by numerous courts. Accordingly, EPA does not understand the commenters to be asking EPA to revise that definition but rather to be seeking a better understanding of the overlap between waters of the United States and the waters which are excluded under Idaho's provision, that is, a better understanding of the waters actually affected by EPA's proposed rule.

An important starting place is the scope of the state's ''private waters'' exclusion. First, that section does not apply to man-made waterways, which are instead addressed by Idaho 16.01.02.101.02, which protects man-made waterways for the uses for which they are developed unless specifically designated in Idaho Sections 110. through 160. for other or additional uses. Hence, man-made waterways are

not affected by EPA's proposal, whether or not they are waters of United States, because they were not part of the private waters exclusion from standards. Second, the Idaho exclusion only applies to waters ''located wholly and entirely upon a person's land.'' In other words, ponds which extend across property lines, or streams which flow across property lines were never excluded from standards under the state provision, and thus are not affected by EPA's proposal.

In short, the waters which might be affected by EPA's proposal are the very limited subset of waters in Idaho which (1) are not man-made waterways, (2) are confined entirely to a particular person's land *and* (3) satisfy the commerce test for isolated waters under the definition of waters of the United States.

Comment: The federal government has no right, or need, to regulate the quality of waters on private land. Regulating downstream waters is sufficient.

Response: Under the commerce clause of the United States Constitution, Congress may regulate activities on private property in order to protect interstate and foreign commerce. The Clean Water Act represents an exercise of that authority.

One of the fundamental principles of the CWA is that water moves in hydrological cycles and that it is necessary to control pollution at the source to fully protect the nation's waters. To exclude all waters on private property from protection and instead to attempt to deal with polluted water after it crosses the property line to public land would be ineffective and contrary to the CWA's principles.

On the other hand, where a waterbody on private land is isolated and has no effect on other waterbodies and does not itself have an interstate commerce nexus, we agree that there is no need to regulate it, and indeed such waters are not encompassed by the definition of waters of the United States nor regulated under today's rule.

Comment: The cold water biota use which EPA proposed for unclassified waters is an inappropriate use for most private waters.

Response: Idaho has since revised its ''unclassified waters'' provision (now denominated ''undesignated waters'') and the revision has been approved by EPA. Therefore, today's final rule does not contain a federal unclassified waters provision. The revised Idaho provision presumes that most waters in the state support cold water biota and primary and secondary recreation beneficial uses. However, the revised provision also provides that during the review of any new or existing activity on an undesignated water, the department may examine all relevant data on beneficial uses and, where the department determines after public notice that uses other than cold water biota and primary or secondary recreation are appropriate, may use the new information in making compliance determinations. Thus, to the extent that any ''private'' waters are waters of the United States, and a regulated person has information indicating that cold water biota is not an appropriate use, he may present information to the state and ask for a determination that another use is more appropriate.

3. Final Rule

The state did not revise this provision to address EPA's concerns and, as discussed above, none of the comments provided a basis for withdrawing EPA's objection or modifying the proposal. Accordingly, EPA is promulgating this provision as proposed to ensure that all waters of the United States are protected by water quality standards.

I. Federal Variances

1. Proposal

The proposed rule authorized the Regional Administrator to grant federal WQS variances when subsequent data showed that the uses that had been promulgated by EPA were unattainable in the near term for a particular pollutant. The proposal explained that EPA has approved states' granting variances from state water quality standards in such circumstances (i.e., where removing a designated use entirely could have alternatively been allowed). EPA expressed the view that it was appropriate to provide a comparable federal process because EPA's use designations relied (at least in part) on a rebuttable presumption that fishable/swimmable uses were attainable. The proposed procedures linked the variance application process to the NPDES permit process for efficiency, and set out the criteria for granting or denying federal variances. See 62 FR 23015 for a more detailed discussion of EPA's proposed variance procedure.

2. Comments

Comment: Variances should be used infrequently and cautiously to avoid undercutting water quality standards.

Response: EPA agrees. Under the proposed and final language, variances may be granted only when there is data demonstrating to the Regional Administrator's satisfaction that the requirements of 40 CFR 131.10(g) are met and that granting the variance will not jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat, in accordance with the Endangered Species Act. In addition, any proposed decision to issue a variance will be subject to public notice and comment. Moreover, the final rule includes use designations for only five segments, and the variance provision only applies to those use designations. These requirements and circumstances should limit the use of variances to appropriate situations.

Comment: To avoid adverse effects on listed species, variances should consider the needs of listed species and should include mitigation plans.

Response: Because the granting of a variance under the procedure in question is a federal action, EPA will consult with the FWS and/or NMFS pursuant to section 7 of the ESA where a proposed variance may affect a listed species. Mitigation measures developed as part of such consultation may be included in the final variances as needed.

Comment: The proposal is too narrow because it makes variances available only to NPDES applicants. Nonpoint sources may also need variances; variances may be needed in the TMDL process.

Response: When first approved of by EPA, variances were conceived of as a mechanism which allowed CWA permits to be written to assure compliance with water quality standards, as required by section 301(b)(1)(C), while providing temporary relief when the uses under the existing standards were not presently attainable. EPA tied the proposal to the NPDES permit process, because that is the only EPA regulatory program which requires compliance with the applicable water quality standards, and therefore the main context in which the need for a such a variance would arise.

The comments concerned with the application of variances to non-point sources seem to be based on an assumption that, without a variance, nonpoint sources unable to meet a federal standard (or TMDL) would be vulnerable to suit or similar enforcement action. However, the CWA does not make water quality standards (or TMDLs) directly enforceable; that is, EPA's enforcement authority under section 309 of the Act and citizen suits under section 505 cannot be used to enjoin or seek penalties from someone simply because they are violating a water quality standard. Rather, enforcement actions are directed against

persons discharging without a permit or failing to comply with a permit or an administrative order.

As mentioned above, the final rule establishes use designations for only five water body segments. None of the comments singled out these segments as ones where a variance would likely be needed for non-NPDES activities. Persons who nonetheless see the need for a variance in non-NPDES contexts, for example, an applicant for a CWA section 404 permit to discharge dredged and fill material who has data indicating that a designated use is unattainable, may of course petition EPA to revise a water quality standard, either by removing a use entirely or by granting a variance.

Comment: Under the proposal, variances may be granted only for standards in paragraphs (a) and (b), that is, beneficial uses for unclassified waters and 53 specific water bodies. Variances should also be available for streams subject to the bull trout temperature criteria.

Response: The bull trout criteria only apply to streams where the best available information shows that bull trout actually spawn, incubate, or rear, in other words, streams where bull trout are an existing use. Variances may not be used to modify such existing uses. However, as discussed in section E. of this preamble, if EPA determines that bull trout are in fact not present in a segment of a listed bull trout stream, the bull trout criteria will not be applied to that segment. In addition, if bull trout are present in a given location, but the data indicates that less stringent temperature criteria would fully protect the bull trout there, paragraph (a)(3) of the final rule provides procedures for a site-specific temperature modification. These procedures are a more appropriate means to provide the relief sought by the commenters.

Comment: A discharger should be allowed to apply for a variance at any time, not just when submitting an NPDES application. The circumstances justifying the variance may not arise, or be apparent, until after the initial NPDES application.

Response: EPA agrees that greater flexibility is appropriate, and is adding language to the rule to allow later applications for variances if the need or factual basis for the variance was not available when the NPDES application was filed. This exception should be used only when necessary. EPA will be in the best position to process the variance and NPDES permit applications expeditiously if they are filed concurrently.

One of the commenter's examples involved the situation where EPA reopens a permit to change permit conditions. This is unlikely to create the need for a variance. Under 40 CFR 122.62, a permit may be reopened to reflect new or revised water quality standards only at the permittee's request, unless there is a specific reopener clause in the permit providing otherwise.

Comment: One commenter asked that the expiration date of a variance be able to extend past the 5 years in the proposal when the permit reflecting it remains in effect.

Response: It is not necessary to extend the term of the variance itself in these circumstances. NPDES permits are issued for terms not to exceed 5 years. However, under the Administrative Procedures Act and 40 CFR 122.7, where a permittee files a timely application for permit renewal, and EPA does not complete its decision by the expiration of the original permit, the original permit continues in effect until a decision is reached. Unless the original permit had contained a schedule of compliance requiring compliance with the underlying standard at some specified time, the original permit would continue to reflect the variance until superseded by the new permit. Whether the new permit would reflect the variance would depend on whether a request for a variance renewal had been granted.

3. Final Rule

For the reasons above, the final variance procedure is essentially the same as the proposal, but modified to allow applications for variances to be filed after NPDES permit applications are filed in certain circumstances. EPA is making this procedural modification because there are circumstances where the need or the factual basis for a variance may not be apparent at the time the NPDES permit application is filed. For example, the final permit may be sufficiently more stringent than the draft permit that the applicant can demonstrate that complying with the final limit would cause substantial and widespread social and economic impact. In addition, a discharger to a stream affected by today's promulgation may have already filed an NPDES renewal application. A discharger with an existing permit will not be subject to permit conditions reflecting today's standards until its permit is renewed (unless the discharger requests that its existing permit be reopened for this purpose); such a discharger will be able to submit any variance request with its application for permit renewal.

J. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866, and is therefore not subject to OMB review. As explained more fully below in section L (Regulatory Flexibility Act), EPA's final rule does not itself establish any requirements directly applicable to regulated entities. In addition, there is significant flexibility and discretion in how the final rule will be implemented within the National Pollutant Discharge Elimination System (NPDES) permit program. While implementation of today's rule may ultimately result in some new or revised permit conditions for some dischargers, EPA's action today does not impose any of these as yet unknown requirements on dischargers. Nonetheless, consistent with the intent of E.O. 12866, EPA has estimated (within the limits of these uncertainties) the possible indirect costs which might ultimately result from this rulemaking. The following is a summary of the regulatory impact analysis (RIA) prepared for this final rule. Further discussion is included in the full RIA, which is included in the docket for this rulemaking.

Under the CWA, costs cannot be a basis for adopting water quality criteria that will not be protective of designated uses. If a range of scientifically defensible criteria that are protective can be identified, however, costs may be considered in selecting a particular criterion within that range. As long as

existing uses are protected, costs may be considered in designating beneficial uses if the incremental controls would cause substantial and widespread social and economic impact on the community such that the uses are not attainable. EPA's regulations also include other factors that may be considered in designating uses (see 40 CFR 131.10(g)).

The designated uses and water quality criteria of today's final rule are not enforceable requirements until separate steps are taken to implement them. Therefore, this final rule does not have an immediate effect on dischargers or the community. Until actions are taken to implement these designated uses and criteria, there will be no economic effect on any dischargers or the community.

In the short time prior to proposal EPA attempted to assess, to the best of its ability, compliance costs for facilities that could eventually be indirectly affected by the designated uses and water quality criteria in the proposed rule. However, EPA was unable to find all of the information necessary to accurately estimate these potential costs. Although the costs were not expected to be significant, EPA developed a methodology to estimate the potential indirect cost impacts on facilities discharging pollutants to waters subject to the numeric water quality criteria and uses established by the proposal.

Following proposal, EPA continued to gather additional data and information on the facilities and waters needed to evaluate use attainability and the costs attributable to the rule. In addition, as discussed in sections C, D, and E, the State of Idaho undertook several actions that significantly reduced the number of waters covered by this rulemaking and, subsequently, the scope of the RIA for today's final rule. EPA also solicited public comment and supporting data on the facilities and waters it intended to evaluate as part of the RIA, and on the methodology it planned to use to estimate costs associated with implementation of the rule. EPA has reviewed the State actions and the comments and data provided by the public as well as the information and data it gathered during the public comment period, and has estimated the potential costs to facilities as an indirect result of attaining numeric water quality criteria and uses in the final rule. EPA has included this information in the record for today's final rulemaking.

1. Use Attainability

As described for the proposal, in order to properly assess the impact of EPA's new use designations in Idaho, EPA performed a preliminary evaluation to determine if fishable/swimmable uses were attainable for all assessed water body stream segments affected by the proposal. For this analysis, EPA extracted chemical-specific data from the EPA Storage and Retrieval Water Quality File (STORET) data base. If EPA found that significant exceedances of water quality criteria (in terms of relative magnitude above the applicable criteria, duration of exceedance above the criteria, and the number and types of pollutants) has occurred, then an upgrade of designated uses may not be appropriate. Based on this preliminary analysis, EPA found periodic exceedances of water quality criteria for several water body stream segments for several specific parameters. However, due to the age of most of the data, and the fact that data for all applicable parameters were not available, EPA could not definitively conclude that a downgrade for any water body stream segment affected by the proposed rule was justified by stream condition. Therefore for purposes of estimating the cost of the proposed rule, EPA conservatively assumed that the new use designation would apply to all affected water bodies. This assumption was considered conservative because if the use of a particular water body could not be attained, then less stringent criteria would apply to the water body and all discharges to the water body (and most likely lower potential costs).

For the proposal, EPA acknowledged that an appropriate evaluation of use attainability should consider physical, biological, and chemical indicators to properly evaluate whether a use can be attained. EPA also requested data and information that would support use attainability analyses for the final rule. EPA received limited data as part of the public comments that could be used to support use attainability analyses for the final rule.

As described in section D, this final rule designates cold water biota protection for five water body segments. Data and information was submitted as part of the public comments for only one of the five water body segments (South Fork Coeur d'Alene). In particular, chemical-specific information was submitted for primarily metal parameters. The information showed that exceedances of applicable EPA aquatic life water quality criteria occur for several metal parameters, and that ambient metal levels in mining areas may be due in part to natural metal levels that occur in mineralized areas (e.g., from natural seeps, etc.). However, EPA believes that elevated levels of metals may also be a result of historical contamination from past mining operations. Notwithstanding, as discussed in section D, these exceedances alone, do not prevent the stream from supporting cold water biota. In addition, none of the commenters specifically contended that a cold water biota use was unattainable on any of the five streams at issue on account of compliance costs. To the extent that the commenters did raise cost concerns, as shown below, EPA's cost methodology indicates that the costs (which are not direct costs in any event) would be significantly less than predicted by many of the commenters.

EPA has considered this data in its evaluation of the potential impact of this rulemaking to dischargers. As described in section K.2 below, EPA estimated a range of costs to account for the flexibility and discretion related to implementing water quality standards within the NPDES permit program. Particularly under the low-end, EPA assumed that dischargers would take advantage of the alternative regulatory approaches available, as opposed to installing costly controls to meet permit limits. It is under this low-end scenario that EPA acknowledged that background data exceeded water quality criteria, and assumed that dischargers would only incur costs related to pursuing an alternative regulatory approach (e.g., site-specific criteria). However, if these alternative regulatory approaches were not pursued or were not successful (e.g., data to produce site-specific criteria did not result in less stringent criteria), EPA estimated the costs under a high-end scenario. As such, the high-end scenario is considered a worst-case scenario because all facilities with effluent quality expected to exceed their permit limits would require installation and operation of additional control measures with no possible opportunity to reduce costs using alternative regulatory approaches allowed for under the national water quality standards and NPDES permit programs.

2. Overview of Methodology to Estimate Potential Costs Related to New Use Designations

In general, the approach to deriving costs for the final rule is the same as the approach described for the proposal. However, due to the reduced scope of the final rule, as compared to the proposal, all NPDES permitted dischargers to the five water body segments were evaluated for potential costs.

As described in the proposal, the new use designations being proposed by EPA, by themselves, will have no impact or effect. However, when the water quality criteria to protect these

uses are applied to dischargers through the NPDES permit program, then costs may be incurred by regulated entities (i.e., point source dischargers) but these costs can vary significantly because of the wide range of control strategies available to dischargers. Since EPA, as the NPDES permitting authority, also has significant flexibility and discretion in how it chooses to implement water quality criteria, analysis of potential costs would be difficult to perform for all potentially affected entities, especially within the time-frame to promulgate this rule. As a result, EPA estimated the potential costs attributable to the final rule by developing a range of detailed cost estimates for all NPDES permitted point source dischargers that discharge to the five water body segments.

The actual impact of the final rule will depend upon how the NPDES permit is developed and on which control strategy the discharger selects in order to bring the facility into compliance. In writing NPDES permits EPA determines the need for water quality-based effluent limits (WQBELs) and, if WQBELs are required, derive WQBELs from applicable water quality criteria. The implementation procedures used to derive WQBELs for this analysis were based on the methods recommended in the EPA *Technical Support Document for Water Quality-based Toxics Control* (or TSD) (EPA/505/2–90–001; March 1991). Specifically, a projected effluent quality (PEQ) was calculated. A PEQ is considered an effluent value statistically adjusted for uncertainty to estimate a maximum value that may occur. The PEQ for each selected pollutant was compared to the projected WQBEL. If the PEQ exceeded the projected WQBEL, a reasonable potential existed to exceed the WQBEL. Pollutants with a reasonable potential to exceed then were analyzed to determine potential costs to achieve the projected WQBEL.

Prior to estimating compliance costs, an engineering analysis of how each sample facility could comply with the projected WQBEL was performed. The costs were then estimated based on the decisions and assumptions made in the analysis. To ensure consistency and reasonableness in estimating the general types of controls that would be necessary for a facility to comply with the final rule (assuming that implementation of the rule resulted in more stringent requirements), as well as to integrate into the cost analysis the other alternatives available to regulated facilities, a costing decision matrix, described in more detail in the proposed rule, was used for each sample facility. Specific rules were established in the matrix to provide the reviewing engineers with guidance in consistently selecting control options.

Since dischargers can request a variety of regulatory alternative approaches available within the national water quality standards and NPDES permit programs (e.g., site-specific criteria, variances, compliance schedules, etc.), EPA also developed a low-end cost estimate assuming that these regulatory alternatives would be used to reduce costs under certain conditions. In particular, when the estimated costs to comply with WQBELs, based on new use designations, exceeded a cost-effectiveness trigger, then it was assumed that the discharger would pursue a regulatory alternative option. The triggering methodology used for this analysis was modeled after other regulatory impact analyses prepared by EPA for other water quality standards rulemakings.

Finally, for the five stream segments with specific use designation, once a cost range was established for the facilities EPA conducted a preliminary analysis of whether or not these uses are attainable. To make this determination EPA evaluated limited biological and chemical information on the five stream segments, the magnitude of the implementation costs on the individual facilities and the economic strength of the facilities that may incur costs as a result of today's rule.

3. Results for Stream Segments With Specific Use Designation

EPA identified 12 facilities that possess NPDES permits to discharge to the five water body segments affected by the final rule. To estimate costs for each facility, EPA obtained data from NPDES permit files (permit application, permit, fact sheet or statement of basis), downloaded effluent monitoring data from EPA's Permit Compliance System (PCS), and extracted ambient background data from EPA's STORET system.

For each facility, EPA performed an evaluation of reasonable potential to exceed water quality-based effluent limits (WQBELs) based on applicable water quality criteria to protect new use designations (i.e., cold water biota protection). EPA considered any pollutant for which water quality criteria existed and for which data were available. EPA assumed that reasonable potential existed if a permit limit for the pollutant of concern was included in the existing permit for the sample facility. In the absence of a permit limit, but where monitoring data were available, EPA evaluated reasonable potential based on the monitoring data and the procedures contained in the TSD (EPA 505/2–90–001; March 1991).

To calculate WQBELs, EPA used the TSD procedures to derive maximum daily and monthly average limits. Background concentrations were based on the average of data contained in STORET for upstream monitoring stations (including nearby tributaries); in the absence of background data, EPA assumed zero. Critical low flows were calculated from data contained in the United States Geological Survey (USGS) Daily Flow file data base for nearby gage stations; the 1-day, 10-year low flow (1Q10) was used for acute aquatic life protection and the 7-day, 10-year low flow (7Q10) was used for chronic aquatic life protection. In the absence of stream flow data, EPA conservatively assumed zero low flow.

Once WQBELs were derived, EPA derived cost estimates that represent the cost to remove the incremental amount of pollutant(s) to levels needed to comply with WQBELs (based on the existing effluent limit or reported effluent quality in the absence of a limit). This assessment was based on an evaluation of the performance of existing treatment system units, as well as consideration of other possible control options (e.g., waste minimization, additional new treatment units).

Based on evaluation of the facilities that may be impacted, EPA estimates that the total potential cost resulting from new designation for the five water body segments will range from $1.2 million to $10.5 million. Under the low-end, the costs for individual facilities ranged from $0 (i.e., no projected impact) to just over $640,000. Under the low-end, 3 facilities were assumed to pursue alternative regulatory approaches. Under the high-end, the costs for individual facilities ranged from $0 (i.e., no projected impact) to $5,700,000. Under the high-end, no facilities were assumed to pursue alternative regulatory approaches.

The total baseline pollutant load for the 12 facilities is just over 71,000 toxic pound-equivalents per year (pollutant toxic weights were derived using the EPA criterion for copper, 5.6 micrograms per liter, as the standardization factor). The pollutant load reduction under the low-end scenario is 21 percent or 14,800 toxic pound-equivalents per year. Cadmium, lead, and mercury account for 87 percent of the total pollutant load reduction under the low-end. Under the high-end scenario, the pollutant load reduction is 98 percent or 70,200 toxic

pound-equivalents per year. Lead, mercury, and silver account for over 80 percent of the total pollutant load reduction under this scenario.

Under the low-end scenario, capital and operation and maintenance (O&M) costs accounted for over 66 percent of the annual costs; costs for pursuing regulatory alternatives accounted for just under 34 percent of the total annual costs. Consistent with the intent of the high-end scenario, capital and O&M costs account for 100 percent of the total annual costs. Under the low- and high-end scenarios, cadmium, lead, and zinc accounted for approximately 74 and 69 percent of the total annual costs, respectively.

While EPA was only able to gather limited economic information on the affected facilities in the time allowed by the Court for this rulemaking, this information and EPA's regulatory impact analysis did not support a finding that the uses in today's rule are not attainable. EPA's analysis indicated that under the high-end scenario one facility could potentially incur relatively higher costs when compared to the other 11 facilities subject to today's rule. However, EPA could not conclude based on the information in the record that those costs would result in widespread social and economic impact because the facility is an abandoned mining operation designated as a Superfund site with ongoing remediation. Should such information become available for any of the facilities, the Agency could consider this information under the variance provision in today's rule.

4. Overview of Approach to Estimate Potential Costs Related to New Temperature Criteria

EPA received many comments related to EPA's proposed temperature criteria to protect certain threatened and endangered species (Kootenai River white sturgeon, freshwater aquatic snails, and bull trout). As described in section E, as a result of these comments and associated State actions, this final rule includes new temperature criteria only for the protection of bull trout in a limited number of water body segments (see § 131.33(a) of the final rule).

Although the number of water body segments that are affected by EPA's new temperature criteria in the final rule has been reduced from the proposal, certain facilities may still be impacted by the final rule. Therefore, EPA assessed the potential costs to comply with the new temperature criteria for bull trout.

EPA's approach to estimate costs included three steps. First, ambient temperature data was collected for each water body segment impacted by the new temperature criteria and compared to the criteria contained in § 131.33(a). Due to the fact that many of the water body segments are small tributaries in the headwater areas of the water body, limited ambient data existed. In the absence of ambient data for a particular water body, then temperature data for other water bodies within the hydrologic basin were used as a surrogate.

For any water body that had background ambient temperatures below the new temperature criteria, EPA identified NPDES permitted dischargers on those segments and evaluated the reasonable potential for the discharge to cause an exceedance in the downstream temperature. If a reasonable potential to exceed was determined, then costs were estimated to install controls that would reduce discharge temperatures.

Although EPA is projecting the potential costs to point sources, EPA also received several comments related to the potential large economic impact that could occur as a result of the new temperature criteria, particularly for the agricultural and forestry segments of the Idaho economy. As described earlier, the scope of the new temperature criteria has resulted in a limited number of water body segments for which revised temperature criteria are required. However, EPA has only estimated costs to point source facilities that are subject to numeric WQBELs included in NPDES permits. The point sources included in this study only include those that discharge to waters within the State designated for protection of bull trout. Under the CWA, EPA has direct authority regarding permits issued under the NPDES. EPA did not calculate costs for any program for which it does not have enforceable authority, such as agricultural and forestry-related nonpoint sources.

Further, agricultural and forestry-related nonpoint source discharges are technically difficult to model and evaluate for costing purposes because they are intermittent, highly variable, and occur under different hydrologic or climatic conditions than continuous discharges from industrial and municipal facilities, which are evaluated under critical low flow or drought conditions. Thus, the evaluation of agricultural and forestry-related nonpoint source discharges and their effects on the environment are highly site-specific and data intensive.

EPA predicted how the final temperature criteria for bull trout protection may be implemented by the State through numeric effluent limits for NPDES facilities and attempted to predict the actions these facilities may need to take in order to comply with effluent limits based on the new criteria. EPA envisions that some of these costs may involve efforts to defer new effluent limits until studies are undertaken to allocate temperature reductions throughout a watershed and, where appropriate, EPA has included the costs of these studies in the analysis. Although EPA has focused on calculating costs to individual NPDES permitted facilities, EPA believes that a comprehensive watershed approach that addresses all significant sources of high temperature discharges will often present more cost-effective approaches. EPA and the State may ask or require these sources to implement best management practices or participate in a comprehensive watershed management planning approach.

5. Results for Stream Segments With New Temperature Criteria

There are 1877 water body segments for which EPA has established new temperature criteria for the protection of bull trout. Based on data contained in PCS, EPA estimates that there are 37 NPDES permitted facilities located on these 1877 water body segments. Of the 37 NPDES dischargers, eight facilities are classified as a major discharger, and 29 are classified as minor dischargers. The largest categories of dischargers that make up the 37 dischargers are mine sites (15 total; 6 majors and 9 minors), municipal wastewater treatment plants (9 total; 1 major and 8 minors), and fish hatcheries (6 total; 1 major and 5 minors).

Of the 37 NPDES facilities, three facilities (1 major mine, 1 major municipal wastewater treatment plant, and 1 minor municipal wastewater treatment plant) contained permit limits for temperature discharges. Evaluation of these three facilities was conducted using water quality data from STORET, three USGS data sets not contained in STORET, and PCS monitoring data. The USGS data sets included the National Water Quality Assessment (NAWQA), the National Water Quality Networks (NQN), and a specific data request made to the Idaho USGS for continuously monitored temperature. The Hydrological Unit Code (HUC) for each of the three sample facilities (determined from PCS) was used to gather data from STORET and the USGS data sets. Flow and temperature data were not found for any monitoring stations in STORET for the three HUCs. The three USGS data sets contained no monitoring stations in the HUC that corresponded to each of the facilities.

Because of the lack of ambient temperature and flow data for streams, data for flow was complied using USGS gauging stations.

As discussed in proposal for this rule, an accurate evaluation of the need for and cost for temperature controls requires extensive data for both ambient conditions (air and water) and the effluent discharge. Since the specific data was not readily available for the final rule analysis for any of the sample facilities, the following discussion describes the potential range of costs that could result from implementation of the final temperature criteria for protection of bull trout.

If it is assumed that each of 37 facilities were to pursue alternative regulatory approaches to comply with the temperature criteria, the total annual costs are estimated to be just over $1 million. Alternative regulatory relief would be considered feasible for a facility should ambient receiving water conditions indicate that criteria can not be achieved (e.g., habitat unsuitable for bull trout, natural background temperatures higher than criteria, etc.). In fact, EPA evaluated the limited background ambient temperature data that were available and found that some waters (based on limited, historical data) may naturally exceed the temperature to protect bull trout. Under these circumstances, a facility could pursue alternatives such as the derivation of a site-specific criterion. The cost for a facility to pursue regulatory alternatives was based on those used in the Regulatory Impact Analysis prepared for the final Great Lakes Water Quality Guidance.

Alternatively, if it is assumed that each of the 37 facilities were to conservatively incur costs to install and operate temperature control equipment, the total annual costs are estimated to be just under $9 million per year. This high-end cost estimate is based upon the installation and operation of cooling towers at each facility. This assumption is considered a worst-case scenario for several reasons. First, not all types of facilities produce wastewater with elevated temperatures that would require reduction (e.g., fish hatcheries, mining sites that do not include milling operations that require cooling waters, and minor municipal dischargers). Second, since many of the facilities that discharge to bull trout protection streams are classified as minor dischargers, they are not expected to discharge wastewater at a volume or at a temperature that would effect the receiving water quality. Finally, the incremental decrease in temperatures would be expected to relatively small for most discharges, with the possible exception of cooling water discharges. As such, the use of cooling towers for all discharges is unrealistic and most likely not cost efficient (i.e., there are other relatively simple and inexpensive practices such as cooling ponds that could be used in place of cooling towers to adequately reduce temperatures). Therefore, EPA believes that the total annual costs to comply with the temperature criteria in today's final rule will be at the lower end of the cost range.

K. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that, whenever an agency publishes a rule under 5 U.S.C. 553, after being required to publish a general notice of proposed rulemaking, an agency must prepare a regulatory flexibility analysis unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604 and 605. The Administrator is today certifying, pursuant to section 605(b) of the RFA, that this final rule will not have a significant impact on a substantial number of small entities. Therefore, the Agency did not prepare a regulatory flexibility analysis.

Under the CWA water quality standards program, States must adopt water quality standards for their waters that must be submitted to EPA for approval. If the Agency disapproves a State standard, EPA must promulgate standards consistent with the statutory requirements. These State standards (or EPA-promulgated standards) are implemented through the NPDES program that limits discharges to navigable waters except in compliance with an EPA permit or permit issued under an approved State program. The CWA requires that all NPDES permits must include any limits on discharges that are necessary to meet State water quality standards.

Thus under the CWA, EPA's promulgation of water quality standards where State standards are inconsistent with statutory requirements establishes standards that are implemented through the NPDES permit process by authorized States, or, in the absence of an approved State NPDES program, by EPA. EPA implements the NPDES program in Idaho. EPA and authorized States have discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. While State or EPA implementation of federally-promulgated water quality standards *may* result in new or revised discharge limits being placed on small entities, the standards themselves do not apply to any discharger, including small entities.

Today's final rule imposes obligations on EPA but, as explained above, does not itself establish any requirements that are applicable to small entities. As a result of this action, EPA will need to ensure that permits issued in the State of Idaho include any limitations on discharges necessary to comply with the standards in the final rule. EPA and the State have a number of discretionary choices associated with permit writing and total maximum daily load (TMDL) calculations and waste load allocations (WLAs) which can affect the burden felt by any small entity as a result of EPA action to implement the final rule. While implementation of the final rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.

The RFA requires analysis of the impacts of a rule on the small entities *subject to the rules' requirements.* See *United States Distribution Companies* v. *FERC,* 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's final rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. (''[N]o analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule,*'' *United Distribution* at 1170, quoting *Mid-Thaws Elec. Co-op* v. *FERC,* 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court).) The Agency is thus certifying that today's final rule will not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA.

L. Submission to Congress and the General Accounting Office

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

M. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written Statement, including a cost-benefit analysis, for proposed and final rules with ''Federal Mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written Statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of the affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this final rule is limited to water quality standards for a limited number of waters within the State of Idaho. EPA believes that today's final rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA also believes that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

N. Paperwork Reduction Act

Today's rulemaking imposes no new or additional information collection activities subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Therefore, no Information Collection request will be submitted to the Office of Management and Budget for review in compliance with the Paperwork Reduction Act.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—lands, Intergovernmental relations, Water pollution control, Water quality standards.

Dated: July 21, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

2. Section 131.33 is added to read as follows:

§ 131.33 Idaho.

(a) *Temperature criteria for bull trout.* (1) Except for those streams or portions of streams located in Indian country, or as may be modified by the Regional Administrator, EPA Region X, pursuant to paragraph (a)(3) of this section, a temperature criterion of 10 °C, expressed as an average of daily maximum temperatures over a seven-day period, applies to the waterbodies identified in paragraph (a)(2) of this section during the months of June, July, August and September.

(2) The following waters are protected for bull trout spawning and rearing:

(i) BOISE-MORE BASIN: Devils Creek, East Fork Sheep Creek, Sheep Creek.

(ii) BROWNLEE RESERVOIR BASIN: Crooked River, Indian Creek.

(iii) CLEARWATER BASIN: Big Canyon Creek, Cougar Creek, Feather Creek, Laguna Creek, Lolo Creek, Orofino Creek, Talapus Creek, West Fork Potlatch River.

(iv) COEUR D'ALENE LAKE BASIN: Cougar Creek, Fernan Creek, Kid Creek, Mica Creek, South Fork Mica Creek, Squaw Creek, Turner Creek.

(v) HELLS CANYON BASIN: Dry Creek, East Fork Sheep Creek, Getta Creek, Granite Creek, Kurry Creek, Little Granite Creek, Sheep Creek.

(vi) LEMHI BASIN: Adams Creek, Alder Creek, Basin Creek, Bear Valley Creek, Big Eightmile Creek, Big Springs Creek, Big Timber Creek, Bray Creek, Bull Creek, Cabin Creek, Canyon Creek, Carol Creek, Chamberlain Creek, Clear Creek, Climb Creek, Cooper Creek, Dairy Creek, Deer Creek, Deer Park Creek, East Fork Hayden Creek, Eighteenmile Creek, Falls Creek, Ferry Creek, Ford Creek, Geertson Creek, Grove Creek, Hawley Creek, Hayden Creek, Kadletz Creek, Kenney Creek, Kirtley Creek, Lake Creek, Lee Creek, Lemhi River (above Big Eightmile Creek), Little Eightmile Creek, Little Mill Creek, Little Timber Creek, Middle Fork Little Timber Creek, Milk Creek, Mill Creek, Mogg Creek, North Fork Kirtley Creek, North Fork Little Timber Creek, Paradise Creek, Patterson Creek, Payne Creek, Poison Creek, Prospect Creek, Rocky Creek, Short Creek, Squaw Creek, Squirrel Creek, Tobias Creek, Trail Creek, West Fork Hayden Creek, Wright Creek.

(vii) LITTLE LOST BASIN: Badger Creek, Barney Creek, Bear Canyon, Bear Creek, Bell Mountain Creek, Big Creek, Bird Canyon, Black Creek, Buck Canyon, Bull Creek, Cedar Run Creek, Chicken Creek, Coal Creek, Corral Creek, Deep Creek, Dry Creek, Dry Creek Canal, Firbox Creek, Garfield Creek, Hawley Canyon, Hawley Creek, Horse Creek, Horse Lake Creek, Iron Creek, Jackson Creek, Little Lost River (above Badger Creek), Mahogany Creek, Main Fork Sawmill Creek, Massacre Creek, Meadow Creek, Mill Creek, Moffett Creek, Moonshine Creek, Quigley Creek, Red Rock Creek, Sands Creek, Sawmill Creek, Slide Creek, Smithie Fork, Squaw Creek, Summerhouse Canyon, Summit Creek, Timber Creek, Warm Creek, Wet Creek, Williams Creek.

(viii) LITTLE SALMON BASIN: Bascum Canyon, Boulder Creek, Brown Creek, Campbell Ditch, Castle Creek, Copper Creek, Granite Fork Lake Fork Rapid River, Hard Creek, Hazard Creek, Lake Fork Rapid River, Little Salmon River (above Hazard Creek), Paradise Creek, Pony Creek, Rapid River, Squirrel Creek, Trail Creek, West Fork Rapid River.

(ix) LOCHSA BASIN: Apgar Creek, Badger Creek, Bald Mountain Creek, Beaver Creek, Big Flat Creek, Big Stew Creek, Boulder Creek, Brushy Fork, Cabin Creek, Castle Creek, Chain Creek, Cliff Creek, Coolwater Creek, Cooperation Creek, Crab Creek, Crooked Fork Lochsa River, Dan Creek, Deadman Creek, Doe Creek, Dutch Creek, Eagle Creek, East Fork Papoose Creek, East Fork Split Creek, East Fork Squaw Creek, Eel Creek, Fern Creek, Fire Creek, Fish Creek, Fish Lake Creek, Fox Creek, Gass Creek, Gold Creek, Ham Creek,

Handy Creek, Hard Creek, Haskell Creek, Heather Creek, Hellgate Creek, Holly Creek, Hopeful Creek, Hungery Creek, Indian Grave Creek, Jay Creek, Kerr Creek, Kube Creek, Lochsa River, Lone Knob Creek, Lottie Creek, Macaroni Creek, Maud Creek, Middle Fork Clearwater River, No-see-um Creek, North Fork Spruce Creek, North Fork Storm Creek, Nut Creek, Otter Slide Creek, Pack Creek, Papoose Creek, Parachute Creek, Pass Creek, Pedro Creek, Pell Creek, Pete King Creek, Placer Creek, Polar Creek, Postoffice Creek, Queen Creek, Robin Creek, Rock Creek, Rye Patch Creek, Sardine Creek, Shoot Creek, Shotgun Creek, Skookum Creek, Snowshoe Creek, South Fork Spruce Creek, South Fork Storm Creek, Split Creek, Sponge Creek, Spring Creek, Spruce Creek, Squaw Creek, Storm Creek, Tick Creek, Tomcat Creek, Tumble Creek, Twin Creek, Wag Creek, Walde Creek, Walton Creek, Warm Springs Creek, Weir Creek, Wendover Creek, West Fork Boulder Creek, West Fork Papoose Creek, West Fork Squaw Creek, West Fork Wendover Creek, White Sands Creek, Willow Creek.

(x) LOWER CLARK FORK BASIN: Cascade Creek, East Fork, East Fork Creek, East Forkast Fork Creek, Gold Creek, Johnson Creek, Lightning Creek, Mosquito Creek, Porcupine Creek, Rattle Creek, Spring Creek, Twin Creek, Wellington Creek.

(xi) LOWER KOOTENAI BASIN: Ball Creek, Boundary Creek, Brush Creek, Cabin Creek, Caribou Creek, Cascade Creek, Cooks Creek, Cow Creek, Curley Creek, Deep Creek, Grass Creek, Jim Creek, Lime Creek, Long Canyon Creek, Mack Creek, Mission Creek, Myrtle Creek, Peak Creek, Snow Creek, Trout Creek.

(xii) LOWER MIDDLE FORK SALMON BASIN: Acorn Creek, Alpine Creek, Anvil Creek, Arrastra Creek, Bar Creek, Beagle Creek, Beaver Creek, Belvidere Creek, Big Creek, Birdseye Creek, Boulder Creek, Brush Creek, Buck Creek, Bull Creek, Cabin Creek, Camas Creek, Canyon Creek, Castle Creek, Clark Creek, Coin Creek, Corner Creek, Coxey Creek, Crooked Creek, Doe Creek, Duck Creek, East Fork Holy Terror Creek, Fawn Creek, Flume Creek, Fly Creek, Forge Creek, Furnace Creek, Garden Creek, Government Creek, Grouse Creek, Hammer Creek, Hand Creek, Holy Terror Creek, J Fell Creek, Jacobs Ladder Creek, Lewis Creek, Liberty Creek, Lick Creek, Lime Creek, Little Jacket Creek, Little Marble Creek, Little White Goat Creek, Little Woodtick Creek, Logan Creek, Lookout Creek, Loon Creek, Martindale Creek, Meadow Creek, Middle Fork Smith Creek, Monumental Creek, Moore Creek, Mulligan Creek, North Fork Smith Creek, Norton Creek, Placer Creek, Pole Creek, Rams Creek, Range Creek, Routson Creek, Rush Creek, Sawlog Creek, Sheep Creek, Sheldon Creek, Shellrock Creek, Ship Island Creek, Shovel Creek, Silver Creek, Smith Creek, Snowslide Creek, Soldier Creek, South Fork Camas Creek, South Fork Chamberlain Creek, South Fork Holy Terror Creek, South Fork Norton Creek, South Fork Rush Creek, South Fork Sheep Creek, Spider Creek, Spletts Creek, Telephone Creek, Trail Creek, Two Point Creek, West Fork Beaver Creek, West Fork Camas Creek, West Fork Monumental Creek, West Fork Rush Creek, White Goat Creek, Wilson Creek.

(xiii) LOWER NORTH FORK CLEARWATER BASIN: Adair Creek, Badger Creek, Bathtub Creek, Beaver Creek, Black Creek, Brush Creek, Buck Creek, Butte Creek, Canyon Creek, Caribou Creek, Crimper Creek, Dip Creek, Dog Creek, Elmer Creek, Falls Creek, Fern Creek, Goat Creek, Isabella Creek, John Creek, Jug Creek, Jungle Creek, Lightning Creek, Little Lost Lake Creek, Little North Fork Clearwater River, Lost Lake Creek, Lund Creek, Montana Creek, Mowitch Creek, Papoose Creek, Pitchfork Creek, Rocky Run, Rutledge Creek, Spotted Louis Creek, Triple Creek, Twin Creek, West Fork Montana Creek, Willow Creek.

(xiv) LOWER SALMON BASIN: Bear Gulch, Berg Creek, East Fork John Day Creek, Elkhorn Creek, Fiddle Creek, French Creek, Hurley Creek, John Day Creek, Kelly Creek, Klip Creek, Lake Creek, Little Slate Creek, Little Van Buren Creek, No Business Creek, North Creek, North Fork Slate Creek, North Fork White Bird Creek, Partridge Creek, Slate Creek, Slide Creek, South Fork John Day Creek, South Fork White Bird Creek, Warm Springs Creek.

(xv) LOWER SELWAY BASIN: Anderson Creek, Bailey Creek, Browns Spring Creek, Buck Lake Creek, Butte Creek, Butter Creek, Cabin Creek, Cedar Creek, Chain Creek, Chute Creek, Dent Creek, Disgrace Creek, Double Creek, East Fork Meadow Creek, East Fork Moose Creek, Elbow Creek, Fivemile Creek, Fourmile Creek, Gate Creek, Gedney Creek, Goddard Creek, Horse Creek, Indian Hill Creek, Little Boulder Creek, Little Schwar Creek, Matteson Creek, Meadow Creek, Monument Creek, Moose Creek, Moss Creek, Newsome Creek, North Fork Moose Creek, Rhoda Creek, Saddle Creek, Schwar Creek, Shake Creek, Spook Creek, Spur Creek, Tamarack Creek, West Fork Anderson Creek, West Fork Gedney Creek, West Moose Creek, Wounded Doe Creek.

(xvi) MIDDLE FORK CLEARWATER BASIN: Baldy Creek, Big Cedar Creek, Browns Spring Creek, Clear Creek, Middle Fork Clear Creek, Pine Knob Creek, South Fork Clear Creek.

(xvii) MIDDLE FORK PAYETTE BASIN: Bull Creek, Middle Fork Payette River (above Fool Creek), Oxtail Creek, Silver Creek, Sixteen-to-one Creek.

(xviii) MIDDLE SALMON-CHAMBERLAIN BASIN: Arrow Creek, Bargamin Creek, Bat Creek, Bay Creek, Bear Creek, Bend Creek, Big Elkhorn Creek, Big Harrington Creek, Big Mallard Creek, Big Squaw Creek, Bleak Creek, Bronco Creek, Broomtail Creek, Brown Creek, Cayuse Creek, Center Creek, Chamberlain Creek, Cliff Creek, Colt Creek, Corn Creek, Crooked Creek, Deer Creek, Dennis Creek, Disappointment Creek, Dismal Creek, Dog Creek, East Fork Fall Creek, East Fork Horse Creek, East Fork Noble Creek, Fall Creek, Filly Creek, Fish Creek, Flossie Creek, Game Creek, Gap Creek, Ginger Creek, Green Creek, Grouse Creek, Guard Creek, Hamilton Creek, Horse Creek, Hot Springs Creek, Hotzel Creek, Hungry Creek, Iodine Creek, Jack Creek, Jersey Creek, Kitchen Creek, Lake Creek, Little Horse Creek, Little Lodgepole Creek, Little Mallard Creek, Lodgepole Creek, Mayflower Creek, McCalla Creek, Meadow Creek, Moose Creek, Moose Jaw Creek, Mule Creek, Mustang Creek, No Name Creek, Owl Creek, Poet Creek, Pole Creek, Porcupine Creek, Prospector Creek, Pup Creek, Queen Creek, Rainey Creek, Ranch Creek, Rattlesnake Creek, Red Top Creek, Reynolds Creek, Rim Creek, Ring Creek, Rock Creek, Root Creek, Runaway Creek, Sabe Creek, Saddle Creek, Salt Creek, Schissler Creek, Sheep Creek, Short Creek, Shovel Creek, Skull Creek, Slaughter Creek, Slide Creek, South Fork Cottonwood Creek, South Fork Chamberlain Creek, South Fork Kitchen Creek, South Fork Salmon River, Spread Creek, Spring Creek, Starvation Creek, Steamboat Creek, Steep Creek, Stud Creek, Warren Creek, Webfoot Creek, West Fork Chamberlain Creek, West Fork Rattlesnake Creek, West Horse Creek, Whimstick Creek, Wind River, Woods Fork Horse Creek.

(xix) MIDDLE SALMON-PANTHER BASIN: Allen Creek, Arnett Creek, Beaver Creek, Big Deer Creek, Blackbird Creek, Boulder Creek, Cabin Creek, Camp Creek, Carmen Creek, Clear Creek, Colson Creek, Copper Creek, Corral Creek, Cougar Creek, Cow Creek, Deadhorse Creek, Deep Creek, East Boulder Creek, Elkhorn Creek, Fawn Creek, Fourth Of July Creek, Freeman Creek, Homet Creek, Hughes Creek, Hull Creek, Indian Creek, Iron Creek, Jackass Creek, Jefferson Creek, Jesse Creek, Lake

Creek, Little Deep Creek, Little Hat Creek, Little Sheep Creek, McConn Creek, McKim Creek, Mink Creek, Moccasin Creek, Moose Creek, Moyer Creek, Musgrove Creek, Napias Creek, North Fork Hughes Creek, North Fork Iron Creek, North Fork Salmon River, North Fork Williams Creek, Opal Creek, Otter Creek, Owl Creek, Panther Creek, Park Creek, Phelan Creek, Pine Creek, Pony Creek, Porphyry Creek, Pruvan Creek, Rabbit Creek, Rancherio Creek, Rapps Creek, Salt Creek, Salzer Creek, Saw Pit Creek, Sharkey Creek, Sheep Creek, South Fork Cabin Creek, South Fork Iron Creek, South Fork Moyer Creek, South Fork Phelan Creek, South Fork Sheep Creek, South Fork Williams Creek, Spring Creek, Squaw Creek, Trail Creek, Twelvemile Creek, Twin Creek, Weasel Creek, West Fork Blackbird Creek, West Fork Iron Creek, Williams Creek, Woodtick Creek.

(xx) MOYIE BASIN: Brass Creek, Bussard Creek, Copper Creek, Deer Creek, Faro Creek, Keno Creek, Kreist Creek, Line Creek, McDougal Creek, Mill Creek, Moyie River (above Skin Creek), Placer Creek, Rutledge Creek, Skin Creek, Spruce Creek, West Branch Deer Creek.

(xxi) NORTH AND MIDDLE FORK BOISE BASIN: Abby Creek, Arrastra Creek, Bald Mountain Creek, Ballentyne Creek, Banner Creek, Bayhouse Creek, Bear Creek, Bear River, Big Gulch, Big Silver Creek, Billy Creek, Blackwarrior Creek, Bow Creek, Browns Creek, Buck Creek, Cabin Creek, Cahhah Creek, Camp Gulch, China Fork, Coma Creek, Corbus Creek, Cow Creek, Crooked River, Cub Creek, Decker Creek, Dutch Creek, Dutch Frank Creek, East Fork Roaring River, East Fork Swanholm Creek, East Fork Yuba River, Flint Creek, Flytrip Creek, Gotch Creek, Graham Creek, Granite Creek, Grays Creek, Greylock Creek, Grouse Creek, Hot Creek, Hungarian Creek, Joe Daley Creek, Johnson Creek, Kid Creek, King Creek, La Mayne Creek, Leggit Creek, Lightening Creek, Little Queens River, Little Silver Creek, Louise Creek, Lynx Creek, Mattingly Creek, McKay Creek, McLeod Creek, McPhearson Creek, Middle Fork Boise River (above Roaring River), Middle Fork Corbus Creek, Middle Fork Roaring River, Mill Creek, Misfire Creek, Montezuma Creek, North Fork Boise River (above Bear River), Phifer Creek, Pikes Fork, Quartz Gulch, Queens River, Rabbit Creek, Right Creek, Roaring River, Robin Creek, Rock Creek, Rockey Creek, Sawmill Creek, Scenic Creek, Scotch Creek, Scott Creek, Shorip Creek, Smith Creek, Snow Creek, Snowslide Creek, South Fork Corbus Creek, South Fork Cub Creek, Spout Creek, Steamboat Creek, Steel Creek, Steppe Creek, Swanholm Creek, Timpa Creek, Trail Creek, Trapper Creek, Tripod Creek, West Fork Creek, West Warrior Creek, Willow Creek, Yuba River.

(xxii) NORTH FORK PAYETTE BASIN: Gold Fork River, North Fork Gold Fork River, Pearsol Creek.

(xxiii) AHSIMEROI BASIN: Baby Creek, Bear Creek, Big Creek, Big Gulch, Burnt Creek, Christian Gulch, Dead Cat Canyon, Ditch Creek, Donkey Creek, Doublespring Creek, Dry Canyon, Dry Gulch, East Fork Burnt Creek, East Fork Morgan Creek, East Fork Pahsimeroi River, East Fork Patterson Creek, Elkhorn Creek, Falls Creek, Goldberg Creek, Hillside Creek, Inyo Creek, Long Creek, Mahogany Creek, Mill Creek, Morgan Creek, Morse Creek, Mulkey Gulch, North Fork Big Creek, North Fork Morgan Creek, Pahsimeroi River (above Big Creek), Patterson Creek, Rock Spring Canyon, Short Creek, Snowslide Creek, South Fork Big Creek, Spring Gulch, Squaw Creek, Stinking Creek, Tater Creek, West Fork Burnt Creek, West Fork North Fork Big Creek.

(xxiv) PAYETTE BASIN: Squaw Creek, Third Fork Squaw Creek.

(xxv) PEND OREILLE LAKE BASIN: Branch North Gold Creek, Cheer Creek, Chloride Gulch, Dry Gulch, Dyree Creek, Flume Creek, Gold Creek, Granite Creek, Grouse Creek, Kick Bush Gulch, North Fork Grouse Creek, North Gold Creek, Plank Creek, Rapid Lightning Creek, South Fork Grouse Creek, Strong Creek, Thor Creek, Trestle Creek, West Branch Pack River, West Gold Creek, Wylie Creek, Zuni Creek.

(xxvi) PRIEST BASIN: Abandon Creek, Athol Creek, Bath Creek, Bear Creek, Bench Creek, Blacktail Creek, Bog Creek, Boulder Creek, Bugle Creek, Canyon Creek, Caribou Creek, Cedar Creek, Chicopee Creek, Deadman Creek, East Fork Trapper Creek, East River, Fedar Creek, Floss Creek, Gold Creek, Granite Creek, Horton Creek, Hughes Fork, Indian Creek, Jackson Creek, Jost Creek, Kalispell Creek, Kent Creek, Keokee Creek, Lime Creek, Lion Creek, Lost Creek, Lucky Creek, Malcom Creek, Middle Fork East River, Muskegon Creek, North Fork Granite Creek, North Fork Indian Creek, Packer Creek, Rock Creek, Ruby Creek, South Fork Granite Creek, South Fork Indian Creek, South Fork Lion Creek, Squaw Creek, Tango Creek, Tarlac Creek, The Thorofare, Trapper Creek, Two Mouth Creek, Uleda Creek, Priest R. (above Priest Lake), Zero Creek.

(xxvii) SOUTH FORK BOISE BASIN: Badger Creek, Bear Creek, Bear Gulch, Big Smoky Creek, Big Water Gulch, Boardman Creek, Burnt Log Creek, Cayuse Creek, Corral Creek, Cow Creek, Edna Creek, Elk Creek, Emma Creek, Feather River, Fern Gulch, Grape Creek, Gunsight Creek, Haypress Creek, Heather Creek, Helen Creek, Johnson Creek, Lincoln Creek, Little Cayuse Creek, Little Rattlesnake Creek, Little Skeleton Creek, Little Smoky Creek, Loggy Creek, Mule Creek, North Fork Ross Fork, Pinto Creek, Rattlesnake Creek, Ross Fork, Russel Gulch, Salt Creek, Shake Creek, Skeleton Creek, Slater Creek, Smokey Dome Canyon, South Fork Ross Fork, Three Forks Creek, Tipton Creek, Vienna Creek, Weeks Gulch, West Fork Big Smoky Creek, West Fork Salt Creek, West Fork Skeleton Creek, Willow Creek.

(xxviii) SOUTH FORK CLEARWATER BASIN: American River, Baker Gulch, Baldy Creek, Bear Creek, Beaver Creek, Big Canyon Creek, Big Elk Creek, Blanco Creek, Boundary Creek, Box Sing Creek, Boyer Creek, Cartwright Creek, Cole Creek, Crooked River, Dawson Creek, Deer Creek, Ditch Creek, East Fork American River, East Fork Crooked River, Elk Creek, Fivemile Creek, Flint Creek, Fourmile Creek, Fox Creek, French Gulch, Galena Creek, Gospel Creek, Hagen Creek, Hays Creek, Johns Creek, Jungle Creek, Kirks Fork American River, Little Elk Creek, Little Moose Creek, Little Siegel Creek, Loon Creek, Mackey Creek, Meadow Creek, Melton Creek, Middle Fork Red River, Mill Creek, Monroe Creek, Moores Creek, Moores Lake Creek, Moose Butte Creek, Morgan Creek, Mule Creek, Newsome Creek, Nuggett Creek, Otterson Creek, Pat Brennan Creek, Pilot Creek, Quartz Creek, Queen Creek, Rabbit Creek, Rainbow Gulch, Red River, Relief Creek, Ryan Creek, Sally Ann Creek, Sawmill Creek, Schooner Creek, Schwartz Creek, Sharmon Creek, Siegel Creek, Silver Creek, Sixmile Creek, Sixtysix Creek, Snoose Creek, Sourdough Creek, South Fork Red River, Square Mountain Creek, Swale Creek, Swift Creek, Taylor Creek, Tenmile Creek, Trail Creek, Trapper Creek, Trout Creek, Twentymile Creek, Twin Lakes Creek, Umatilla Creek, West Fork Big Elk Creek, West Fork Crooked River, West Fork Gospel Creek, West Fork Newsome Creek, West Fork Red River, West Fork Twentymile Creek, Whiskey Creek, Whitaker Creek, Williams Creek.

(xxix) SOUTH FORK PAYETTE BASIN: Archie Creek, Ash Creek, Baron Creek, Basin Creek, Bear Creek, Beaver Creek, Big Spruce Creek, Bitter Creek, Blacks Creek, Blue Jay Creek, Burn Creek, Bush Creek, Camp Creek, Canyon Creek, Casner Creek, Cat Creek, Chapman Creek, Charters Creek, Clear Creek, Coski Creek, Cup Creek, Dead Man Creek, Deadwood River, Deer Creek, East Fork Deadwood Creek, East

Fork Warm Springs Creek, Eby Creek, Elkhorn Creek, Emma Creek, Fall Creek, Fence Creek, Fern Creek, Fivemile Creek, Fox Creek, Garney Creek, Gates Creek, Goat Creek, Grandjem Creek, Grouse Creek, Habit Creek, Helende Creek, Horse Creek, Huckleberry Creek, Jackson Creek, Kettle Creek, Kirkham Creek, Lake Creek, Lick Creek, Little Tenmile Creek, Logging Gulch, Long Creek, MacDonald Creek, Meadow Creek, Middle Fork Warm Springs Creek, Miller Creek, Monument Creek, Moulding Creek, Ninemile Creek, No Man Creek, No Name Creek, North Fork Baron Creek, North Fork Canyon Creek, North Fork Deer Creek, North Fork Whitehawk Creek, O'Keefe Creek, Packsaddle Creek, Park Creek, Pass Creek, Pinchot Creek, Pine Creek, Pitchfork Creek, Pole Creek, Richards Creek, Road Fork Rock Creek, Rock Creek, Rough Creek, Scott Creek, Silver Creek, Sixmile Creek, Smith Creek, Smokey Creek, South Fork Beaver Creek, South Fork Canyon Creek, South Fork Clear Creek, South Fork Payette River (above Rock Creek), South Fork Scott Creek, South Fork Warm Spring Creek, Spring Creek, Steep Creek, Stratton Creek, Topnotch Creek, Trail Creek, Wapiti Creek, Warm Spring Creek, Warm Springs Creek, Whangdoodle Creek, Whitehawk Creek, Wild Buck Creek, Wills Gulch, Wilson Creek, Wolf Creek.

(xxx) SOUTH FORK SALMON BASIN: Alez Creek, Back Creek, Bear Creek, Bishop Creek, Blackmare Creek, Blue Lake Creek, Buck Creek, Buckhorn Bar Creek, Buckhorn Creek, Burgdorf Creek, Burntlog Creek, Cabin Creek, Calf Creek, Camp Creek, Cane Creek, Caton Creek, Cinnabar Creek, Cliff Creek, Cly Creek, Cougar Creek, Cow Creek, Cox Creek, Curtis Creek, Deep Creek, Dollar Creek, Dutch Creek, East Fork South Fork Salmon River, East Fork Zena Creek, Elk Creek, Enos Creek, Falls Creek, Fernan Creek, Fiddle Creek, Fitsum Creek, Flat Creek, Fourmile Creek, Goat Creek, Grimmet Creek, Grouse Creek, Halfway Creek, Hanson Creek, Hays Creek, Holdover Creek, Hum Creek, Indian Creek, Jeanette Creek, Johnson Creek, Josephine Creek, Jungle Creek, Knee Creek, Krassel Creek, Lake Creek, Landmark Creek, Lick Creek, Little Buckhorn Creek, Little Indian Creek, Lodgepole Creek, Loon Creek, Maverick Creek, Meadow Creek, Middle Fork Elk Creek, Missouri Creek, Moose Creek, Mormon Creek, Nasty Creek, Nethker Creek, Nick Creek, No Mans Creek, North Fork Bear Creek, North Fork Buckhorn Creek, North Fork Camp Creek, North Fork Dollar Creek, North Fork Fitsum Creek, North Fork Lake Fork, North Fork Lick Creek, North Fork Riordan Creek, North Fork Six-bit Creek, Oompaul Creek, Paradise Creek, Park Creek, Peanut Creek, Pepper Creek, Phoebe Creek, Piah Creek, Pid Creek, Pilot Creek, Pony Creek, Porcupine Creek, Porphyry Creek, Prince Creek, Profile Creek, Quartz Creek, Reeves Creek, Rice Creek, Riordan Creek, Roaring Creek, Ruby Creek, Rustican Creek, Ryan Creek, Salt Creek, Sand Creek, Secesh River, Sheep Creek, Silver Creek, Sister Creek, Six-Bit Creek, South Fork Bear Creek, South Fork Blackmare Creek, South Fork Buckhorn Creek, South Fork Cougar Creek, South Fork Elk Creek, South Fork Fitsum Creek, South Fork Fourmile Creek, South Fork Salmon River, South Fork Threemile Creek, Split Creek, Steep Creek, Sugar Creek, Summit Creek, Tamarack Creek, Teepee Creek, Threemile Creek, Trail Creek, Trapper Creek, Trout Creek, Tsum Creek, Two-bit Creek, Tyndall Creek, Vein Creek, Victor Creek, Wardenhoff Creek, Warm Lake Creek, Warm Spring Creek, West Fork Buckhorn Creek, West Fork Elk Creek, West Fork Enos Creek, West Fork Zena Creek, Whangdoodle Creek, Willow Basket Creek, Willow Creek, Zena Creek.

(xxxi) ST. JOE R. BASIN: Bad Bear Creek, Bean Creek, Bear Creek, Beaver Creek, Bedrock Creek, Berge Creek, Bird Creek, Blue Grouse Creek, Boulder Creek, Broadaxe Creek, Bruin Creek, California Creek, Cherry Creek, Clear Creek, Color Creek, Copper Creek, Dolly Creek, Dump Creek, Eagle Creek, East Fork Bluff Creek, East Fork Gold Creek, Emerald Creek, Fishhook Creek, Float Creek, Fly Creek, Fuzzy Creek, Gold Creek, Heller Creek, Indian Creek, Kelley Creek, Malin Creek, Marble Creek, Medicine Creek, Mica Creek, Mill Creek, Mosquito Creek, North Fork Bean Creek, North Fork Saint Joe River, North Fork Simmons Creek, Nugget Creek, Packsaddle Creek, Periwinkle Creek, Prospector Creek, Quartz Creek, Red Cross Creek, Red Ives Creek, Ruby Creek, Saint Joe River (above Siwash Creek), Setzer Creek, Sherlock Creek, Simmons Creek, Siwash Creek, Skookum Creek, Thomas Creek, Thorn Creek, Three Lakes Creek, Timber Creek, Tinear Creek, Trout Creek, Tumbledown Creek, Wahoo Creek, Washout Creek, Wilson Creek, Yankee Bar Creek.

(xxxii) UPPER COEUR D'ALENE BASIN: Brown Creek, Falls Creek, Graham Creek.

(xxxiii) UPPER KOOTENAI BASIN: Halverson Cr, North Callahan Creek, South Callahan Creek, West Fork Keeler Creek

(xxxiv) UPPER MIDDLE FORK SALMON BASIN: Asher Creek, Automatic Creek, Ayers Creek, Baldwin Creek, Banner Creek, Bear Creek, Bear Valley Creek, Bearskin Creek, Beaver Creek, Bernard Creek, Big Chief Creek, Big Cottonwood Creek, Birch Creek, Blue Lake Creek, Blue Moon Creek, Boundary Creek, Bridge Creek, Browning Creek, Buck Creek, Burn Creek, Cabin Creek, Cache Creek, Camp Creek, Canyon Creek, Cap Creek, Cape Horn Creek, Casner Creek, Castle Fork, Casto Creek, Cat Creek, Chokebore Creek, Chuck Creek, Cliff Creek, Cold Creek, Collie Creek, Colt Creek, Cook Creek, Corley Creek, Cornish Creek, Cottonwood Creek, Cougar Creek, Crystal Creek, Cub Creek, Cultus Creek, Dagger Creek, Deer Creek, Deer Horn Creek, Doe Creek, Dry Creek, Duffield Creek, Dynamite Creek, Eagle Creek, East Fork Elk Creek, East Fork Indian Creek, East Fork Mayfield Creek, Elk Creek, Elkhorn Creek, Endoah Creek, Fall Creek, Fawn Creek, Feltham Creek, Fir Creek, Flat Creek, Float Creek, Foresight Creek, Forty-five Creek, Forty-four Creek, Fox Creek, Full Moon Creek, Fuse Creek, Grays Creek, Grenade Creek, Grouse Creek, Gun Creek, Half Moon Creek, Hogback Creek, Honeymoon Creek, Hot Creek, Ibex Creek, Indian Creek, Jose Creek, Kelly Creek, Kerr Creek, Knapp Creek, Kwiskwis Creek, Lime Creek, Lincoln Creek, Little Beaver Creek, Little Cottonwood Creek, Little East Fork Elk Creek, Little Indian Creek, Little Loon Creek, Little Pistol Creek, Lola Creek, Loon Creek, Lucinda Creek, Lucky Creek, Luger Creek, Mace Creek, Mack Creek, Marble Creek, Marlin Creek, Marsh Creek, Mayfield Creek, McHoney Creek, McKee Creek, Merino Creek, Middle Fork Elkhorn Creek, Middle Fork Indian Creek, Middle Fork Salmon River (above Soldier Creek), Mine Creek, Mink Creek, Moonshine Creek, Mowitch Creek, Muskeg Creek, Mystery Creek, Nelson Creek, New Creek, No Name Creek, North Fork Elk Creek, North Fork Elkhorn Creek, North Fork Sheep Creek, North Fork Sulphur Creek, Papoose Creek, Parker Creek, Patrol Creek, Phillips Creek, Pierson Creek, Pinyon Creek, Pioneer Creek, Pistol Creek, Placer Creek, Poker Creek, Pole Creek, Popgun Creek, Porter Creek, Prospect Creek, Rabbit Creek, Rams Horn Creek, Range Creek, Rapid River, Rat Creek, Remington Creek, Rock Creek, Rush Creek, Sack Creek, Safety Creek, Salt Creek, Savage Creek, Scratch Creek, Seafoam Creek, Shady Creek, Shake Creek, Sheep Creek, Sheep Trail Creek, Shell Creek, Shrapnel Creek, Siah Creek, Silver Creek, Slide Creek, Snowshoe Creek, Soldier Creek, South Fork Cottonwood Creek, South Fork Sheep Creek, Spike Creek, Springfield

Creek, Squaw Creek, Sulphur Creek, Sunnyside Creek, Swamp Creek, Tennessee Creek, Thatcher Creek, Thicket Creek, Thirty-two Creek, Tomahawk Creek, Trail Creek, Trapper Creek, Trigger Creek, Twenty-two Creek, Vader Creek, Vanity Creek, Velvet Creek, Walker Creek, Wampum Creek, Warm Spring Creek, West Fork Elk Creek, West Fork Little Loon Creek, West Fork Mayfield Creek, White Creek, Wickiup Creek, Winchester Creek, Winnemucca Creek, Wyoming Creek.

(xxxv) UPPER NORTH FORK CLEARWATER BASIN: Adams Creek, Avalanche Creek, Bacon Creek, Ball Creek, Barn Creek, Barnard Creek, Barren Creek, Bear Creek, Beaver Dam Creek, Bedrock Creek, Bill Creek, Bostonian Creek, Boundary Creek, Burn Creek, Butter Creek, Camp George Creek, Canyon Creek, Cayuse Creek, Chamberlain Creek, Clayton Creek, Cliff Creek, Coffee Creek, Cold Springs Creek, Collins Creek, Colt Creek, Cool Creek, Copper Creek, Corral Creek, Cougar Creek, Craig Creek, Crater Creek, Cub Creek, Davis Creek, Deadwood Creek, Deer Creek, Dill Creek, Drift Creek, Elizabeth Creek, Fall Creek, Fire Creek, Fix Creek, Flame Creek, Fly Creek, Fourth of July Creek, Fro Creek, Frog Creek, Frost Creek, Gilfillian Creek, Goose Creek, Grass Creek, Gravey Creek, Grizzly Creek, Hanson Creek, Heather Creek, Henry Creek, Hidden Creek, Howard Creek, Independence Creek, Jam Creek, Japanese Creek, Johnagan Creek, Johnny Creek, Junction Creek, Kelly Creek, Kid Lake Creek, Kodiak Creek, Lake Creek, Laundry Creek, Lightning Creek, Little Moose Creek, Little Weitas Creek, Liz Creek, Long Creek, Marten Creek, Meadow Creek, Middle Creek, Middle North Fork Kelly Creek, Mill Creek, Mire Creek, Monroe Creek, Moose Creek, Negro Creek, Nettle Creek, Niagra Gulch, North Fork Clearwater River (Fourth of July Creek), Nub Creek, Osier Creek, Perry Creek, Pete Ott Creek, Placer Creek, Polar Creek, Post Creek, Potato Creek, Quartz Creek, Rapid Creek, Rawhide Creek, Roaring Creek, Rock Creek, Rocky Ridge Creek, Ruby Creek, Saddle Creek, Salix Creek, Scurry Creek, Seat Creek, Short Creek, Shot Creek, Siam Creek, Silver Creek, Skull Creek, Slide Creek, Smith Creek, Snow Creek, South Fork Kelly Creek, Spud Creek, Spy Creek, Stolen Creek, Stove Creek, Sugar Creek, Swamp Creek, Tinear Creek, Tinkle Creek, Toboggan Creek, Trail Creek, Vanderbilt Gulch, Wall Creek, Weitas Creek, Williams Creek, Windy Creek, Wolf Creek, Young Creek.

(xxxvi) UPPER SALMON BASIN: Alder Creek, Alpine Creek, Alta Creek, Alturas Lake Creek, Anderson Creek, Aspen Creek, Basin Creek, Bayhorse Creek, Bear Creek, Beaver Creek, Big Boulder Creek, Block Creek, Blowfly Creek, Blue Creek, Boundary Creek, Bowery Creek, Broken Ridge Creek, Bruno Creek, Buckskin Creek, Cabin Creek, Camp Creek, Cash Creek, Challis Creek, Chamberlain Creek, Champion Creek, Cherry Creek, Cinnabar Creek, Cleveland Creek, Coal Creek, Crooked Creek, Darling Creek, Deadwood Creek, Decker Creek, Deer Creek, Dry Creek, Duffy Creek, East Basin Creek, East Fork Salmon River, East Fork Valley Creek, East Pass Creek, Eddy Creek, Eightmile Creek, Elevenmile Creek, Elk Creek, Ellis Creek, Estes Creek, First Creek, Fisher Creek, Fishhook Creek, Fivemile Creek, Fourth of July Creek, Frenchman Creek, Garden Creek, Germania Creek, Goat Creek, Gold Creek, Gooseberry Creek, Greylock Creek, Hay Creek, Hell Roaring Creek, Herd Creek, Huckleberry Creek, Iron Creek, Job Creek, Jordan Creek, Juliette Creek, Kelly Creek, Kinnikinic Creek, Lick Creek, Lightning Creek, Little Basin Creek, Little Beaver Creek, Little Boulder Creek, Little West Fork Morgan Creek, Lodgepole Creek, Lone Pine Creek, Lost Creek, MacRae Creek, Martin Creek, McKay Creek, Meadow Creek, Mill Creek, Morgan Creek, Muley Creek, Ninemile Creek, Noho Creek, Pack Creek, Park Creek, Pat Hughes Creek, Pig Creek, Pole Creek, Pork Creek, Prospect Creek, Rainbow Creek, Redfish Lake Creek, Road Creek, Rough Creek, Sage Creek, Sagebrush Creek, Salmon River (Redfish Lake Creek), Sawmill Creek, Second Creek, Sevenmile Creek, Sheep Creek, Short Creek, Sixmile Creek, Slate Creek, Smiley Creek, South Fork East Fork Salmon River, Squaw Creek, Stanley Creek, Stephens Creek, Summit Creek, Sunday Creek, Swimm Creek, Taylor Creek, Tenmile Creek, Tennel Creek, Thompson Creek, Three Cabins Creek, Trail Creek, Trap Creek, Trealor Creek, Twelvemile Creek, Twin Creek, Valley Creek, Van Horn Creek, Vat Creek, Warm Spring Creek, Warm Springs Creek, Washington Creek, West Beaver Creek, West Fork Creek, West Fork East Fork Salmon River, West Fork Herd Creek, West Fork Morgan Creek, West Fork Yankee Fork, West Pass Creek, Wickiup Creek, Williams Creek, Willow Creek, Yankee Fork.

(xxxvii) UPPER SELWAY BASIN: Basin Creek, Bear Creek, Burn Creek, Camp Creek, Canyon Creek, Cliff Creek, Comb Creek, Cooper Creek, Cub Creek, Deep Creek, Eagle Creek, Elk Creek, Fall Creek, Fox Creek, Goat Creek, Gold Pan Creek, Granite Creek, Grass Gulch, Haystack Creek, Hells Half Acre Creek, Indian Creek, Kim Creek, Lake Creek, Langdon Gulch, Little Clearwater River, Lodge Creek, Lunch Creek, Mist Creek, Paloma Creek, Paradise Creek, Peach Creek, Pettibone Creek, Running Creek, Saddle Gulch, Schofield Creek, Selway River (above Pettibone Creek), South Fork Running Creek, South Fork Saddle Gulch, South Fork Surprise Creek, Spruce Creek, Squaw Creek, Stripe Creek, Surprise Creek, Set Creek, Tepee Creek, Thirteen Creek, Three Lakes Creek, Triple Creek, Wahoo Creek, White Cap Creek, Wilkerson Creek, Witter Creek.

(xxxviii) WEISER BASIN: Anderson Creek, Bull Corral Creek, Dewey Creek, East Fork Weiser River, Little Weiser River, above Anderson Creek, Sheep Creek, Wolf Creek.

(3) Procedures for site specific modification of listed waterbodies or temperature criteria for bull trout.

(i) The Regional Administrator may, in his discretion, determine that the temperature criteria in paragraph (a)(1) of this section shall not apply to a specific waterbody or portion thereof listed in paragraph (a)(2) of this section. Any such determination shall be made consistent with § 131.11 and shall be based on a finding that bull trout spawning and rearing is not an existing use in such waterbody or portion thereof.

(ii) The Regional Administrator may, in his discretion, raise the temperature criteria in paragraph (a)(1) of this section as they pertain to a specific waterbody or portion thereof listed in paragraph (a)(2) of this section. Any such determination shall be made consistent with § 131.11, and shall be based on a finding that bull trout would be fully supported at the higher temperature criteria.

(iii) For any determination made under paragraphs (a)(3)(i) or (a)(3)(ii) of this section, the Regional Administrator shall, prior to making such a determination, provide for public notice of and comment on a proposed determination. For any such proposed determination, the Regional Administrator shall prepare and make available to the public a technical support document addressing each waterbody or portion thereof that would be deleted or modified and the justification for each proposed determination. This document shall be made available to the public not later than the date of public notice.

(iv) The Regional Administrator shall maintain and make available to the public an updated list of determinations made pursuant to paragraphs (a)(3)(i) and (a)(3)(ii) of this section as well as the technical support documents for each determination.

(v) Nothing in this paragraph (a)(3) shall limit the Administrator's authority to modify the temperature criteria in paragraph (a)(1) of this section or the list of waterbodies in paragraph (a)(2) of this section through rulemaking.

(b) *Use designations for surface waters.* In addition to the State adoped use designations, the following water body segments in Idaho are designated for cold water biota: Canyon Creek (PB 121)—below mining impact; South Fork Coeur d'Alene River (PB 140S)—Daisy Gulch to mouth; Shields Gulch (PB 148S)—below mining impact; Blackfoot River (USB 360)—Equalizing Dam to mouth, except for any portion in Indian country; Soda Creek (BB 310)—source to mouth.

(c) *Excluded waters.* Lakes, ponds, pools, streams, and springs outside public lands but located wholly and entirely upon a person's land are not protected specifically or generally for any beneficial use, unless such waters are designated in Idaho 16.01.02.110. through 160., or, although not so designated, are waters of the United States as defined at 40 CFR 122.2.

(d) *Water quality standard variances.* (1) The Regional Administrator, EPA Region X, is authorized to grant variances from the water quality standards in paragraph (b) of this section where the requirements of this paragraph (d) are met. A water quality standard variance applies only to the permittee requesting the variance and only to the pollutant or pollutants specified in the variance; the underlying water quality standard otherwise remains in effect.

(2) A water quality standard variance shall not be granted if:

(i) Standards will be attained by implementing effluent limitations required under sections 301(b) and 306 of the CWA and by the permittee implementing reasonable best management practices for nonpoint source control; or

(ii) The variance would likely jeopardize the continued existence of any threatened or endangered species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat.

(3) Subject to paragraph (d)(2) of this section, a water quality standards variance may be granted if the applicant demonstrates to EPA that attaining the water quality standard is not feasible because:

(i) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

(iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the waterbody to its original condition or to operate such modification in a way which would result in the attainment of the use; or

(v) Physical conditions related to the natural features of the waterbody, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or

(vi) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

(4) *Procedures.* An applicant for a water quality standards variance shall submit a request to the Regional Administrator not later than the date the applicant applies for an NPDES permit which would implement the variance, except that an application may be filed later if the need for the variance arises or the data supporting the variance becomes available after the NPDES permit application is filed. The application shall include all relevant information showing that the requirements for a variance have been satisfied. The burden is on the applicant to demonstrate to EPA's satisfaction that the designated use is unattainable for one of the reasons specified in paragraph (d)(3) of this section. If the Regional Administrator preliminarily determines that grounds exist for granting a variance, he shall publish notice of the proposed variance. Notice of a final decision to grant a variance shall also be published. EPA will incorporate into the permittee's NPDES permit all conditions needed to implement the variance.

(5) A variance may not exceed 5 years or the term of the NPDES permit, whichever is less. A variance may be renewed if the applicant reapplies and demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the applicant did not comply with the conditions of the original variance.

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Thursday
July 31, 1997

Part IV

Federal Communications Commission

47 CFR Part 90

Future Development of SMR Systems in the 800 MHz Frequency Band; Final Rules

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–144; FCC 97–223]

Future Development of SMR Systems in the 800 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Second Report and Order* resolves issues raised in the *Second Further Notice of Proposed Rulemaking* and completes the process by establishing technical and operational rules for the lower 230 800 MHz channels. Specifically, this order establishes the U.S. Department of Commerce Bureau of Economic Analysis Economic Areas (EAs) as the relevant geographic service area for licensing these channels and defines the rights of incumbent SMR licensees already operating on the lower 230 channels. It also provides further details concerning the mandatory relocation rules adopted in the *800 MHz Report and Order,* and establishes rules for partitioning and disaggregation of EA licenses. Coupled with the rules adopted in the *800 MHz Report and Order,* the decisions reached in this order complete the process of converting to new rules for the 800 MHz SMR service and enable us to commence geographic area licensing of the service. These rule revisions not only eliminate a cumbersome and outdated regulatory regime, they will promote competition and provide SMR licensees with flexibility to deploy multiple technologies in response to a changing marketplace, and they further the Congressionally mandated goal of establishing regulatory symmetry between 800 MHz SMR licensees and other competing providers of Commercial Mobile Radio Services (CMRS).

EFFECTIVE DATE: September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Shaun Maher or Michael Hamra, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418–0620 or Alice Elder, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This *Second Report and Order* in PR Docket No. 93–144, GN Docket No. 93–252, and PP Docket No. 9–253, adopted June 23, 1997, and released July 10, 1997, is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone (202) 857–3800).

I. Background

1. As described in the *800 MHz Report and Order* in PR Docket 93–144, 61 FR 6138 (February 16, 1996), the Commission formerly used a site-by-site licensing approach for 800 MHz SMR channels, which were primarily used to provide dispatch radio service. In recent years, however, a number of SMR licensees have expanded the geographic scope of their services, aggregated channels, and developed digital networks to enable them to provide a type of service comparable to that provided by cellular and Personal Communications Service (PCS) operators. This trend led us to rethink our site-by-site licensing procedures, which were very cumbersome for systems comprised of several hundred sites because licensees were required to receive individual Commission approval for each site. We were concerned that site-by-site licensing procedures also impaired an SMR licensee's ability to respond to changing market conditions and consumer demand. We concluded that granting licenses through waivers and other case-by-case mechanisms was administratively burdensome and had resulted in a licensing regime that lacked uniformity. Accordingly, we initiated this proceeding to transition to a geographic area licensing approach for the 800 MHz SMR service. At the same time, we emphasized the need to consider the interests of incumbent SMR licensees, many of whom continue to provide traditional dispatch service and do not seek to develop services comparable to cellular or PCS.

2. In the *800 MHz Report and Order,* the Commission established an EA-based licensing procedure for the upper 200 channels in the 800 MHz SMR band. That procedure will enable an EA licensee to, among other things, construct facilities at any available site within its EA and to add, remove or relocate sites within the EA without prior Commission approval. The new rules also give the EA licensee flexibility to determine the channelization of available spectrum within the authorized channel block, the right to use any spectrum within its EA block that is recovered by the Commission from an incumbent licensee (*i.e.,* the incumbent's license is terminated for some reason), and establishes a presumption that assignments from incumbents to the relevant EA licensee are in the public interest. In addition, the *800 MHz Report and Order* adopted a 10-year license term, and a five-year construction period with three-year and five-year coverage requirements for EA licensees on the upper 200 channels. We also created a mechanism for relocation of incumbent licensees on the upper 200 channels, delineated the parameters of unrelocated incumbents' expansion rights, and reallocated the former General Category channels to the 800 MHz SMR service. Finally, we established competitive bidding procedures for 525 EA licenses in the upper 200 channel block.

3. In the *Second Further Notice of Proposed Rulemaking,* in PP Docket 93–253, 61 FR 6212 (February 16, 1996), we sought comment on additional service rules for the upper 200 channels, and on instituting geographic area licensing for the lower 230 800 MHz SMR channels. With respect to the upper 200 channels, we asked commenters to address whether EA licensees should be permitted to partition and disaggregate their spectrum blocks. We also proposed additional procedures and clarifications regarding mandatory relocation of incumbent licensees from the upper 200 channels. With respect to the lower 230 channels, we proposed geographic area licensing procedures and auction rules similar to those adopted for the upper 200 channels. We declined to propose a mandatory relocation plan for incumbents on the lower 230 channels, however, and we proposed to adopt operating parameters for incumbents that would give them a reasonable opportunity to expand their businesses. We further proposed to establish competitive bidding rules for licensing the General Category and lower 80 channels with special provisions to encourage participation by designated entities in the auction of that spectrum.

4. Sixty-five parties filed initial comments and fifty-eight parties filed reply comments in response to the *Second Further Notice of Proposed Rulemaking.* Numerous written ex parte presentations also have supplemented the record. Notably, in reply comments, AMTA, SMR WON and Nextel offered a proposal (''Industry Proposal'') for licensing the lower 230 channels through a pre-auction process that would allow incumbents to obtain rights to unlicensed spectrum through settlement agreements with one another. The parties submit that the Industry Proposal represents a consensus of the SMR industry and takes into account

the interests of wide-area licensees as well as site-by-site incumbents.

II. Discussion

A. Service Rules for the Lower 230 Channels

1. Geographic Area Licensing

5. We adopt geographic area licensing for the lower 230 channels. Geographic area licensing will increase the flexibility afforded to licensees to manage their spectrum, and will reduce administrative burdens and operating costs by allowing licensees to modify, move, or add to their facilities within specified geographic areas without need for prior Commission approval. Geographic area licensing will also ensure that licensees on these channels have operational flexibility similar to that afforded to SMR licensees on the upper 200 channels as well as to cellular and PCS licensees.

6. We reject the view that the heavy use of the lower 230 channels by incumbents renders geographic area licensing impractical. To the contrary, incumbents benefit from geographic area licensing because it will make it far easier for them to fill in gaps in their current systems, make modifications to meet shifting market demands, and expand into unserved areas. Even where a licensee's ability to expand is limited by the presence of adjacent systems, geographic licensing is preferable to site-specific licensing because it affords the same degree of protection from interference but allows licensees greater flexibility within their existing service areas. We also do not agree with the view that the prospective relocation of SMR incumbents from the upper 200 channels to the lower 230 is an obstacle to geographic licensing. Upon moving to the lower 230 channels, relocated licensees will be able to take advantage of the flexibility in our rules to the same extent as other licensees.

7. We also disagree with UTC and other commenters who contend that geographic area licensing is inappropriate because of the presence of non-SMRs on the lower 230 channels. While non-SMR operators may not require geographic licenses to operate systems designed for internal communications, geographic area licensing remains the most efficient and logical licensing approach for the majority of licensees in the band. We are not persuaded that we should forego the benefits of geographic licensing to accommodate the interests of a small minority of systems. In any event, systems that are not SMR systems will remain fully protected under our geographic licensing rules. In addition, non-SMRs can obtain spectrum to suit their internal communications needs by forming joint bidding consortia or by entering into partitioning and disaggregation agreements with EA licensees.

2. Service Areas

8. We adopt EAs as the basis for geographic licensing of the lower 230 channels. EAs are generally recognized by the SMR industry as being optimally sized for geographic licensing in this band, because EAs approximate the coverage of most SMR systems except the largest wide-area operations. As we stated in the *800 MHz Report and Order*, EAs will encourage a diverse group of prospective bidders, because they are small enough that licensees seeking to serve small markets can bid on areas they wish to serve, but are large enough that they can also form the basis for wide-area systems. By encouraging more diverse bidders in the auction, we believe we will fulfill the mandate of section 309(j)(3)(B) & (4)(C) of the Communications Act to disseminate licenses among a wide variety of applicants and to ensure economic opportunities for a wide variety of applicants. In addition, having the same geographic area licenses for the upper 200 and lower 230 channels makes it easier for licensees to develop systems that use both upper 200 and lower 230 channels in a common licensing area.

3. Channel Blocks

a. Lower 80 Channels

9. We adopt our proposal to license the lower 80 channels in five-channel blocks. The non-contiguous nature of these channels makes it impractical to impose any other channel plan. This approach will also provide opportunities for incumbents and applicants that base their systems on trunking of non-contiguous channels, in keeping with the mandate of section 309(j)(4)(C) of the Communications Act to make equitable distribution of licenses and provide economic opportunities for a wide variety of entities. Furthermore, we find that this will be the less disruptive method for smaller incumbent licensees since they have acquired their channels in five channel increments. Therefore, we will license the lower 80 channels in sixteen five-channel blocks as set forth in § 90.617(d) of our rules.

b. General Category Channels

10. We understand the needs of those providers who want contiguous spectrum to implement frequency re-use technology, and those that want non-contiguous spectrum because the spectrum is highly encumbered, or because it suits their current technology. If we were to adopt very large contiguous blocks of spectrum we would preclude smaller entities from participating in the auction because presumably bigger blocks of spectrum would require larger bids to acquire than smaller blocks of spectrum. On the other hand, if we were to auction EAs on a channel-by-channel basis, as suggested by Fresno, it would be difficult to accumulate contiguous spectrum and would require all licensees interested in accumulating spectrum to keep track of 150 auctions at one time. If one entity wanted to acquire five channel blocks in three EAs, the licensee would have to potentially keep track of 450 simultaneous auctions.

11. To accommodate licensees who want contiguous as well as those licensees that want large blocks of spectrum, we will adopt the Industry Proposal and allot three contiguous 50-channel blocks. We expect a significant amount of the former General Category channels to continue to be used for traditional SMR systems and retaining the contiguity of these channels will permit alternative offerings that may require multiple, contiguous channels. In addition, we find that allotting 50 channel blocks will allow bidders to aggregate even larger contiguous blocks of spectrum. We find that adopting such a channel plan strikes a balance between licensees with different spectrum allocation needs and allows licensees with different goals to pursue spectrum in the General Category. Once again, this fulfills the mandate of section 309(j)(4)(C) of the Communications Act that we distribute licenses in such a way so as to ensure economic opportunities for a wide variety of entities. While we do not adopt Fresno's or Sierra's proposals, small system licensees will have the opportunity to acquire smaller amounts of spectrum compatible with their existing technology through the newly-created disaggregation rules we adopt herein. Meanwhile licensees seeking to deploy contiguous spectrum technology will have the opportunity to acquire a 100 or 150 channel block of contiguous spectrum. Adopting this channel plan addresses the competing demands of trunked systems and wide-area systems that require contiguous spectrum.

4. Channel Aggregation Limits

12. We conclude that no aggregation limit is necessary for the lower 230 channels. In both the *CMRS Third Report and Order* and the *800 MHz*

Report and Order, we observed that the 800 MHz SMR service is just one of many competitive services in the CMRS marketplace. If a single licensee were to acquire all 230 channels in a single market, it would hold an aggregated 11.5 MHz of spectrum, not all of which would be contiguous. Even if a single licensee combined this spectrum with spectrum from the upper 200 channels, it would fall well short of the 45 MHz spectrum cap, and would have less spectrum than PCS and cellular providers in the same market. The total potential aggregation of spectrum in the 800 MHz SMR service, combined with the General Category, is 21.5 MHz of spectrum, not all of which is contiguous. We do not believe that this level of aggregation would enable an SMR licensee to have an anticompetitive effect on the CMRS market. Moreover, we are concerned that limiting the ability of SMR providers to aggregate spectrum could handicap their efforts to compete with other services. As a practical matter, the presence of numerous incumbents on the lower 230 channels reduces the likelihood that significant aggregation of this spectrum will occur. However, we conclude that the marketplace, not our rules, should determine whether these channels will be used on an aggregated or disaggregated basis.

13. We also decline to limit SMR applicants on the lower 230 channels to obtaining one channel block at a time. This is inconsistent with our approach to licensing of other CMRS, including cellular, PCS, 900 MHz SMR, and the upper 200 channels in the 800 MHz band. In addition, the use of competitive bidding to resolve mutually exclusive geographic area licenses on the lower 230 channels provides a strong incentive for licenses to utilize the channels.

5. Licensing in the Mexican and Canadian Border Areas

14. In the *800 MHz Report and Order,* we acknowledged that in the Canadian and Mexican border areas, some upper 200 channels would not be available or would be subject to power and height restrictions. Nevertheless, we did not distinguish between border and non-border areas for the upper 200 channels in our EA licensing plan, because we concluded that EA applicants could best determine the effect of such restrictions on the value of the spectrum. We adopt the same approach for the lower 230 channels as well. Thus, EA licensees on the lower 230 channels of EAs that are adjacent to Canada or Mexico will be entitled to use any available channels within their spectrum blocks, except where use of such channels is restricted by international agreement.

15. In addition, we clarify that SMR and General Category channels assigned to non-SMR pools in the border areas are not available for use by EA licensees in those regions. Thus, non-SMR licensees operating on those channels in border areas may continue to operate and will not be subject to relocation. Moreover, EA licensees must afford full interference protection to non-SMR licensees operating on these channels. We admonish potential applicants for EA licenses to carefully evaluate these limitations on spectrum availability when determining their bidding strategies for blocks of spectrum adjacent to the Mexican and Canadian borders.

16. Finally, we note that there are some non-SMR channels in the non-border areas that in the Canadian and Mexican border areas are available soley to SMR eligibles. These channels will be associated with specific SMR and General Category spectrum blocks in these border areas. Prospective bidders on EAs near the Canadian and Mexican borders should be aware that these channels, which are not available to them anywhere else except in the border regions, will be assigned for their use in the Canadian and Mexican border regions. EA licensees must also afford full interference protection to non-SMR licensees operating in adjacent areas on these channels.

6. Construction and Coverage Requirements for the Lower 230 Channels

a. Requirements for EA Licensees

17. We adopt the construction requirements proposed in the *Second Further Notice of Proposed Rulemaking* for the lower 230 channels. We believe that adoption of such flexible construction requirements will enhance the rapid deployment of new technologies and services and will expedite service to rural areas. We disagree with those commenters that contend that adoption of stricter construction requirements for the lower 230 channels will better serve the public interest. We find that more flexible construction requirements will allow EA licensees in the encumbered lower 230 channels to respond to market demands for service and thus eliminate the need for an EA licensee to meet construction requirements based on population alone. We disagree with those commenters that believe that strict construction requirements are necessary to deter speculation and warehousing. We believe that, by participating in the auction, licensees will have shown that they are genuinely interested in acquiring spectrum to utilize and not warehouse. At the same time, we continue to believe that licensees should be held to some type of construction requirement in order to encourage expedited construction and foster service to rural areas. Therefore, EA licensees in the lower 230 channel blocks, just as their counterparts in the upper 200 channels, will be required to provide coverage to one-third of the population within three years of the license grant, and to two-thirds of the population within five years of the license grant. However, in the alternative, EA licensees in the lower 230 channel block may provide ''substantial service'' to the geographic license area within five years of license grant. ''Substantial service'' will be defined as service that is sound, favorable, and substantially above a level of mediocre service, which would barely warrant renewal. For example, a licensee may demonstrate that it is providing a technologically innovative service or that it is providing service to unserved or underserved areas. This flexibility will allow EA licensees to expedite service to rural areas that may have a higher service demand than a heavily populated urban area with less demand. As we proposed in the *Second Further Notice of Proposed Rulemaking,* we will not adopt a channel usage requirement for licensees in the lower 230 channel block. In addition, we decline to adopt PCIA's proposal to require that construction requirements be met on a ''per-channel'' basis. We believe EA licensees should have the flexibility to respond to market-based demands for service and that adopting a ''per-channel'' construction requirement would greatly interfere with licensees' ability to respond to such demands.

18. The failure to meet these performance requirements will result in automatic termination of the geographic area license. This is consistent with our rules for broadband PCS, 900 MHz SMR services, Multipoint Distribution Services (MDS), and most recently for paging. We will individually license any incumbent facilities that were authorized, constructed, and operating at the time of termination of the geographic area license.

b. Requirements for Site-Based Licensees

19. As a result of our decision to convert to EA-based licensing of the lower 230 channels, the only instances in which future site-based applications will be necessary are those few instances where site approval continues

to be required, *e.g.*, for sites at environmentally sensitive locations that require Commission approval under NEPA. In such instances, we will require incumbent licensees to construct facilities and commence service within 12 months in accordance with our proposal. EA licensees that are required to seek separate approval for environmentally sensitive locations within their geographic areas will be permitted to include those sites in their geographic area license and will not be subject to the 12 month construction deadline.

20. We also take this opportunity to clarify two points. First, we note the applicability of the 12-month construction requirement to incumbents on the lower 230 channels holding site-based authorizations with construction periods that have not yet expired. In general, SMR licensees with site specific authorizations have 12 months from the grant date to complete construction and commence service, unless the authorization is part of a system that has received an extended implementation grant. Pursuant to the new rules we adopt herein, interior sites added within an incumbent's existing footprint will not be subject to construction requirements because they do not require separate authorizations.

c. Transfers and Assignments of Unconstructed Site-Specific Licenses

21. We agree with SMR WON and Digital that temporary waiver of our restrictions against assignment or transfer of unconstructed site-specific SMR licenses would facilitate the relocation process and geographic licensing. We believe that there is good cause to support waiver of the rule in this case. The special circumstances that exist with this innovative approach to licensing support temporary waiver of § 90.609(b) of the rules. That rule was designed to prevent trafficking in site-specific licenses and spectrum warehousing by taking back unused spectrum. However, in this proceeding, we seek to encourage rapid migration of incumbents, preferably through voluntary negotiations, from the upper 200 channels to lower band 800 MHz channels. If we were to rigidly apply § 90.609(b) in such circumstances, licensees holding unconstructed site-specific licenses on the lower channels would not be able to transfer their authorizations for relocation purposes unless they had constructed them first. Therefore, it is more efficient to waive the rule and allow licensees who have unconstructed lower channels suitable for relocation of upper channel incumbents to transfer them without prior construction, so that the relocated licensees can construct facilities suitable to their needs.

22. In addition, relaxing our transfer restrictions facilitates geographic licensing of the lower channels themselves. We expect that in many instances, incumbents on the lower channels will bid for EA licenses on those channels to consolidate their existing holdings. However, because we are adopting new channel blocks for geographic licensing, particularly in the General Category, incumbents may find it advantageous to their bidding strategy to modify their holdings in advance of the auction through transfers or channel swaps. In addition, allowing transfer of unconstructed as well as constructed spectrum provides an opportunity for new entrants to position themselves for the auction by acquiring existing licenses in areas where they intend to bid.

23. Therefore, to facilitate relocation and geographic licensing, we will temporarily waive the prohibition on assignment or transfer of unconstructed authorizations on the lower 80 and General Category channels. Thus, licensees on these channels may apply to transfer or assign their authorizations regardless of construction. Where unconstructed spectrum is transferred, the assignee or transferee will be subject to the same construction deadline as the transferor/assignor. We will, however, allow licensees with extended implementation authority to apply their system-wide construction deadlines to licenses acquired by transfer that are within their pre-existing footprint. This waiver will remain in effect until six months after the conclusion of the upper band EA auction. We believe this period will provide sufficient time for licensees to identify suitable lower band spectrum for transfer as part of voluntary relocation agreements, and for potential bidders in the lower band auction to negotiate transfers as part of their pre-auction strategy.

24. We will extend this waiver to all holders of unconstructed spectrum on the lower 80 and General Category channels, including both SMR and non-SMR licensees. We will also allow these licensees to transfer or assign their authorizations to any eligible entity. Although Nextel argues that such transfers should be allowed only if they are between wide-area SMR incumbents and EA licensees, we believe such restrictions are unnecessary and unduly restrictive. First, we see no reason to allow only wide-area licensees to transfer unconstructed spectrum. The purpose of this policy is to facilitate the rapid assignment of all lower band spectrum—not just spectrum held by wide-area licensees—to those who are most likely to use it. Similarly, we will not restrict holders of unconstructed spectrum to dealing with EA licensees. Although we expect that many transfers will in fact be to EA licensees, we do not believe that incumbents should be prevented from negotiating transfers to other parties who value the spectrum. In any event, such a restriction would prevent incumbents from negotiating transfers prior to the conclusion of the auction because EA winners will not be identified until then.

25. We recognize that relaxing transfer restrictions makes it more difficult to take action against speculators who have not constructed facilities on their spectrum but instead have sought to warehouse spectrum for profit. However, we believe that the benefits of this approach for relocation and future geographic licensing in this service outweigh the potential cost. First, not all 800 MHz licensees who have failed to construct are necessarily speculators: our application freeze and uncertainty caused by the lengthy pendency of this proceeding have also made it difficult for legitimate licensees to develop their systems. Moreover, even in the case of licensees who acquired spectrum through application mills, allowing unconstructed spectrum to be transferred rapidly and efficiently to those who value it most allows development of the service to proceed and provides potential benefits to prospective bidders in the auction. This approach will also not compromise the objectives of geographic area licensing: because only currently licensed spectrum can be transferred, there is no impact on unlicensed spectrum that will be awarded to EA licensees. In addition, EA licensees are not obliged by this policy to negotiate with incumbents they believe have no intention of constructing facilities; if an incumbent fails to construct and commence operations within the period required by its license, the unused spectrum reverts to the EA licensee.

B. Rights and Obligations of EA Licensees in the Lower 230 Channels

1. Operational Restrictions

26. Except for using the 18 dBμV/m contour to define the interference protection obligations of EA licensees with respect to lower 230 incumbents (discussed in § IV–B–3–b, *infra.*), we will apply the same operational rules to EA licensees on the lower 230 channels that are applicable to the upper 200 channels. No commenter has suggested that EA licensees on the lower 230 channels should not have the right to

modify their facilities without prior Commission approval, and we see no reason to treat the lower 230 channels differently in this regard. We also adopt the same notification requirements applicable to the upper 200 channels with respect to system additions, deletions, and modifications.

2. Spectrum Management Rights—Acquisition and Recovery of Channels Within Spectrum Blocks

27. In light of our decision to extend EA licensing to the lower 230 channels, we adopt the same rules for these channels with respect to recovery of unused spectrum and transfers and assignments of spectrum from incumbents to EA licensees. For the same reasons, we dismiss all wait-listed applications for these channels. Our action today will not apply to any application that is currently pending that includes a request for waiver of the processing freeze. We shall resolve those applications by separate action.

3. Treatment of Incumbents

a. Mandatory Relocation of Lower Channel Incumbents

28. We will not adopt mandatory relocation procedures for either SMR or non-SMR incumbents on the lower 230 channels. The record supports our tentative conclusion that requiring incumbents to migrate off this spectrum would be impractical because there is no identifiable alternative spectrum to accommodate such migration. In addition, it is likely that many of the incumbents who will operate on these channels will have relocated from the upper 200 channels, and we have already determined that such relocatees should not be required to relocate more than once. Therefore, EA licensees on the lower 230 channels will not have the right to move incumbents off of their spectrum blocks unless the incumbent voluntarily agrees to move.

b. Incumbent Operations

i. Expansion and Flexibility Rights of Lower Channel Incumbents

29. In the *Further Notice of Proposed Rulemaking* in this proceeding, we recognized that the geographic licensing scheme we designed for the upper 200 channels could result in some incumbent licensees remaining in this channel block, despite our mandatory relocation provisions. To avoid interference between these incumbent licensees and the new EA licensees in the upper 200 channel block, we concluded in our *800 MHz Report and Order* that it was necessary to limit the ability of incumbent licensees to expand their systems after geographic licensing had occurred. At the same time, we concluded that incumbents should be afforded operational flexibility to add sites or make system modifications within those areas already licensed to them. We concluded that, for the upper 200 channel block, incumbent licensees would be allowed to make modifications within their current 22 dBμV/m interference contour and would be allowed to add new transmitters in their existing service areas without prior notification to the Commission. However, incumbents would be required to notify the Commission of any changes in technical parameters or additional stations constructed, including agreements with an EA licensee to expand beyond their signal strength contour, through a minor modification of their license.

30. In the *Second Further Notice of Proposed Rulemaking,* we acknowledged that transitioning to a geographic licensing scheme in the lower 230 channels raises similar issues with respect to the rights of incumbents. We proposed to limit expansion rights of incumbent SMR licensees in the lower 230 channels in the same manner as we did in the upper 200 channel block. Under our proposal, incumbent licensees on the lower 230 channels would be allowed to modify or add transmitters in their existing service area without prior notification to the Commission, so long as they did not expand their 22 dBμV/m interference contour. We proposed that incumbents would not be allowed to expand beyond the 22 dBμV/m contour and into the geographic area licensee's territory without obtaining the prior consent of the geographic area licensee or unless the incumbent is the geographic area licensee for the relevant channel. We sought comment on this proposal and asked commenters to discuss whether a basis other than the 22 dBμV/m interference contour should be used to determine an incumbent's service area.

31. We agree with the supporters of the Industry Proposal that the public interest would be served by giving incumbents on the lower 230 channels some flexibility to expand beyond their 22 dBμV/m contours. However, we decline to adopt the Industry Proposal in its entirety. The settlement concept would, in essence, allow incumbents to divide all remaining unlicensed spectrum on the lower 230 channels among themselves, with no opportunity for new entrants to obtain or even compete for such spectrum. As set forth below, this raises both statutory and policy concerns that prevent us from endorsing the proposal.

32. First, by restricting the settlement process to incumbents, the Industry Proposal would foreclose new entrants from obtaining spectrum on any of the lower 230 channels that are subject to a settlement among incumbents. In any market where all of the channels in an EA were allocated by such settlements, the result would be that no opportunities for geographic licensing would be available to new entrants. The Industry Proposal would also preclude competition in the licensing process and restrict the number of potential applicants who can obtain licenses. Thus, it could yield a higher concentration of licenses than would result if non-incumbents were allowed to compete for the spectrum at the same time. We conclude that allowing only incumbent licensees to obtain rights to an entire EA while foreclosing opportunities for new entrants would be at odds with our goals of promoting economic competition in the 800 MHz SMR service and avoiding an undue concentration of licenses. The approach we adopt herein, unlike the Industry Proposal, would encourage participation of new entrants, including small businesses, and, therefore, promote vigorous economic competition and avoid excessive concentration of licenses.

33. Furthermore, the Industry Proposal provides no method for the Commission to recover a portion of the value of public spectrum pursuant to section 309(j)(3)(C) of the Communications Act. Instead, incumbent licensees who negotiate expansion rights among themselves could obtain a windfall by obtaining rights to an entire EA without having to pay for such expanded rights. We disagree with commenters who attempt to justify this potential windfall by arguing that the proposed settlement procedure complies with the directive in section 309(j)(6)(E) for the Commission to avoid mutual exclusivity through ''engineering solutions, negotiation, threshold qualifications, service regulations, and other means'' section 309(j)(6)(E) requires us to adopt such methods where we find them to be ''in the public interest.'' We do not believe it is in the public interest to ''resolve'' the competing claims of incumbents and non-incumbents for spectrum by establishing a settlement mechanism that is limited to incumbents and excluding non-incumbents from the process.

34. The Industry Proposal would also be inconsistent with the approach we have adopted in other services where we have converted from site-by-site licensing to geographic area licensing.

In our 900 MHz SMR proceeding and our recent paging proceeding, for example, we adopted similar rules for licensing on a geographic basis while protecting the existing operations of incumbent operators. In neither instance did we give incumbents the unrestricted right to obtain available spectrum through a pre-auction settlement process that excluded non-incumbents. We also rejected this and similar alternatives for the upper 200 channels of the 800 MHz band. For all of these reasons, we conclude that the Industry Proposal would not serve the public interest.

35. While we reject the specific settlement procedure described in the Industry Proposal, we note that many of the positive aspects of the proposal can still be accomplished through the auction process we are establishing for the lower 230 channels. For example, incumbents on these channels are free to enter into partnerships, joint ventures, or consortia for purposes of applying for EA licenses on the lower 230 channels in the areas where they currently operate. Incumbents may also negotiate transfers, swaps, partitioning arrangements, or similar agreements with respect to spectrum that is currently licensed to them. In some instances, taking these steps may result in only one entity applying for a given EA license. Where that occurs, no auction will be necessary because there will be no mutually exclusive applications to resolve. At the same time, providing all parties, incumbents and non-incumbents alike, with the *opportunity* to compete for EA licenses will ensure that the spectrum is awarded to the party that values it the most.

36. We also conclude that while geographic licensing is appropriate for the lower 230 channels, some additional flexibility is appropriate for incumbents on these channels to facilitate modifications and limited expansion of their systems. First, allowing incumbent licensees on the lower 230 channels such flexibility will facilitate the relocation of incumbent licensees on the upper 200 channels. Licensees who are faced with relocation will have a significant incentive to relocate rapidly and voluntarily if they know they will have greater flexibility to modify and expand their systems on the channels to which they are relocating. This will promote our objectives for enabling EA licensees on the upper 200 channels to make flexible use of their spectrum, while also protecting the interests of incumbents who relocate.

37. In addition, affording greater flexibility to lower 230 incumbents is appropriate because these channels are subject to an application freeze and geographic licensing of these channels will not occur until after the upper 200 channel auction is concluded and incumbents have had an opportunity to relocate to the lower channels. Because the upper 200 channels will be licensed first, EA winners on these channels will obtain the ability to expand within their geographic areas earlier than lower channel licensees. Allowing lower channel incumbents limited flexibility to expand prior to the auction will help to compensate for the fact that upper 200 licensees will obtain the benefits of geographic licensing sooner.

38. Therefore, we adopt our proposal to allow incumbents on the lower 230 channels to make system modifications within their interference contours without prior Commission approval. Incumbent licensees who currently utilize the 40 dBu signal strength contour for their service area contour and 22 dBu signal strength contour for their interference contour will be permitted to utilize their existing 18 dBu signal strength contour for their interference contour as long as they obtain the consent of all affected parties to do so. *See* § IV–B–4–a. Thus, an incumbent licensee, with the concurrence of all affected incumbents, that desires to make modifications to its existing system will be able to make such modifications such as adding new transmitters, and altering its coverage area, so long as such incumbent does not expand the 18 dBu interference contour of its system. Moreover, licensees who do not receive the consent of all incumbent affected licensees, will be able to make similar modifications within their 22 dBu signal strength interference contour. Licensees that do not desire to make modifications may also continue to operate with their existing systems. We find that this approach will not only enable incumbents to fill in ''dead spots'' in coverage or to reconfigure their systems to increase capacity, but will also allow for some incremental expansion of their systems.

39. In the *800 MHz Report and Order*, some commenters stated that smaller SMR entities only need to make smaller incremental changes to their service areas to better serve their customers. We believe that adopting the 18 dBu standard will allow such entities to make the incremental changes they desire. At the same time, we find that the 18 dBu standard is superior to the Industry Proposal because it preserves opportunities for new entrants in areas that are currently unserved and that are not reasonably proximate to existing facilities. The 18 dBu standard is more flexible than the 22 dBu standard and will thereby increase opportunities for lower 230 incumbents to modify their existing operations to meet technological changes and market demands for service. This additional flexibility will also facilitate the relocation of incumbent SMR licensees from the upper 200 to the lower 230 channels by providing these licensees with more flexibility to modify their existing systems than they would possess if they remained on the upper 200 channels.

40. Because our prior rules governing separation of 800 MHz facilities are based on a 40/22 dBμV/m standard, we recognize that the 18 dBμV/m standard adopted here may have little practical significance in portions of the United States areas where incumbents are already operating in close proximity to one another, *e.g.*, most markets east of the Mississippi. Therefore, as discussed in § IV–B–4–a, we will continue to use the current separation tables and short-spacing rules based on the 40/22 dBμV/m ratio to define the interference protection rights of incumbents against other incumbents, except where incumbents consent to the use of a more relaxed standard. In less densely populated areas, however, we expect the 18 dBμV/m standard to be beneficial to incumbent systems seeking greater operational flexibility. In addition, as discussed in § IV–B–4–b, we will use the incumbent's 36 dBμV/m as opposed to 40 dBμV/m contour as the basis for protection from interference by adjacent EA licensees.

ii. Converting Site-Specific Licenses to Geographic Licenses

41. We will allow lower 230 channel incumbents to combine their site-specific licenses into single geographic licenses as proposed. This option will provide incumbents with the same flexibility and reduced administrative burden that geographic licensing affords to EA licensees, and will simplify the licensing process for the Commission. Because we have adopted the 18 dBu contour rather than the 22 dBu contour, where the incumbent licensee has obtained the consent of all affected parties, as the benchmark for defining an incumbent licensee's protected service area, we will use the contiguous and overlapping 18 dbu contours of the incumbent's previously authorized sites to define the scope of the incumbent's geographic license. Therefore, after the auction of the lower 230 channels has been completed, incumbents in the lower 230 channels may convert their current multiple site licenses to a single

license. Incumbents seeking such reissued licenses must make a one-time filing of specific information for each of their external base station sites to update our database. Such filings should be made on FCC Form 600 and should include a detailed map of the area the system will cover. We also will require evidence that such facilities are constructed and placed in operation. Once the geographic license has been issued, facilities that are later added or modified that do not extend the licensees' 18 dBu interference contour will not require prior approval or subsequent notification under this procedure. Such facilities should not receive interference because they will be protected by the presence of the licensee's external co-channel stations. Licensees who do not receive the consent of all affected parties may also follow the same process utilizing their 22 dBu signal strength interference contour, rather than the 18 dBu contour.

4. Co-Channel Interference Protection

a. Incumbent SMR Systems

42. Our interference protection proposals in the *Second Further Notice of Proposed Rulemaking* assumed that we would use the 22 dBμV/m contour as the basis for determining the area in which lower 230 incumbents could operate. As noted in § IV–B–3–b, *supra,* we have decided instead to allow all incumbents on the lower 230 channels to use the 18 dBμV/m contour as the basis for modifying and expanding their systems, provided that they obtain the consent of all co-channel incumbents potentially affected by the use of this standard. Because the 18 dBμV/m standard gives incumbents greater flexibility to expand, we must apply stricter interference protection criteria to EA licensees to ensure that they do not interfere with incumbent operations. Specifically, we will require EA licensees either: (1) to locate their stations at least 173 km (107 miles) from the licensed coordinates of any incumbent, or (2) to comply with co-channel separation standards based on a 36/18 dBμV/m standard rather than the previously applicable 40/22 dBμV/m standard. The 36 dBμV/m desired signal strength contour is determined from the R–6602, F(50,50) curves for Channels 7–13 in § 73.699 of the Commission's rules (Figure 10), with a 9 dB correction factor for antenna height differential. The 18 dBμV/m undesired signal strength contour is calculated using the R–6602, F(50,10) curves for Channels 7–13 found in § 73.699 of the Commission's rules (Figure 10a), with a 9 dB correction factor for antenna height differential. In PR Docket No. 93–60, the Commission determined that a protection ratio of 18 dB would result in co-channel station spacings that provide reasonable protection from co-channel interference and, at the same time, provide for efficient reuse of valuable spectrum. Thus, EA licensees are required to ensure that the 18 dBμV/m undesired signal strength contour of a proposed station does not encroach upon the 36 dBμV/m desired signal strength contour of an existing incumbent station. Furthermore, in the opposite situation, EA licensees will have their 36 dBμV/m desired signal strength contour protected with an 18 dB ratio, since the undesired signal strength contour limit for incumbents that have reached consent of all other affected parties shall be 18 dBμV/m.

43. We emphasize that this revised interference standard protects incumbents only against EA licensees, not against other incumbents. As noted above, incumbents who seek to use the 18 dBμV/m standard must obtain the consent of other affected incumbents to do so. In the absence of such consent, the protection that one incumbent must afford another continues to be governed by § 90.621(b) of the Commission's rules, i.e., incumbents must locate their stations at least 113 km (70 miles) from the facilities of any other incumbent or comply with the co-channel separation standards based on the 40/22 dBμV/m standard set forth in our prior short-spacing rules.

b. Adjacent EA Licensees

44. We adopt the same interference protection standards for the lower 230 channels that we previously adopted for the upper 200 channels. Thus, EA licensees on the lower 230 channels must limit their signal strength at their EA borders to 40 dBμV/m, unless affected adjacent EA licensees agree to higher signal strength. We emphasize that this rule applies only to resolving interference issues between EA licensees. Thus, an EA licensee who complies with this rule may nevertheless be required to limit its operations further in order to comply with the rules governing protection of incumbents (see § IV–B–4–a, *infra*).

c. Emission Masks

45. In response to a request for reconsideration from Ericcson, again supported by Motorola, we are further modifying our emission mask rule for the upper 200 channels in the accompanying *Memorandum Opinion and Order.* We conclude that this rule, as modified, should also be applied to the lower 230 channels. Use of a common emission standard throughout the 800 MHz SMR band will facilitate use of common equipment and make it easier for licensees to combine upper 200 and lower 230 channels in their systems. As in the case of the upper 200 channels, application of the emission mask rule to the lower 230 channels will apply only to ''outer'' channels used by the licensee, *i.e.,* to channels that are creating out-of-band emissions that affect another licensee. Thus, the emission mask rules do not apply to ''interior'' channels in a spectrum block that do not create out-of-band emissions outside that block or on channels in the block that are used by incumbents.

5. Regulatory Classification of EA Licensees on the Lower 230 Channels

46. We adopt our proposal with respect to SMR applicants who obtain EA licensees on the lower 230 channels, but modify it with respect to non-SMR applicants for EA licenses. We anticipate that most applicants for EA licenses on these channels will be SMR applicants who seek to provide interconnected service, thus meeting the statutory definition of CMRS. Therefore, we will presumptively classify SMR winners of EA licenses as CMRS providers. However, we will allow SMR applicants and licensees to overcome this presumption by demonstrating that their service does not meet the CMRS definition. This is consistent with our approach to broadband PCS and other services. We reject Genesee's contention that we have illegitimately used CMRS classification as a basis for auctioning the lower 230 channels. In fact, the issue of regulatory classification under section 332 of the Act is irrelevant to the issue of auctionability, which turns on the factors enumberated in section 309(j) of the Act. We address the issue of auctionability elsewhere in this order and decline to revisit it here.

47. In the *Memorandum Opinion and Order* adopted today, we determine that non-SMRs as well as SMRs will be eligible to obtain EA licenses on the 150 General Category channels. While we expect most EA licenses to be sought by SMR providers, we agree with E.F. Johnson that where an EA license is obtained by a non-SMR operator, the CMRS presumption is inapplicable. Thus, in the event that EA licenses are awarded to Public Safety, Industrial/Land Transportation, or Business licensees, such licensees will be classified as PMRS providers. Although Business Radio licensees below 800 MHz may be classified as CMRS, Business Radio licensees above 800 MHz are precluded from providing for-

profit service, and therefore are classified as PMRS.

C. Relocation of Incumbents From the Upper 200 Channels

1. Comparable Facilities

48. We adopt our proposed definition of ''comparable'' facilities, with certain clarifications discussed below. In general, we define comparable facilities as facilities that will provide the same level of service as the incumbent's existing facilities. We also agree with commenters that being provided with comparable facilities requires that the change be transparent to the end user to the fullest extent possible. However, our definition does not require an EA licensee to upgrade the incumbent's facilities. As we proposed, EA licensees will not be required to replace existing analog equipment with digital equipment when there is an acceptable analog alternative that satisfies the comparable facilities definition. Thus, under these circumstances the cost obligation of the EA licensee will be the minimum cost the incumbent would incur if it sought to replace, but not upgrade, its system.

49. We agree with many of commenters' suggestions for further refining the factors that are used to define comparable facilities. We conclude that the determination of whether facilities are comparable should be made from the perspective of the end user. To this end, we identify four factors—*system, capacity, quality of service,* and *operating costs*—that are relevant to this determination. We emphasize that these factors are only relevant to determining what facilities the EA licensee must provide to meet the requirements for mandatory relocation; we reiterate that incumbents and EA licensees are free to negotiate any mutually agreeable alternative arrangement.

a. System

50. To meet the comparable facilities requirement, an EA licensee must provide the relocated incumbent with a comparable system. We believe the term ''system'' should be defined functionally from the end user's point of view, i.e., a system is comprised of base station facilities that operate on an integrated basis to provide service to a common end user, and all mobile units associated with those base stations. System comparability includes stations licensed on a secondary, non-protected basis. An incumbent that is licensed on a secondary basis at the time of notification must receive at least the equivalent type of license. We agree with SMR WON that this definition can include multiple-licensed facilities that share a common switch or are otherwise operated as a unitary system, provided that an end user has the ability to access all such facilities. However, our definition does not extend to facilities that are operationally separate. For example, if a subscriber on one system has the ability to roam on a neighboring system, we would not define the two facilities as part of a common ''system.'' In addition, our definition does not include managed systems that are comprised of individual licenses. We also agree with SMR WON and AMTA that a ''system'' may cover more than one EA if its existing geographic coverage extends beyond the EA borders. We reject Nextel and Pittencrief's suggestions that we define ''system'' more narrowly. In our view, a narrower definition would impair the flexibility of incumbents to continue meeting their customer's needs.

b. Capacity

51. To meet the comparable facilities requirement, an EA licensee must relocate the incumbent to facilities that provide equivalent channel capacity. We define channel capacity as the same number of channels with the same bandwidth that is currently available to the end user. For example, if an incumbent's system consists of five 50 kHz (two 25 kHz paired frequencies) channels, the replacement system must also have five 50 kHz channels. If a different channel configuration is used, it must have the same overall capacity as the original configuration. We agree with commenters that comparable channel capacity requires equivalent signaling capability, baud rate, and access time. In addition, the geographic coverage of the channels must be coextensive with that of the original system.

c. Quality of Service

52. Comparable facilities must provide the same quality of service as the facilities being replaced. We define quality of service to mean that the end user enjoys the same level of interference protection on the new system as on the old system. In addition, where voice service is provided, the voice quality on the new system must be equal to the current system. Finally, we consider reliability of service to be integral to defining quality of service. We measure reliability as the degree to which information is transferred accurately within the system. Reliability is a function of equipment failures (*e.g.* transmitters, feed lines, antennas, receivers, battery back-up power, etc.) and the availability of the frequency channel due to propagation characteristics (*e.g.* frequency, terrain, atmospheric conditions, radio-frequency noise, etc.) For digital data systems, this will be measured by the percent of time the bit error rate exceeds the desired value. For analog or digital voice transmissions, we will measure the percent of time that audio signal quality meets an established threshold. If analog voice system is replaced with a digital voice system the resulting frequency response, harmonic distortion, signal-to-noise ratio, and reliability will be considered.

d. Operating Costs

53. Another factor in determining whether facilities are comparable is operating costs. We define operating costs as costs that affect the delivery of services to the end user. If the EA licensee provides facilities that entail higher operating cost than the incumbent's previous system, and the cost increase is a direct result of the relocation, the EA licensee must compensate the incumbent for the difference. We anticipate that costs associated with the relocation process will fall into several categories. First, the incumbent must be compensated for any increased recurring costs associated with the replacement facilitates (*e.g.* additional rental payments, increased utility fees). Second, increased maintenance costs must be taken into consideration when determining whether operating costs are comparable. For example, maintenance costs associated with analog systems may be higher than the costs of digital equipment because manufacturers are producing mostly digital equipment and analog replacement parts can be difficult to find.

54. While we conclude that EA licensees should be responsible for increased operating costs caused by relocation, we note that identifying whether increased costs are attributable to relocation becomes more difficult over time. Therefore, we will not impose this obligation indefinitely, but will end the EA licensee's obligation to pay increased costs five years after relocation has occurred. We believe this appropriately balances the interests of EA licensees and relocated incumbents.

2. Cost-Sharing

a. Sharing Relocation Costs on a Pro Rata Basis

55. We adopt an approach that is similar to our PCS microwave relocation rules. We conclude that, absent an

agreement among EA licensees who are prepared to relocate the incumbent, all EA licensees who benefit from the relocation of the incumbent must share the relocation costs on a *pro rata* basis. Although several commenters believe that the Commission should adopt detailed rules for sharing relocation costs among multiple EA licensees, we do not believe that detailed rules are necessary since all EA licensees will be licensed at approximately the same time. However, we do not believe that all EA licensees will notify incumbents of their intention to relocate within 90 days of the release of the Public Notice announcing the commencement of the voluntary negotiation period because they may not be ready or capable of relocating an incumbent and, therefore will not participate in the relocation process. Those non-notifying EA licensees, however may subsequently determine that those channels relocated out of their EA by other EA licensees are necessary for their use. Therefore, EA licensees who relocate the incumbent will obtain a right to reimbursement from non-notifying EA licensees who want to benefit from the relocation. We believe that allowing all EA licensees who relocate the incumbent a right to reimbursement is necessary to avoid a ''free-rider'' problem by those EA licensees who did not provide notification, but subsequently benefit from the relocation. We also believe that reimbursement rights will ensure that the incumbent is relocated as a whole and not on a piece-meal basis.

56. The *pro rata* formula will be based on the number of channels being relocated out of each EA. Several commenters support this proposal, because the relocation process is likely to involve multiple EA licensees and one incumbent. The pro rata formula requires those EA licensees who participate in the relocation process to share the costs for relocating those channels that are located in a non-notifying licensee's EA. Therefore, the cost-sharing formula will determine the costs for relocating the incumbent's system out of each EA. We believe that determining the relocation costs for each EA will allow those EA licensees who participate in the relocation process to easily determine their cost obligation and their reimbursement share from later entrant EA licensees who did not participate. We believe that such a formula will negate the need for a complicated plan. The new formula is:

$$Ci = Tc \times \frac{Chi}{TCh}$$

Ci equals the amount of reimbursement
Tc equals the actual cost of relocating the incumbent
TCh equals the total number of channels that are being relocated
Chj equals the number of channels that each respective EA licensee will benefit from

57. We believe the formula provides an effective and straightforward means of determining a participating EA licensee's cost obligation and the reimbursement shares for later entrant EA licensees. This formula is essential to make cost-sharing administratively feasible and fair for those EA licensees who participate in the relocation process and those who choose not to.

58. The formula is similar to the formula adopted for sharing the relocation costs of microwave incumbents, but it does not take into account depreciation for the costs of reimbursing EA licensees who participated in the relocated process. Instead, non-notifying EA licensees who subsequently decide to use the channels or area of their EA that an incumbent was relocated out of must fully reimburse those participating EA licensees prior to testing. Similar to our decision in the microwave relocation proceeding, EA licensees who relocate channels that benefit other EA licensees and are fully outside of their market, should be entitled to full reimbursement of compensable costs for relocating that portion of the incumbent that are either fully outside their market area or licensed EA. However, because we realize that a non-notifying EA licensee may not decide to use those channels or serve the area of their EA that was once occupied by an incumbent, we conclude that ten years from the date of the Public Notice commencing the voluntary negotiation period, reimbursement rights will sunset.

59. The following is an example of how the formula will work: In October 1997, EA licensees A, B, and C each notify the incumbent in a timely manner that they are prepared to relocate the incumbent. EA licensee D does not provide notification to the incumbent. The incumbent decides to compel simultaneous negotiations among EA licensees A, B, and C. As a result, EA licensees A, B, and C fully relocate the incumbent. The total costs for relocating the incumbent is $100,000. There were 60 channels that EA licensees A, B, C, and D can use as a result of the relocation. The channels located in each EA are as follows: EA A has 25 channels; EA B has 15 channels; EA C has 10 channels; and EA D has 10 channels. For this example, we will calculate the formula for determining the costs share of EA licensee B. As a result, Chj=25, because that is the number of channels that EA licensee B will benefit from. The total number of channels that were relocated is 60 and, therefore TCh=60. In addition, Tc equals $100,000, because that is the total costs of relocating the incumbent. The calculation of licensee B's reimbursement payment is as follows:

$$\$25{,}000 = \$100{,}000 \times \frac{25}{60}$$

Thus, licensee B pays $25,000. Licensee A would pay $41,666.66, licensee C would pay $16,666.66 and licensee D would pay $16,666.66. Therefore, licensee D will be obligated to reimburse licensees A, B, and C $16,666.66 if licensee D subsequently decides to use the channels in EA D. This amount must be equally divided among EA licensees A, B, and C. All three licensees will trigger a right to reimbursement from licensee D and will have the right to collect their share of the costs prior to licensee D commencing with testing.

60. We decline to adopt the proposals of commenters that would allow EA licensees who relocate the incumbent to step into the shoes of the incumbent. We realize that not all EA licensees will provide notice, even though there are sufficient incentives to do so. However, we do not believe it would be appropriate to allow an EA licensee who is prepared to relocate the incumbent to succeed to all of the rights and obligations of that incumbent. In essence, succeeding to the rights and obligations of the incumbent would allow EA licensees to attain a de facto license for parts of an EA that they were not the high bidder for at auction. Therefore, we believe that all EA licensees who benefit initially or subsequently from the relocation of an incumbent should share the costs of the relocation on a *pro rata* basis. To accomplish this, EA licensees who relocate the incumbent will obtain a right to reimbursement from non-notifying EA licensees who subsequently decide to use the channels that were relocated. Therefore, we have designed a two-step process that will allow a participating EA licensee to obtain a reimbursement right and collect the initial costs for relocating channels outside of their EA.

b. Triggering a Reimbursement Right

61. Commenters, although supportive of the Commission's proposal to allow EA licensees who negotiate a relocation

agreement the right to reimbursement from EA licensees who benefitted, did not specifically address how such right should be created. We believe that a right to reimbursement can easily be triggered by the procedures we adopted in the *First Report and Order.*

62. In the *First Report and Order,* we developed a notification procedure that requires an EA licensee to file a copy of the relocation notice and proof of the incumbent's receipt of the notice to the Commission within ten days of receipt. Because notification affects an EA licensee's right to relocate an incumbent, we believe that such notification should also be the first step in triggering an EA licensee's reimbursement right. We believe the second step of triggering a reimbursement right is signing a relocation agreement with the incumbent. Thus, if an EA licensee timely notifies an incumbent of its intention to relocate, and subsequently negotiates and signs a relocation agreement with the incumbent, the EA licensee will have triggered its right to reimbursement from EA licensees who benefitted.

63. In addition, because notification is the first step in establishing a reimbursement right for an EA licensee, we believe that such notification should also establish an obligation for those EA licensees who benefited from the relocation. We believe that an EA licensee who is sincere about using the channels in its EA will provide notice to the incumbent of its intention to relocate the incumbent. We agree with AMTA that EA licensees who do not participate in the relocation process should be prohibited from invoking mandatory negotiations or any of the provisions of the Commission's mandatory relocation guidelines.

64. Therefore, if an EA licensee timely notifies an incumbent of its intention to relocate, but during the voluntary negotiation period decides not to participate in the relocation process, such EA licensee will be obligated to reimburse those EA licensees who have triggered a reimbursement right. EA licensees who do not provide notice to the incumbent, but subsequently decide to use the channels in the EA will be required to reimburse, outside of the Commission's mandatory relocation guidelines, those EA licensees who have established a reimbursement right. We believe that this procedure strikes a fair balance between EA licensees who relocate incumbents and those EA licensees who decide not to relocate incumbents.

c. Compensable Costs

65. We agree with those commenters who believe that premium payments should not be reimbursable and therefore adopt our proposal that reimbursable costs will be limited to the actual costs of relocating the incumbent. We believe that EA licensees who have an incentive to be first to market will have a need to accelerate the relocation process. We agree with those commenters that believe other EA licensees will not receive the same advantage and therefore should not be required to contribute to premium payments. Therefore, we conclude that reimbursement rights will only apply to actual relocation costs.

66. In the *Second Further Notice of Proposed Rulemaking,* we tentatively concluded that actual relocation costs will include, but not be limited to: SMR equipment; towers and/or modifications; back-up power equipment; engineering costs; installation; system testing; FCC filing costs; site acquisition and civil works; zoning costs; training; disposal of old equipment; test equipment; spare equipment; project management; and site lease negotiation. Commenters generally supported the list proposed, but were concerned that the list did not address other cost factors related to relocation. We agree with those commenters who argue that there are other factors related to the relocation process and therefore conclude that this list should be illustrative, and not exhaustive. However, because we want to encourage a fast relocation process free of disputes, we believe that the bulk of compensable costs should be tied as closely as possible to actual equipment costs. Based on this goal, we believe that subsequent EA licensees should only be required to reimburse EA relocators for incumbent transaction expenses that are directly attributable to the relocation, subject to a cap of two percent of the ''hard costs'' involved. Hard costs are defined as the actual costs associated with providing a replacement system, such as equipment and engineering expenses. This restriction on the reimbursement of transaction fees corresponds to the restriction we adopted with respect to PCS reimbursement of incumbent transaction expenses for cost-sharing during any time period—voluntary, mandatory, or involuntary. Therefore, we adopt the same restriction for purposes of this cost-sharing plan. However, EA licensees are not required to pay for transaction costs incurred by EA licensees during the voluntary or mandatory periods once the involuntary period is initiated, or for fees that cannot be legitimately tied to the provision of comparable facilities.

67. In addition, we believe that actual costs should also include costs directly related to a seamless transition. In the *First Report and Order,* we concluded that during the involuntary negotiation period, the EA licensee must conduct the relocation in such a fashion that there is a ''seamless'' transition from the incumbents ''old'' frequency to its ''new'' frequency. We agree with ITA and SMR Systems that it may be necessary to operate the old system and the new system simultaneously to ensure a seamless transition. We want to encourage EA licensees and incumbents to exercise flexibility when negotiating a relocation agreement, but we also want to ensure that the incumbent is made whole, and is relocated without a substantial disruption in service. We also recognize that alternative means may be agreed upon to avoid a substantial disruption in service. Therefore, we will require that any costs directly associated with a seamless transition will be considered actual costs and, therefore reimbursable.

d. Payment Issues

68. We partially agree with Genessee and conclude that reimbursement payments should be due when the frequencies of the incumbent have been cleared. We also agree with Fresno that an EA licensee may choose not to use the frequencies in a particular EA. Therefore, it is the EA licensee who must, within 90 days of the release of the Public Notice announcing the commencement of the voluntary negotiation period, decide whether they intend to participate in the mandatory relocation process.

69. We believe that an EA licensee who provides notification is sincere of its intention to use the frequencies in the EA and therefore, concluded supra, that once an EA licensee notifies an incumbent of its intention to relocate the incumbent, the EA licensee will be obligated to pay its share of reimbursement. However, EA licensees who have triggered an obligation should not be required to submit payment until the channels they have been licensed for are available for use. Therefore, we conclude that payments will not be due until the incumbent has been fully relocated and the frequencies are free and clear. We believe this procedure strikes a clear balance between those EA licensees who negotiate a relocation agreement and those EA licensees who want the use of the frequencies, but decide not to negotiate a relocation agreement.

70. Because non-notifying EA licensees will not receive the benefit of the Commission's relocation guidelines, they will be required to reimburse those EA licensees who have triggered a reimbursement right. Therefore, we conclude that non-notifying EA licensees who subsequently decide to use the channels, should be required to submit payment to those EA licensees who have triggered a reimbursement right prior to commencing testing of their system. We believe this strikes a fair balance between the EA licensee who has benefited a non-notifying EA licensee and the non-notifying EA licensees right to use those channels within its licensed EA. In addition, we believe that this will create an incentive for both parties to expedite negotiations among themselves.

3. Resolution of Disputes that Arise During Relocation

71. Commenters strongly support the Commission's proposal to use ADR procedures when disputes arise as to the amount of reimbursement required and the relocation negotiations (including disputes over comparability of facilities and the requirement to negotiate in good faith). We agree with those commenters who believe that the use of ADR procedures will help resolve disputes in a timely fashion, while conserving Commission resources. In addition, we believe that the rapid resolution of disputes will speed the development of wide-area systems, and therefore will ultimately benefit the public. Therefore, to the extent that disputes cannot be resolved among the parties, we strongly encourage parties to use expedited ADR procedures. ADR procedures provide several alternative methods such as binding arbitration, mediation, or other ADR techniques. Because we are encouraging parties to use ADR procedures, we do not need to designate an arbiter to resolve the disputes as some commenters suggest. As several commenters pointed out, the choice of arbiter should be a decision left to the parties.

72. We encourage parties to use ADR procedures prior to seeking Commission involvement and caution that entire resolution of disputes by the Commission will be time consuming and costly to the parties. In addition, we emphasize that parties who neglect their obligation to satisfy a reimbursement right will be subject to the full realm of Commission enforcement mechanisms.

4. Administration of the Cost-Sharing Plan

73. We believe that the cost-sharing plan we have adopted for 800 MHz SMR does not require us to designate an administrator. We believe that an administrator was necessary to administer the cost-sharing plan under the microwave relocation procedures because of the complexity of the plan. We do not believe that the cost-sharing plan we have adopted for 800 MHz SMR is as complex and therefore decline to designate a clearinghouse to administer the cost-sharing plan. However, we will not prohibit an industry supported, not-for-profit clearinghouse from being established for purposes of administering the cost-sharing plan under the 800 MHz relocation procedures.

D. BETRS Eligibility on the Upper 200 Channels

74. As we did in our *Paging Second Report and Order,* 62 FR 11616 (March 12, 1997), we do not believe it is necessary to continue separate primary licensing of BETRS facilities on 800 MHz SMR frequencies. Under the rules adopted in our *CMRS Flex Report and Order,* 61 FR 45336 (August 29, 1996), all CMRS providers, including SMRs, may provide fixed services of the type provided by BETRS licensees. In addition, entities seeking to offer BETRS on 800 MHz SMR frequencies will be able to obtain spectrum through geographic area licensing. We see no basis for distinguishing BETRS from other services that use 800 MHz SMR spectrum to provide commercial communications service to subscribers.

75. As we noted in our *Paging Second Report and Order,* we recognize that BETRS primarily serves rural, mountainous, and sparsely populated areas that might not otherwise receive basic telephone service. However, according to our records, there are few BETRS facilities licensed on 800 MHz SMR frequencies. According to our licensing records, as of November 13, 1996, there were only eleven BETRS authorizations in the 800 MHz service, and all of them were located in the State of Alaska. Furthermore, our records show no BETRS facilities licensed in Puerto Rico. Therefore, we disagree with PRTC that eliminating separate primary licensing of BETRS facilities on 800 MHz SMR frequencies will negatively affect phone penetration in Puerto Rico. More importantly, concerns about the delivery of service to rural and other high cost areas are currently being addressed in our ongoing rulemaking proceeding examining universal service issues. We also note that BETRS has other frequencies available to it under part 22. In light of the limited demand for these channels by BETRS licensees, and the alternatives available for providing telecommunications service in sparsely populated areas, we conclude that continued licensing of 800 MHz channels to BETRS on a co-primary basis is not necessary.

76. We will, however, allow BETRS licensees to obtain new sites and channels in the 800 MHz band on a secondary basis. If any EA licensee subsequently notifies the BETRS licensee that a secondary facility must be shut down because it may cause interference to the EA licensee's existing or planned facilities, the BETRS licensee must discontinue use of the particular channel at that site no later than six months after such notice.

E. Partitioning and Disaggregation for 800 MHz and 900 MHz Licensees

1. Partitioning

a. Eligibility

77. We adopt our tentative conclusion and further extend partitioning to all incumbent licensees and eligible SMR licensees on all SMR channel blocks. We agree with commenters that partitioning will provide SMR licensees with increased flexibility and result in more efficient spectrum management. In the broadband PCS proceeding, we eliminated the existing restriction that limited partitioning of broadband PCS licenses to only rural telcos. We concluded that allowing more entities to acquire partitioned broadband PCS licenses would: ''(1) Remove potential barriers to entry thereby increasing competition in the PCS marketplace; (2) encourage parties to use PCS spectrum more efficiently; and (3) speed service to unserved and underserved areas.'' We conclude that the very same important goals will be met by allowing more open partitioning in the SMR service. Eliminating the existing rural telco restriction on SMR partitioning will: (1) Allow new entities, such as small businesses, to acquire SMR licenses and thus increase competition and foster the development of new technologies and services; (2) encourage existing SMR licensees to use their spectrum more efficiently; and (3) ensure the faster delivery of SMR service to rural areas. We also believe that allowing more flexible partitioning will provide an alternative to the relocation of incumbent licensees.

78. Under our rules, SMR licensees are required to meet performance requirements based on substantial service, which may be fulfilled by providing population-based coverage. As some of the 900 MHz commenters noted, these requirements encourage SMR licensees to initially focus their attention on the more populated, urban

portions of their markets, in order to meet the construction requirements, while leaving the less-populated, rural areas unserved. With the present rural telco restriction in place, SMR licensees are not permitted to partition the more rural portions of the their markets to another entity, unless that entity is a qualified rural telco. In those cases where no rural telco is present in the market or where the rural telco does not desire to provide SMR service, there may be a delay in the delivery of service to the rural portions of the MTA. Allowing SMR licensees to partition portions of their markets to other entities more interested in providing service to those niche areas not only allows those other entities an opportunity to enter the SMR marketplace but also increases the odds that the less populated, rural portions of markets receive higher quality SMR service. Therefore, we are eliminating the existing rural telco restriction on both 800 MHz and 900 MHz SMR partitioning.

79. We do not find that retaining the rural telco restriction will result in higher quality service to rural areas. We find that allowing more open partitioning in the 900 MHz SMR service will mean that additional, highly qualified wireless operators, including incumbent SMR operators, will be permitted to provide 900 MHz SMR service which may result in better service and increased competition which may result in lower prices for service. We also do not find that allowing more open partitioning of 900 MHz SMR licenses is inconsistent with the mandate of section 309(j)(3)(B) of the Communications Act to ensure that licenses are disseminated among a wide variety of applicants including rural telcos. RTG argues that partitioning is the only preference that has been devised to ensure that rural telcos are afforded economic opportunities to participate in the provision of new and innovative services. We disagree. Rural telcos are able to take advantage of the special provisions for small businesses adopted for the 900 MHz SMR auction. Furthermore, sections 309(j)(3) (A), (B), and (D) of the Communications Act direct the Commission to further the rapid deployment of new technologies for the benefit of the public including those residing in rural areas, to promote economic opportunity and competition, and to ensure the efficient use of spectrum. While encouraging rural telco participation in 900 MHz SMR service offerings is an important element in meeting these goals, Congress did not dictate that this should be the sole method of ensuring the rapid deployment of service in rural areas. Allowing more open partitioning will further the goals of section 309(j)(3) by allowing 900 MHz SMR licensees to partition their licenses to multiple entities rather than to a limited number of rural telcos. In addition, we find that, because they possess the existing infrastructure and local marketing knowledge in rural areas, rural telcos will be able to compete with other parties to obtain partitioned 900 MHz SMR licenses.

80. We decline to adopt SMR WON's proposal to restrict non-incumbent 800 MHz SMR licensees from partitioning until they have relocated all incumbent licensees from their band. We agree with those 800 MHz commenters that believe that the auctions process obviates the need for restricting partitioning. While we acknowledge SMR WON's concerns that partitioning could be used as a method for avoiding responsibility for relocation of incumbents, we believe that such a restriction would unfairly discourage partitioning without any corresponding public interest benefit. We note that partitionees will be permitted to acquire partitioned license areas from EA licensees but will not be permitted to operate on channels that were previously cleared by other EA licensees until they have satisfied the relocation reimbursement requirements under our rules. EA licensees and partitionees are free to negotiate among themselves as to who will be responsible for paying the reimbursement costs, and we will require that parties seeking approval for a partitioning arrangement in the 800 MHz SMR service certify which party will be responsible for such reimbursement. We believe that such a certification is a more flexible approach to ensuring that partitioning is not used as a means to circumvent our reimbursement requirements.

b. Available License Area

81. In the broadband PCS and WCS proceedings, we allowed partitioning along any service area defined by the partitioner and partitionee. We found that, by providing such flexibility to licensees for determining partitioned broadband PCS license areas, we would permit the market to decide the most suitable services areas. We find that the same rationale holds true in the SMR service. Restricting the partitioning of SMR licenses to geopolitical boundaries, as originally proposed in the *Second Further Notice of Proposed Rulemaking* and by AMTA, may inhibit partitioning and may not allow licensees to respond to market demands for service. We find that allowing unrestricted partitioning of SMR licenses is preferable, as long as the parties submit information in their partial assignment applications that describes the partitioned license area.

82. We will require that applications seeking approval to partition an SMR license will be required to submit, as separate attachments to the partial assignment application, a description of the partitioned service area and, where applicable, a calculation of the population of the partitioned service area and licensed market. The partitioned service area must be defined by coordinate points at every 3 degrees along the partitioned service area agreed to by both parties, unless either (1) an FCC-recognized service area is utilized (*i.e.*, Major Trading Area, Basic Trading Area, Metropolitan Statistical Area, Rural Service or Economic Area) or (2) county lines are followed. Applicants need only define that portion of the partitioned service area that is not encompassed by an FCC-recognized service area or county line. For example, if the partitioned service area consisted of five counties and three additional townships, the applicant must only define that portion of the partitioned service area comprised of the additional townships. These geographical coordinates must be specified in degrees, minutes and seconds to the nearest second of latitude and longitude, and must be based upon the 1927 North American Datum (NAD27). Applicants may also supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required based on NAD27. This coordinate data should be supplied as an attachment to the partial assignment application, and maps need not be supplied. In cases where an FCC recognized service area or county lines are being utilized, applicants need only list the specific area(s) (through use of FCC designations) or counties that make up the newly partitioned area. For example, if a licensee desires to partition its license only for the service area needed by a rural telco, it will simply provide coordinate data points at each 3 degree data point extending from the center of the service area (*i.e*, at the 3 degree, 6 degree, 9 degree, 12 degree, etc. azimuth points with respect to true north).

83. We note that this rule will also apply to incumbent 800 MHz SMR licensees seeking partial assignments of license. Incumbent licensees are currently licensed on a site-by-site basis and currently must seek a partial assignment of license under our existing rules if they desire to assign a portion of their licensed transmitter sites to

another entity. Under our new rules, incumbent 800 MHz SMR licensees must follow the same procedures as all other licensees and must include the necessary description of the ''partitioned license area.'' For incumbent 800 MHz SMR licensees, the ''partitioned license area'' will mean that area encompassed by the protected service contours of all of the transmitter sites being assigned.

2. Disaggregation

a. Eligibility

84. We conclude that all SMR licensees should be allowed to disaggregate portions of their spectrum to any party that is qualified for the spectrum's underlying channel block. We find that disaggregation will provide SMR licensees greater flexibility to manage their spectrum more efficiently and, in the 800 MHz band, will facilitate the coexistence of geographic area licensees and incumbents by allowing geographic licensees to subdivide their spectrum holdings and assign or transfer parts of their spectrum to other eligible entities or incumbents. We further find that disaggregation will increase competition by encouraging a broader range of SMR participants; foster a broader range of services offered by those participants as they seek niche markets and services; expedite the provision of SMR service to areas that may not otherwise receive CMRS service; and, allow the marketplace to determine who and by whom the spectrum will be used. Moreover, allowing SMR disaggregation will help establish regulatory symmetry with similar services, such as PCS, as mandated by the 1993 Budget Act. Once again, we find that allowing disaggregation will provide a less disruptive alternative for the relocation of incumbent licensees.

85. As we did with partitioning, we decline to adopt SMR WON's proposal to restrict non-incumbent 800 MHz SMR licensees' ability to disaggregate. We agree with commenters that conclude that the market should determine when and how much spectrum to disaggregate.

b. Amount of Spectrum to Disaggregate

86. We agree with commenters that we should not limit the amount of SMR spectrum that can be disaggregated. We find that the marketplace should decide the amount of SMR spectrum to be disaggregated and that there is no need to set a minimum disaggregation amount. As we did for broadband PCS and WCS, we seek to provide flexibility to the parties to decide the amount of spectrum they need. This will permit more efficient use of spectrum and deployment of a wider range of service offerings. Requiring a minimum disaggregation amount for SMR may interfere with parties intend use of spectrum and may foreclose some parties from using disaggregation as a means of obtaining SMR spectrum to provide their unique service offerings. We note that parties acquiring disaggregated SMR spectrum will continue to be subject to all of our technical and operating requirements.

1. Construction, Coverage and Channel Usage Requirements

87. We agree that SMR licensees should not be able to use partitioning and disaggregation as a means of circumventing our performance requirements and that some version of these requirements should apply to parties obtaining licenses through these means. By adopting such requirements we seek to ensure that spectrum is used to the same degree that it would have been used had the partitioning or disaggregation transaction not taken place.

88. Therefore, we will adopt flexible coverage and channel usage requirements for partitioning and disaggregation in the 800 MHz and 900 MHz SMR services that are consistent with the underlying requirements in those services. We find that granting the parties flexibility to devise a scheme for meeting these requirements will increase the viability and value of partitioned licenses and disaggregated spectrum and will facilitate partitioning and disaggregation for the SMR service.

89. With respect to incumbent licensees, we believe that it would be inappropriate to subject entities that obtain partitioned licenses or disaggregated spectrum from incumbent SMR licensees to additional performance requirements when no such requirements currently exist for these licensees. However, to prevent incumbent licensees from using partitioning or disaggregation as a means of circumventing our one-year construction requirement, we will hold partitionees and disaggregatees to the original construction deadline(s) for each of the partitioned facilities they acquire. These deadlines may vary depending on when the facility was originally licensed. In any case, a partitionee or disaggregatee that obtains a portion of an incumbent SMR licensees' facilities or spectrum with only a few months remaining before the expiration of the construction deadline, will be required to have these facilities constructed and providing ''service to subscribers'' by each individual construction deadline. Failure to meet the individual construction deadline for a specific facility will result in automatic termination of that facility's authorization. We believe that such a requirement is a fair balance between allowing incumbent SMR licensees the opportunity to utilize the helpful spectrum management tools of partitioning and disaggregation while ensuring continued compliance with our performance requirements.

90. *Geographic Area Licensees—Partitioning.* Because the coverage requirements differ for licensees in the 800 MHz and 900 MHz bands, we will adopt coverage requirements that are consistent with the licensees' underlying requirements. In the 900 MHz band and in the lower 230 channels of the 800 MHz band, licensees are required to provide ''substantial service'' to their markets within five years of the grant of their initial licensees. As such, we will permit parties seeking to partition licenses in those bands to meet one of the following performance requirements. Under the first option, the partitioner and partitionee can each agree to meet the ''substantial service'' requirement for their respective portions of the market. If a partitionee fails to meet the ''substantial service'' requirement for its portion of the market, the license for the partitioned area will automatically cancel without further Commission action. Under the second option, if the original geographic area licensee certifies that it has already met or will meet the ''substantial service'' requirement for the entire market by providing coverage to at least one-third of the population of the entire (pre-partitioned) market within three years of the grant of its license and at least two-thirds of the market population within five years, then the partitionee not be subject to performance requirements except for those necessary to obtain renewal.

91. In the upper 200 channels of the 800 MHz band, licensees must meet specific coverage benchmarks by providing coverage to at least one-third of the population of their market within three years of the grant of their initial license and coverage to at least two-thirds of the population within five years. For licensees in the upper 200 channels of the 800 MHz band, we will adopt flexible coverage requirements similar to those we adopted in the broadband PCS proceeding. Under the first option, we will require that the partitionee certify that it will meet the same coverage requirement as the original licensee for its partitioned

market. If the partitionee fails to meet its coverage requirement, the license for the partitioned area will automatically cancel without further Commission action. Under the second option, the original licensee certifies that it has already met or will meet its three-year coverage requirement and that it will meet the five-year construction requirement for the entire geographic area market. In that case, the partitionee will not be subject to performance requirements except for those necessary to obtain renewal.

92. *Geographic Area Licensees—Disaggregation*. Licensees in the upper 200 channels of the 800 MHz band are required to meet a channel usage requirement. Consistent with that rule, we will require that disaggregatees in the upper 200 channels of the 800 MHz band meet a channel usage requirement for the spectrum they acquire. However, consistent with our approach for partitioning and to provide flexibility to the parties to facilitate disaggregation in the upper 200 channels, we will permit the parties to negotiate among themselves the responsibility for meeting the channel usage requirement. Each party may agree to separately meet its channel usage requirement for its portion of the disaggregated spectrum or the original licensee may certify that is has or will meet the channel usage requirement for the entire spectrum block. Similar to our approach for partitioning, one party's failure to meet its agreed-to channel usage requirement shall result in that party's license automatically reverting to the Commission and shall not affect the other party's license.

93. There are no channel usage requirements in the 900 MHz SMR band or in the lower 230 channels of the 800 MHz band. We believe it would be inconsistent with our existing construction requirements to impose separate performance requirements on both the disaggregator and disaggregatee in those bands. However, we wish to ensure that parties do not use disaggregation to circumvent our underlying performance requirements. Therefore, we will adopt an approach similar to the one adopted for partitioning: we will retain the underlying ''substantial service'' requirement for the spectrum as a whole but allow either party to meet the requirements on its disaggregated portion. Therefore, a licensee in either the 900 MHz band or the lower 230 channels of the 800 MHz band that disaggregates a portion of its spectrum may elect to retain responsibility for meeting the ''substantial service'' requirement, or it may negotiate a transfer of this obligation to the disaggregatee. In either case, the rules ensure that the spectrum will be developed to at least the same degree that was required prior to disaggregation.

94. To ensure compliance with our rules, we will require that parties seeking Commission approval of disaggregation agreement in the 900 MHz band or the lower 230 channels of the 800 MHz band include a certification as to which party will be responsible for meeting the applicable ''substantial service'' requirements. Parties may also propose to share the responsibility for meeting the requirement. As part of our public interest review under section 310(d), we will review each transaction to ensure that the party designated as responsible for meeting the performance requirements is bona fide and has the ability to meet these requirements. In the event that only one party agrees to take responsibility for meeting the performance requirement and later fails to do so, that party's license will be subject to forfeiture, but the other party's license will not be affected. Should both parties agree to share the responsibility for meeting the performance requirements and either party later fail to do so, both parties' licenses will be subject to forfeiture.

95. We note also that disaggregatees that already hold an SMR license or other CMRS license in the same geographic market will be subject to the same performance requirements as disaggregatees who do not hold other licenses for disaggregated spectrum. In addition, as we noted above, we will require that parties to partitioning and disaggregation agreements involving 800 MHz licensees certify in their applications which party will be responsible for relocating incumbent licensees located in the partitioned license area or the disaggregated spectrum block. The parties are free to negotiate among themselves which party will be responsible for incumbent relocation.

2. Matters Related to Designated Entity Licensees

96. Geographic area licensees in both the 800 MHz and 900 MHz bands that qualify as a ''small business'' (otherwise referred to generally as ''designated entity'' licensees) may receive a bidding credit to reduce the amount of their winning auction bid. Entities with average gross revenues of not more than $3 million for the preceding three years may receive a 35 percent bidding credit. Entities with average gross revenues of not more than $15 million for the preceding three years may receive a 25 percent bidding credit. While 900 MHz licensees may repay their winning auction bid pursuant to installment payments, pursuant to our *Memorandum Opinion and Order* released today, installment payments for 800 MHz licensees in the upper 200 channels have been eliminated and we decline to adopt such a provision for the lower 230 channels. There are two levels of installment payments available to small business EA licensees in the upper 200 channels while only one level of installment payments is available to small business EA licensees in the lower 230 channels. Therefore, we must only concern ourselves with the question of installment payments with respect to 900 MHz licensees.

97. Whenever an geographic area 800 MHz or 900 MHz SMR licensee, that received a bidding credit at auction, transfers its entire license to an entity that would not have qualified for such a bidding credit or would have qualified for a lower bidding credit, the geographic area licensee is required to repay some or all of its bidding credit. If the transfer occurs in the first two years, 100 percent of the bidding credit must be repaid; if it occurs in year three, 75 percent; in year four, 50 percent; and in year five, 25 percent. After the fifth year, no unjust enrichment penalty is imposed.

98. Similarly, if a 900 MHz geographic area licensee, that is paying its winning bid through installment payments, transfers its license to entire an entity that would not have qualified for such installment payments or, in the case of the upper 200 channels, for a less favorable installment payment plan, the geographic area licensee must make full payment of the remaining unpaid principal and interest accrued through the date of assignment or transfer. A similar rule has been adopted for the lower 230 channels, however, only one level of installment payments in available to EA licensees in the lower 230 channels.

99. We conclude that the above-outlined unjust enrichment requirements shall apply if licensee, that received one of these special small business benefits, partitions or disaggregates to an entity that would not qualify for the benefit. We will follow the approach adopted in both the broadband PCS and WCS proceedings and apply all such unjust enrichment requirements on a *pro rata* basis using population to calculate the relative value of the partitioned area and amount of spectrum disaggregated to calculate the relative value of the disaggregated spectrum. We disagree

with PCIA that these measures will slow the assignment process or encourage the filing of frivolous petitions to deny. We find that such measures will provide an objective method for calculating the relative values of partitioned areas and disaggregated spectrum. We note that population will be calculated based upon the latest census data. Parties may use the latest census data when it is available.

100. With respect to installment payments, we will follow the procedures established in the broadband PCS proceeding and require that a 900 MHz SMR geographic area licensee, making installment payments, and seeking to partition or disaggregate to an entity that does not meet the applicable installment payment eligibility standards, make a payment of principal and interest calculated on a proportional basis as set forth above. If a geographic area licensee making installment payments, partitions or disaggregates to an entity that would qualify for less favorable installment payments, we will require the licensee to reimburse the government for the difference between the installment payment paid by the licensee and the installment payments for which the partitionee or disaggregatee is eligible calculated on a proportional basis as set forth above.

101. We will separate the payment obligations using the same procedures adopted for broadband PCS. When a 900 MHz SMR geographic area licensee with installment payments partitions or disaggregates to a party that would not qualify for installment payments under our rules or to an entity that does not desire to pay for its share of the license with installment payments, we will require, as a condition of grant of the partial assignment application, that the partitionee/disaggregatee pay its entire *pro rata* amount within 30 days of Public Notice conditionally granting the partial assignment application. The partitioner or disaggregator will receive new financing documents (promissory note and security agreement) with a revised payment obligation, based on the remaining amount of time on the original installment payment schedule. A default on an obligation will only affect that portion of the market area held by the defaulting party.

102. Where both parties to the 900 MHz SMR partitioning or disaggregation arrangement qualify for installment payments under our rules, we will again follow the procedures established in the broadband PCS proceeding and permit the partitionee/disaggregatee to make installment payments on its portion of the remaining government obligation. Partitionees/disaggregatees are free, however, to make a lump sum payment of all or some of their *pro rata* portion of the remaining government obligation within 30 days of the Public Notice conditionally granting the partial assignment application. Should a partitionee/disaggregatee choose to make installment payments, we will require, as a condition to approval of the partial assignment application, that both parties execute financing documents (promissory note and security agreement) agreeing to pay the U.S. Treasury their *pro rata* portion of the balance due (including accrued and unpaid interest on the date the partial assignment application is filed) based upon the installment payment terms for which they would qualify. Each party will receive a license for its portion of the market area and each party's financing documents will provide that a default on its obligation would only affect their portion of the market area. These payments to the U.S. Treasury are required notwithstanding any additional terms and conditions agreed to between or among the parties.

3. Related Matters

103. We asked commenters in the *Second Further Notice of Proposed Rulemaking* to discuss the conditions by which partitioning and disaggregation should be allowed for 800 MHz licensees. In addition, AMTA raised related matters in its Petition. We adopt the following rules with respect to the above-outlined matters similar to those we have adopted for the broadband PCS service.

a. Combined Partitioning and Disaggregation

104. In the broadband PCS proceeding, we found that allowing entities to propose combined partitioning and disaggregation transactions would provide added flexibility and would facilitate such arrangements. We believe the same rationale would apply to partitioning and disaggregation in the SMR service. Therefore, we will allow licensees to propose combined partitioning and disaggregation transactions. We believe that the goals of providing competitive serve offering, encouraging new market entrants, and ensuring quality service to the public will be advanced by allowing such combined transactions. We further conclude that in the event that there is a conflict in the application of the partitioning and disaggregation rules, the partitioning rules should prevail. For the purpose of applying our unjust enrichment requirements and/or for calculating obligations under installment payment plans, when a combined 900 MHz SMR partitioning and disaggregation is proposed, we will use a combination of both population of the partitioned area and amount of spectrum disaggregated to make these *pro rata* calculations.

b. License Term and Renewal Expectancy

105. In the broadband PCS proceeding, we concluded that entities acquiring a license through partitioning and disaggregation should hold their license for the remainder of the original licensee's license term. We found that this approach was consistent with the approach we had adopted for the Multipoint Distribution Service and was the easiest to administer. We found that allowing licensees to ''re-start'' the license term from the date of the grant of the partial assignment of license application could invite parties to circumvent our license term rules and unnecessarily delay service to the affected areas.

106. We find the same to be true with respect to the SMR service. Limiting partitionees and disaggregatees in the SMR service to the remainder of the original licensee's license term (whether it be five years for incumbent licensees or ten years for geographic area licensees) will ensure that there will be the maximum incentive for parties to pursue available spectrum as quickly as practicable, thus expediting delivery of service to the public.

107. We will also adopt renewal expectancy provisions for SMR partitionees and disaggregatees that obtain their licenses from geographic area licensees similar to those adopted in the broadband PCS proceeding. Partitionees and disaggregatees obtaining license areas or spectrum from geographic area licensees may earn a renewal expectancy on the same basis as other geographic area licensees.

c. Licensing

108. In order to provide added flexibility, we will not adopt the procedures set forth in the *Second Further Notice of Proposed Rulemaking* and, instead, adopt procedures similar to those proposed by AMTA and those devised for broadband PCS partitioning and disaggregation. We will require that parties seeking approval for an SMR partitioning or disaggregation transaction follow the existing partial assignment procedures for the SMR service. Such applications will be placed on Public Notice and will be subject to petitions to deny. The licensee will be required to file an FCC Form 490 that is signed by both the

licensee and the qualifying entity. The qualifying entity will also be required to file an FCC Form 430 unless a current FCC Form 430 is already on file with the Commission. An FCC Form 600 must be filed by the qualifying entity to receive authorization to operate in the market area being partitioned or for the disaggregate spectrum and to modify the existing license of the qualifying entity to include the new/additional market area being partitioned or the spectrum being disaggregated. Any requests for a partitioned license or disaggregated spectrum must contain the FCC Forms 490, 430, and 600 and be filed as one package under cover of the FCC Form 490. We note that the 45 MHz CMRS spectrum cap contained in § 20.6 of the rules applies to partitioned license areas and disaggregated spectrum in the SMR service. In the context of partitioning, we will determine compliance with the spectrum cap based on the post-partitioning populations of each licensees' partitioned market. This means that neither the partitioner nor the partitionee may count the population in the other's party's portion of the market in determining its own compliance with the spectrum cap. Furthermore, by signing FCC Forms 490 and 600, the parties will certify that grant of the partial assignment application would not cause either party to be in violation of the spectrum aggregation limit contained in § 20.6 of the rules.

F. Competitive Bidding Issues of Lower 80 and General Category Channels

1. Auction of Lower 80 and General Category Channels

109. In previous proceedings, we concluded generally that we should use ''competitive bidding procedures to select from among mutually exclusive CMRS applications where we have the authority to do so and where we find such processing to be in the public interest.'' Upon consideration of the record in this proceeding, we conclude that auctioning the Lower 80 channels and the General Category channels meets the criteria set forth in section 309(j) of the Communications Act and will further the public interest. Nextel, AMTA, and SMR Won generally support competitive bidding for these channels.

110. Southern and ITA argue that the Commission lacks the authority to auction this spectrum on the ground that under section 309(j) the Commission is obligated to use existing means (*i.e.* engineering solutions, negotiations, threshold qualifications) to avoid mutual exclusivity in application and license proceedings. We note as an initial matter that the Communications Act only requires the Commission to use other such existing means when it is in the public interest. After careful analysis of this spectrum, we conclude that the likelihood of mutually exclusive applications in the 800 MHz SMR band is considerable and that not all potential conflicts will be eliminated through negotiations or other existing means. We therefore conclude that the public interest will be served by using competitive bidding to license these channels.

111. Some commenters contend that the General Category and Lower 80 are not auctionable because the channels are heavily licensed leaving few or no channels or space available for new licensing. Further, these commenters contend that those channels that are open will be used for mandatory relocation of incumbents from the upper 10 MHz channels. These commenters also contend that there is little to be gained by adopting geographic licensing because geographic areas that already have any value are licensed and there will be no increase in spectrum efficiency. Further, commenters argue that because there is little open space and no mandatory relocation proposal from the Lower 80 or General Category channels, EA licensees will not be able to expand and these licensees could be further frustrated by relocatees from the upper 200 channels.

112. We reject those arguments for several reasons. We do not believe the purported dearth of channels in some areas or the potential risk of relocatees from the upper 200 channels render the competitive bidding process inapplicable. In this Order, we include provisions for licensees to aggregate licenses within a geographic area, which will enable them to expand the geographic coverage of their systems and potentially enhance the commercial viability of these licenses, as well as use this spectrum efficiently. As noted above, there is a high likelihood that mutually exclusive applications will be filed for these channels. The resolution of these applications by comparative hearings or other means will unnecessarily delay the processing of these applications, contrary to the public interest and to the Congressional objectives under section 309(j)(3). Under the licensing scheme for these channels, *i.e.*, on a geographic area basis (as with the upper 200 channels, EAs will be used for the lower 80 channels), there will be competitive opportunities to provide SMR service in this frequency band and the application process for these channels will be open to any qualified applicant. Furthermore, the use of competitive bidding to select among these applicants will ensure that the qualified applicants who place the highest value on the available spectrum will prevail in the selection process. Additionally, as we concluded in the *First Report and Order*, by using the same service area definition for the lower 80 and General Category channels as we used for the upper 200 channels, we will realize greater administrative efficiency in the licensing of these channels.

113. A few commenters contend that they cannot afford to participate in the auction. Some commenters believe that the auction procedure heavily favors large entities over smaller ones, that these larger entities will hurt competition and delay provision of services while the auction takes place. As noted below, to ensure small business participation in the Lower 80 and General Category channel auctions, the Commission has adopted bidding credits. Furthermore, contrary to claims that auctions will delay the deployment of services, we believe that the use of competitive bidding will enhance competition and serve to streamline the administrative process, thereby allowing licenses to provide service more quickly than alternative licensing procedures.

114. Several commenters argue that the government should be concerned with the safety and welfare of citizens even when such concerns prevent it from raising revenues. Some commenters believe that this spectrum should be reserved for public safety entities and that PMRS licensees need access to additional spectrum. Motorola believes that PMRS providers play an important role in public safety and private industry and that PMRS's concerns should be taken into account. We addressed these concerns fully in the *Second Further Notice of Proposed Rulemaking.* We stated that existing licensees will not be required to relocate their public safety radio systems and geographic licensees will be required to provide protection to all co-channel systems that are constructed and operating within their service area. In addition, an advisory committee has been established to address the concerns of public safety users. Therefore, the Commission's rules will allow both the efficient use of the spectrum and the preservation of public safety.

2. Competitive Bidding Design

a. Bidding Methodology

115. Based on the record in this proceeding and our successful experience conducting simultaneous

multiple round auctions for other services, we believe a simultaneous multiple round auction design is the preferred competitive bidding design for these channels. Commenters generally support the use of this methodology, on the grounds that there is interdependency among the licenses. No commenter advocated the use of sequential multiple round auctions. We also note, as discussed below, that we will adopt regional groupings for the Lower 80 and General Category EA licenses. The aggregation of licenses into these regional groupings creates stronger interdependencies between the licenses, further warranting the use of this auction methodology.

b. License Grouping

116. To expedite the process of auctioning the Lower 80 and General Category EA licenses, we will auction these licenses using the five regional groups that were used for the regional narrowband PCS auction: Northeast, South, Midwest, Central, and West. We believe that by grouping the licenses and auctioning them regionally, we reduce the burden on small businesses which choose to participate in the auction process. Each entity will need to participate only in those regional auctions in which it is interested in winning licenses. Additionally, by holding regional auctions and thereby limiting the number of licenses available, we will decrease the administrative burden of the auction on the participants, and further enable the auction to conclude at an earlier time. Finally, we believe that this grouping will make it easier for incumbents to secure spectrum that complements the licenses they currently hold while allowing them to expand their systems.

c. Bidding Procedures

i. Bid Increments

117. We will adopt our minimum bid increment proposal, but delegate authority to the Bureau to vary the minimum bid increment. While we believe our proposal is appropriate, our experience with other auctions indicates that flexibility is necessary to set appropriate bidding levels to account for the pace of the auction, the needs of the bidders, and the value of the spectrum. Commenters generally support a minimum bid increment based upon a percentage of the bid from the previous round. E.F. Johnson, on the other hand, argues that minimum bid increments should be reduced or eliminated to facilitate small business participation in the auction. There is no evidence that a minimum bid increment will deter small business participation in the auction. Rather, as we previously noted, an appropriate minimum bid increment is important to the functioning of the auction as it speeds the process of the auction and helps to ensure that it comes to closure within a reasonable period of time. Moreover, as noted below, we have adopted provisions to encourage small business participation. We will follow the practice that we have used for other auctions and, consistent with § 1.2104 of the Commission's Rules, announce by Public Notice prior to the auction the general guidelines for bid increments.

ii. Stopping Rules

118. In view of our decision to aggregate licenses on a regional basis, we believe that a simultaneous stopping rule is appropriate for both the Lower 80 and the General Category licenses. Thus, bidding will remain open on all licenses in an auction until bidding stops on every license. Based on the success of our prior broadband PCS and 900 MHz SMR auctions, Nextel agrees that there should be a simultaneous stopping rule. AMTA and Nextel also claim that this rule is appropriate because of the interdependencies between the markets. SMR Won supports the market-by-market stopping rule, suggesting that it will deter speculators and reduce artificial inflation of auction prices. We conclude that bidding should remain open on all licenses in an auction until bidding stops on every license. We believe that allowing simultaneous closing for all licenses will afford bidders the flexibility to pursue back-up strategies without the risk that bidders will refrain from bidding until the final rounds. In any event, we will retain the discretion to change the stopping rules during the course of the auction, and delegate authority to the Bureau to exercise that discretion.

iii. Activity Rules

119. In accordance with § 1.2104 of the Commission's Rules and the guidelines we adopted in the *Competitive Bidding Second Report and Order,* we will employ the Milgrom-Wilson activity rule for both the Lower 80 and General Category auctions. As we noted in the *Competitive Bidding Second Report and Order,* the Milgrom-Wilson activity rule is the preferred activity rule where a simultaneous stopping rule is used. We believe that the Milgrom-Wilson approach best achieves the Commission's goal of affording bidders flexibility to pursue backup strategies, while at the same time ensuring that simultaneous auctions are concluded within a reasonable period of time. Specifically, under the Milgrom-Wilson rules, the auction is divided into three stages and the minimum required activity level, measured as a fraction of the bidder's eligibility in the current round, will increase during the course of the auction. For purposes of this auction, we will adopt the minimum required activity levels at each stage that recently were adopted for the D, E, and F Broadband PCS auction.

120. As in previous auctions, we reserve the discretion to set and, by announcement before or during the auction, vary the level of the requisite minimum activity levels (and associated eligibility calculations) for each auction stage. We believe that retaining this flexibility will improve the Commission's ability to control the pace of the auction and help ensure that the auction is completed within a reasonable period of time. We delegate to the Bureau the authority to set or vary the minimum activity levels if circumstances warrant a modification. The Bureau will announce any such modification by Public Notice. For the purposes of this auction, we also will use the general transition guidelines that were used for the D, E, and F Broadband PCS auctions. The auction will start in Stage One and move to Stage Two when the auction activity level is below ten percent for three consecutive rounds in Stage One. The auction will move from Stage Two to Stage Three when the auction activity level is below ten percent for three consecutive rounds in Stage Two. Under no circumstances can the auction revert to an earlier stage. However, the Bureau will retain the discretion to determine and announce during the course of an auction when, and if, to move from one auction stage to the next.

121. To avoid the consequences of clerical errors and to compensate for unusual circumstances that might delay a bidder's bid preparation or submission in a particular round, we will provide bidders with five activity rule waivers that may be used in any round during the course of the auction. The Bureau will retain the discretion to issue additional waivers during the course of an auction for circumstances beyond a bidder's control, and also retain the flexibility to adjust, by Public Notice prior to an auction, the number of waivers permitted, or to institute a rule that allows one waiver during a specified number of bidding rounds or during specified stages of the auction.

iv. Duration of Bidding Rounds

122. We will retain the discretion to vary the duration of bidding rounds and

the intervals at which bids are accepted. In simultaneous multiple round auctions, bidders may need a significant amount of time to evaluate back-up strategies. AMTA requests that we allow only one round of an auction per day because many of its members who will participate in the auction do not have sufficient staff to monitor the auction if there is more than one round per day. Genesee requests that for the first five rounds of the auction only one round of bids per day be allowed. Genesee does not provide any rationale for its proposal. We do not believe these proposed limitations are necessary. We note that we have adopted regional license groupings that are intended to minimize for small entity participants these burdens in participating and monitoring the auctions. Therefore, we delegate authority to the Bureau to vary the bidding rounds or the interval at which bids are accepted in order to move the auction toward closure more quickly or as circumstances warrant. The Bureau will announce any changes to the duration of and intervals between bidding rounds, whether by Public Notice prior to the auction or by announcement during the auction.

d. Rules Prohibiting Collusion

123. We adopt the rules prohibiting collusive conduct for use in the Lower 80 and General Category auctions. These requirements, as set forth in §§ 1.2105 and 1.2107 of our Rules, operate along with existing antitrust laws as a safeguard to prevent collusion in the competitive bidding process. In addition, where specific instances of collusion in the competitive bidding process are alleged during the petition to deny process, we may conduct an investigation or refer such complaints to the U.S. Department of Justice for investigation. Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the auction process may be subject to a variety of sanctions, including the forfeiture of their down payment or their full bid amount, revocation of their licenses, and possible prohibition from participation in the auctions. Genesee supports our proposal on the grounds that these same rules were effective in the 900 MHz SMR auctions. Coral Gables, in contrast, requests that public safety radio service providers under part 90, or those proposing to provide such services, should be exempt from the collusion rules when they are negotiating with other public safety service providers. We reject Coral Gable's position. First, the specific needs of public safety entities are the subject of, and will be addressed in, a separate Commission proceeding. In addition, we believe that continued negotiation past the short-form filing date by any segment of bidders may impact the valuation of the licenses and jeopardize the integrity of the auction process. We note that prior to the short-form filing date, public safety radio service providers, like other auction participants, are free to negotiate with each other to the extent permitted by the antitrust laws.

e. Procedural and Payment Issues

i. Pre-Auction Application Procedures

124. We will generally use the applications and payment procedures set forth in part 1 of our rules, with certain modifications for the 800 MHz SMR service. A Public Notice announcing the auction will specify the licenses to be auctioned and the time and place of the auction in the event that mutually exclusive applications are filed. The Public Notice will also specify the method of competitive bidding to be used, applicable bid submission procedures, stopping rules, activity rules, the short-form filing deadline, and the upfront payment amounts.

125. Prior to the auction, the Wireless Telecommunications Bureau will also provide information about incumbent licensees for applicants planning to participate in the auction. We encourage all potential bidders to examine these records carefully and do their own independent investigation regarding existing licensees' operations in each license area on which they intend to bid in order to maximize their success in the auction.

126. Section 309(j)(5) provides that no party may participate in an auction ''unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing.'' We adopt our proposal to require all applicants for 800 MHz SMR licenses to submit FCC Form 175 in order to participate in the auction. As we indicated in the *Competitive Bidding Second Report and Order*, if we receive only one application that is acceptable for filing for a particular license, and thus there is no mutual exclusivity, we will issue a Public Notice canceling the auction for that license and establish a date for the filing of a long-form application.

ii. Amendments and Modifications

127. We will apply the provisions set forth in part 1 of our rules governing amendments to and modifications of short-form application to the 800 MHz SMR service. The only commenter on this issue, Genesee, supports the Commission's proposal. Upon reviewing the short-form applications, we will issue a Public Notice listing all defective applications. Applicants with minor defects in their applications will be given an opportunity to cure them and resubmit a corrected version.

iii. Upfront Payments

128. We will adopt our upfront payment proposal, particularly because the majority of commenters support it. Fresno states that the upfront payment should be high enough to discourage frivolous bidders but flexible enough to reflect the lower value of the channels. As we previously noted, a substantial upfront payment requirement is necessary to ensure that only serious qualified bidders participate in auctions, thereby ensuring that sufficient funds are available to satisfy any bid withdrawal or default payments that may be incurred. We thus reject Coral Gables' claim that bidders that provide public safety radio services under part 90 of the Commission's Rules should not be required to make an upfront payment or, alternatively, that they should have a reduced upfront payment. We believe that making these exceptions to the upfront payment requirement would jeopardize the integrity of the auction process. As Fresno suggests, we recognize the standard upfront payment formula may yield too high a payment as compared to the value of these licenses. Accordingly, we delegate authority to the Bureau to vary the minimum upfront payment when it determines the general formula of $0.02 per MHz-pop is an unreasonably high upfront payment. The Bureau will announce any such modification by Public Notice.

iv. Down Payment and Full Payment

129. We conclude that we should require all winning bidders to supplement their upfront payments with down payments sufficient to bring their total deposits up to 20 percent of the winning bid(s). Genesee, the sole commenter to address this issue, supports our proposal. If the upfront payment already tendered by a winning bidder, after deducting any bid withdrawal and default payments due, amounts to 20 percent of its winning bids, no additional deposit will be required. If the upfront payment amount on deposit is greater than 20 percent of the winning bid amount after deducting any bid withdrawal and default payments due, the additional monies will be refunded.

130. We will require winning bidders to submit the required down payment to our lock-box bank within ten business days following release of a Public Notice announcing the close of bidding. All auction winners will be required to make full payment of the balance of their winning bids within ten business days following Public Notice that the Commission is prepared to award the license. The Commission generally will grant uncontested licenses within ten business days after receiving full payment.

131. We believe that small businesses should also be subject to a 20 percent down payment requirement. We believe that such a requirement is consistent with ensuring that winning bidders have the financial capability of building out their systems and will provide us a strong assurance against default. Increasing the amount of the bidder's funds at risk in the event of default discourages insincere bidding and therefore increases the likelihood that licenses are awarded to parties who are best able to serve the public. We also believe that a 20 percent down payment should cover the required payments in the unlikely event of default. In view of our decision to defer the issue of installment payments to the part 1 proceeding, we will also defer our decision as to when small businesses must make their down payment to the part 1 proceeding.

v. Bid Withdrawal, Default, and Disqualification

132. To prevent insincere bidding we will apply our general bid withdrawal, default, and disqualification rules, as set forth in § 1.2104(g) of the Commission's Rules, to the Lower 80 and General Category auctions. Genesee, the sole commenter to address these issues, supports this proposal. Any bidder that withdraws a high bid before the Commission declares bidding closed will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission if this subsequent winning bid is lower than the withdrawn bid. If a bidder has withdrawn a bid or defaulted, but the amount of the withdrawal or default payment cannot yet be determined, the bidder will be required to make a deposit of up to 20 percent on the amount bid on such licenses. When it becomes possible to calculate and assess the payment, any excess deposit will be refunded.

133. In the event an auction winner defaults on its initial down payment, the Commission must exercise our discretion to decide whether to hold a new auction or offer the licenses to the second highest bidder. In exercising our discretion, the Commission will evaluate the particular facts and circumstances of the specific case. In the unlikely event that there is more than one bid withdrawal on the same licenses, we will hold each withdrawing bidder responsible for the difference between its withdrawn bid and the amount of the winning bid the next time the license is offered by the Commission.

vi. Long-Form Applications and Petitions to Deny

134. In the *Second Further Notice of Proposed Rulemaking* we proposed to adopt the general procedures for filing long-form applications to the 800 MHz SMR auctions. In addition, we proposed that the petition to deny procedures that were adopted in the *CMRS Third Report and Order* should apply to the processing of applications for the 800 MHz SMR service. Genesee, the sole commenter on this issue, supports our proposal. Therefore, we adopt our proposals regarding petitions to deny. A party filing a petition to deny against an 800 MHz SMR license application will be required to demonstrate standing and meet all other applicable filing requirements. The restrictions in § 90.162 were established to prevent the filing of speculative applications and pleadings (or threats of the same) designed to extract money from 800 MHz license applicants. Thus, we will limit the consideration that a winning bidder or an individual or entity filing a petition to deny is permitted to receive for agreeing to withdraw an application or a petition to deny to the legitimate and prudent expenses of the withdrawing applicant or petitioner. We note also that we recently amended § 90.162 to reflect the fact that discussions regarding withdrawal of short-form applications are subject to § 1.2105(c) of our Rules.

vii. Transfer Disclosure Requirements

135. In section 309(j) of the Communications Act, Congress directed the Commission to ''require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits.'' Therefore, we imposed a transfer disclosure requirement on licenses obtained through the competitive bidding process, whether by designated entity or not. We tentatively concluded in the *Second Further Notice of Proposed Rulemaking* that the transfer disclosure requirements should apply to all 800 MHz SMR licenses obtained through the competitive bidding process. Genesee, again the sole commenter on this issue, supports the Commission's tentative conclusion. We will adopt the transfer disclosure requirements contained in § 1.2111(a) of our rules to auctions for the Lower 80 and General Category. We will give particular scrutiny to auction winners who have not yet begun commercial service and who seek approval for a transfer of control or assignment of their licenses within three years after the initial license grant, so that we may determine if any unforeseen problems relating to unjust enrichment outside the designated entity context have arisen. These particular transfer disclosure requirements are in addition to the unjust enrichment provisions discussed *infra*.

3. Treatment of Designated Entities

a. Overview and Objectives

136. In authorizing the Commission to use competitive bidding, Congress mandated that the Commission ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' The statute required the Commission to ''consider the use of tax certificates, bidding preferences and other procedures'' in order to achieve this congressional goal. In addition, section 309(j)(3)(B) provided that in establishing eligibility criteria and bidding methodologies the Commission shall promote ''economic opportunity and competition * * * by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' Section 309(j)(4)(A) provides that to promote these objectives, the Commission shall consider alternative payment schedules, including installment payments.

137. We have employed a wide range of special provisions and eligibility criteria designed to meet the statutory objectives of providing opportunities to designated entities in other spectrum-based services. The measures considered for each service were established after closely examining the specific characteristics of the service and determining whether any particular barriers to accessing capital stood in the way of designated entity opportunities. For example, in narrowband PCS we

provided installment payments for small businesses and bidding credits for minority-owned and women-owned businesses. In 900 MHz SMR, we adopted bidding credits and installment payment plans for small businesses.

138. In the *Second Further Notice of Proposed Rulemaking*, we sought comment on the type of designated entity provisions that should be incorporated into our competitive bidding procedures for the Lower 80 and General Category channels. We requested comment on the possibility that, in addition to small business provisions, separate provisions for women- and minority-owned entities should be adopted for the Lower 80 and General Category channels. We requested commenters to discuss whether the capital requirements of the 800 MHz SMR service pose a barrier to entry by minorities and women and whether overcoming such a barrier, if it exists, would constitute a compelling governmental interest. In particular, we sought comment on the actual costs associated with the acquisition, construction, and operation of an 800 MHz SMR system with a service area based on a pre-defined geographic area as well as the proportion of existing 800 MHz SMR businesses that are owned by women and minorities. We also urged the parties to submit evidence about patterns or actual cases of discrimination in the 800 MHz SMR industry or in related communications services.

b. Eligibility for Designated Entity Provisions

139. At this time, we have not developed a record sufficient to sustain race-based measures in the Lower 80 and General Category licenses based on the standard established by the *Adarand* decision. In addition, we believe that the record is insufficient to support any gender-based provisions under the intermediate scrutiny standard established in the *VMI* decision. Fresno urges the Commission to design a regulatory scheme that will provide opportunities for businesses owned by women and minorities to comply with the congressional mandate set out in section 309(j). Fresno, however, does not provide any evidence of past discrimination. Conversely, Nextel states that there is no evidence that minorities and women have been historically discriminated against in the SMR industry. Based upon the record in this proceeding, we will adopt bidding credits solely for applicants qualifying as small businesses. We believe these provisions will provide small businesses with a meaningful opportunity to obtain licenses for the Lower 80 and General Category channels. Moreover, many women- and minority-owned entities are small businesses and will therefore qualify for these provisions. As such, these provisions will meet Congress' goal of promoting wide dissemination of licenses in this spectrum. We have determined that no special provisions for rural telephone companies are warranted but we note that rural telephone companies may take advantage of the geographic partitioning and disaggregation provisions and, to the extent that they fall within the definition of small businesses, they can take advantage of the designated entity provisions too.

i. Small Businesses Definition

140. Based upon the record in this proceeding, we conclude that special provisions for small businesses are appropriate for 800 MHz SMR services. We will adopt a two-tiered definition of small business. We will define a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years that do not exceed $15 million; we will define a very small business as an entity that, together with affiliates and controlling principals, has average gross revenues for the preceding three years of that do not exceed $3 million. Bidding credits will be determined, as discussed *infra*, based upon this two-tiered approach.

141. In determining whether an applicant qualifies as a small business at any level, we will consider the gross revenues of the small business applicant and its affiliates. Specifically, for purposes of determining small business status, we will follow the procedure recently adopted for auctions involving other services and will attribute the gross revenues of affiliates of the applicant. We thus choose not to impose specific equity requirements on the controlling principals that meet our small business definition, as suggested by SMR WON and Genesee. We will still require, however, that in order for an applicant to qualify as a small business, qualifying small business principals must maintain ''control'' of the applicant. The term ''control'' would include both *de facto* and *de jure* control of the applicant. For this purpose, we will borrow from certain SBA rules that are used to determine when a firm should be deemed an affiliate of a small business. Typically, *de jure* control is evidenced by ownership of 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. An entity must demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant: (1) The entity constitutes or appoints more than 50 percent of the board of directors or partnership management committee; (2) the entity has authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensees; and (3) the entity plays an integral role in all major management decisions. While we are not imposing specific equity requirements on the small business principals, the absence of significant equity could raise questions about whether the applicant qualifies as a *bona fide* small business.

ii. Bidding Credits

142. We believe that bidding credits are appropriate as a special provision for designated entities in the Lower 80 and General Category licenses. While bidding credits do not guarantee the success of small businesses, we believe that they at least provide such bidders with an opportunity to successfully compete against larger, well-financed bidders. We also conclude that it is appropriate to adopt tiered bidding credits for 800 MHz SMR auction participants based on the size of the small businesses. Such an approach, we believe, furthers our mandate under section 309(j) of the Communications Act to disseminate licenses to a variety of applicants. Consistent with the tiered small business definition that we adopt today, we will give small businesses that, together with affiliates and controlling principals, have average gross revenues for the preceding three years that do not exceed $3 million, a 35 percent bidding credit. We will give small businesses that, together with affiliates and controlling principals, have average gross revenues for the preceding three years that do not exceed $15 million, a 25 percent bidding credit. Consistent with our approach in the upper 200 channels, we believe that these tiered bidding credits take into account the difficulties smaller businesses have in accessing capital and their differing business strategies.

iii. Installment Payments

143. We will defer the decision regarding whether to adopt installment payments in the lower 80 and General Category channels to our part 1 proceeding. We do not disagree with the contention of Genesee and AMTA that small businesses benefit from the ability to pay for their licenses in installments. Nonetheless, in the part 1 proceeding, we sought comment on whether there are better alternatives to help small

businesses, such as offering higher bidding credits in lieu of installment payments for qualified winning bidders.

144. Finally, we do not see a reason to adopt an alternative payment plan for public safety auction winners, as suggested by Coral Gables. Coral Gables argues that there is a greater public interest value to use these channels for public safety purposes and that special installment payment provisions should be made in the auction rules for public safety auction winners. We decline to provide this benefit for several reasons. First, Coral Gables will not be forced to relocate to other channels and will not be required to participate in the auction to retain the spectrum for which it is currently licensed. Second, we are granting Coral Gables' request to allow disaggregation of channels by geographic area license winners which should enable public safety entities to secure more frequencies from auction winners. Also, as noted above, the Commission is engaged in a separate proceeding dedicated to the issue of spectrum allocation for public safety entities.

iv. Reduced Upfront Payment

145. In view of the favorable bidding credits adopted herein, we do not see a need to adopt reduced upfront payments in order to ensure small business participation in the auction, as advocated by Genesee. Rather, we believe that the standard upfront payment is appropriate for all participants and will help guard against defaults. In addition, reduced upfront payments impose heavy administrative burdens on the Commission and are more confusing to auction participants. We do note that the standard upfront payment amount of $.02/MHz-pop will be discounted on a uniform basis by the Bureau to account for incumbency on this spectrum. The Bureau will announce by Public Notice the amount of this discount.

v. Set-Aside Spectrum

146. We will not adopt an entrepreneurs' block for the Lower 80 and General Category channels for several reasons. First, contrary to the contention of some commenters that an entrepreneurs' block is required to ensure small businesses will be able to obtain licenses, we believe that small businesses will have significant opportunity to compete for licenses given the bidding credits we adopt herein. Second, as noted by at least two commenters, the establishment of an entrepreneurs' block could unfairly exclude some incumbent operators from participation in the auction because some incumbents on these channels are larger companies. Finally, we agree with the argument of one commenter that adoption of an entrepreneurs' block for these channels would contravene the goal of regulatory parity since there is no set-aside in the cellular service and only one-third of the broadband PCS spectrum was set aside for small businesses.

vi. Unjust Enrichment Provisions

147. To ensure that large businesses do not become the unintended beneficiaries of measures meant for smaller firms, we adopt unjust enrichment provisions similar to those adopted for narrowband PCS and 900 MHz SMR services. No comments were received on this issue. Licensees seeking to transfer their licenses to entities which do not qualify as small businesses, as a condition to approval of the transfer, must remit to the government a payment equal to a portion of the total value of the benefit conferred by the government. The amount of this payment will be reduced over time as follows: a transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit; in year three of the license term the payment will be 75 percent; in year four the payment will be 50 percent and in year five the payment will be 25 percent, after which there will be no payment. These assessments will have to be paid to the U.S. Treasury as a condition of approval of the assignment or transfer. Thus, a small business that received bidding credits seeking transfer or assignment of a license to an entity that does not qualify as a small business will be required to reimburse the government for the amount of the bidding credit before the transfer will be permitted.

148. Also, if an investor subsequently purchases an interest in a small business licensee and, as a result, the gross revenues of the business exceed the applicable financial caps, the unjust enrichment provision will apply. We will apply these payment requirements for the entire license term to ensure that small businesses will look first to other small businesses when deciding to transfer their licenses. While small business licensees must abide by these unjust enrichment provisions when transferring their licenses to entities that would not qualify under our small business definitions, we will not impose a holding period or other transfer restrictions on small businesses.

III. Conclusion

149. We believe that the service and auction rules we adopted herein in this *Second Report and Order* are necessary to continue our implementation of a new licensing scheme for the 800 MHz and 900 MHz SMR services. We further believe that the rules will facilitate the rapid implementation of wide-area licensing in the SMR service, thus advancing the public interest by fostering economic growth of competitive new services via efficient spectrum use. The rules also will allow the public to recover a portion of the value of the public spectrum and promote expeditious access to 800 MHz SMR services by consumers, and rapid deployment of 800 MHz SMR by existing licensees and potential new entrants. We also believe that the technical rules proposed and adopted herein strike the proper balance between the rights of incumbent licensees in the 800 MHz SMR spectrum and new EA licensees.

IV. Procedural Matters

A. Regulatory Flexibility Act: (Second Report and Order and Memorandum Opinion and Order on Reconsideration)

150. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Second Further Notice of Proposed Rulemaking* in PR Docket No. 93–144. The Commission sought written public comment on the proposals in the *Second Further Notice of Proposed Rulemaking,* including the IRFA. This Final Regulatory Flexibility Analysis to accompany final rules in both the *Second Report and Order* and the accompanying *Memorandum Opinion and Order on Reconsideration* conforms to the RFA, amended by the Contract With America Advancement Act of 1996.

151. *Need for and Purpose of this Action:* In this *Second Report and Order,* the Commission establishes a flexible regulatory scheme for the 800 MHz Specialized Mobile Radio (SMR) service to promote efficient licensing and enhance the service's competitive potential in the commercial mobile radio marketplace. The rules adopted in the *Second Report and Order* also implement Congress's goal of regulatory symmetry in the regulation of competing commercial mobile radio services as described in sections 3(n) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 153(n), 332 (Communications Act), as amended by Title VI of the Omnibus Budget Reconciliation Act of 1993 (Budget Act).

The Commission also adopts rules regarding competitive bidding for the remaining 800 MHz SMR spectrum based on section 309(j) of the Communications Act, 47 U.S.C. 309(j), which delegates authority to the Commission to use auctions to select among mutually exclusive initial applications in certain services, including 800 MHz SMR.

152. *Summary of Issues Raised in Response to the Initial Regulatory Flexibility Analysis:* No comments were submitted in response to the IRFA. However, there were several comments concerning the potential impact of some of the Commission's proposals on small entities, especially on certain incumbent 800 MHz SMR licensees.

153. The Commission adopted geographic area licensing for the lower 230 800 MHz SMR channels in order to facilitate the evolution of larger 800 MHz SMR systems covering wider areas and offering commercial services to rival other wireless telephony services. Some licensees that were not SMR licensees opposed this plan arguing that it was unsuitable to the needs of smaller, private systems, which do not seek to cover large geographic areas in the manner of commercial service providers.

154. The Commission adopted a portion of a proposal set forth by a number of incumbent 800 MHz SMR licensees (''Industry Proposal'') and allotted three contiguous 50-channel blocks from the former General Category block of channels. Some commenters argued that allotting such large contiguous blocks would not suit the needs of smaller SMR systems, which typically trunk smaller numbers of non-contiguous channels. These commenters argued that large blocks of contiguous channels could be prohibitively expensive to bid for at auction, thereby limiting the opportunities for smaller operators to take advantage of geographic area licensing.

155. The Commission adopted a proposal to allow incumbent licensees in the lower 230 channels to make system modifications within their interference contours without prior Commission approval, so long as they do not expand the 18 dBμV/m interference contour of their systems. Proponents of the Industry Proposal argued for an alternative plan to limit incumbent expansion rights on the lower 230 channels. The Industry Proposal called for the Commission to permit incumbent licensees in the lower 230 channels to negotiate expansion rights within each EA through a settlement process. The proposed settlement process would occur on a channel-by-channel basis prior to the auction of the lower 230 channels, but after incumbents on the upper 200 channels had an opportunity to relocate or retune to the lower 230 channels. For each channel, incumbents licensed on the channel within the EA would negotiate among themselves to allocate rights to the channel within the EA. If all incumbents on the single channel negotiated an agreement for use of that channel within the EA (*e.g.*, by forming a partnership, joint venture, or consortium), they would then receive an EA license for that channel. If only one incumbent operated on the channel within an EA, it would receive an EA license for that channel automatically. If incumbents on a channel were unable to reach a settlement, the channel would be included in the auction of the lower 230 channels. The Industry Proposal called for non-settling channels in the lower 80 channels to be auctioned in five-channel blocks and the 150 General Category channels to be auctioned in three 50-channel blocks.

156. Commenters argued, *inter alia*, that the Industry Proposal would provide significant opportunities for small businesses. Although commenters acknowledged that auctions are a fast and generally efficient means of licensing new spectrum, they argued that small businesses will ''have no chance of succeeding in gaining the spectrum they need for future growth if they must compete against larger entities with deeper pockets.'' The commenters contended that, in the case of non-SMR licensees, the provision of communications services is not their primary business and they will not be in the position to compete with commercial operators at auction.

157. The Commission adopted rules allowing all 800 MHz SMR licensees to partition their market areas and to disaggregate their spectrum. Commenters generally supported these new rules arguing that partitioning and disaggregation will result in more participation in the marketplace by small entities and allow coalitions of smaller entities to bid at auction.

158. The Commission adopted a proposal to auction the Lower 80 channels and the General Category channels. Some commenters argued that there is little space in the Lower 80 and General Categories and that there was no mandatory relocation proposal for incumbents in these channels. These commenters argue that the combination of these factors will further frustrate incumbent licensees in these channels when incumbents from the Upper 200 channels are relocated. Several other commenters argue that they are not financially capable of participating in the auction of the Lower 80 channels and General Category. These commenters believe that the auction process favors large entities and that the large entities an effectively stifle competition in the auction process including the delaying the conclusion of the auction.

159. The Commission adopted its proposal for a minimum bid increment of the greater of $.01 per MHz-pop, or 5% percent of the high bid from the previous round. E.F. Johnson argued that minimum bid increments should be reduced or eliminated to facilitate small business participation in the auction.

160. The Commission adopted a two-tiered small business definition. In order to be eligible for designated entity provisions, an applicant must qualify as a ''small business,'' where an entity must have had average gross revenues of not more than $15 million for the preceding three years or as ''very small business,'' where a company must have had average gross revenues of not more than $3 million for the preceding three years.

161. The Commission adopted bidding credit amounts that were tailored to the Commission's small business definition. Specifically, small businesses with average gross revenues of not more than $15 million for the preceding three years will receive a 10 percent bidding credit and those entities with average gross revenues of not more than $3 million for the preceding three years will receive a 15 percent bidding credit. Some commenters expressed concern that the proposed bidding credits were too low. Coral Gables argued that the bidding credits for public safety entities should be set at a different level than non-public safety entities.

162. The Commission did not adopt an entrepreneurs' block for the Lower 80 and General Category channels. Some commenters argued that by establishing an entrepreneurs' block, some incumbents could be unfairly excluded from participation in the auction because some incumbents in these channels are larger companies. Nextel argued that the adoption of an entrepreneurs' block would contravene the goal of regulatory parity since there is no set-aside in the cellular service and only one-third of the broadband PCS spectrum was set aside for small businesses.

163. *Description and Number of Small Entities Involved:* The rules adopted will apply to current 800 MHz SMR operators and new entrants into the 800 MHz SMR market. Under these rules, Economic Area (EA) licenses will

be granted on a market area basis, instead of site-by-site, and mutually exclusive applications will be resolved through competitive bidding procedures. In order to ensure the more meaningful participation of small business entities in the auction for mutually exclusive geographic area 800 MHz SMR licenses, the Commission, as noted, has adopted a two-tier definition of small businesses. A very small business will be defined for these purposes as an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million. A small business will be defined as an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $15 million. The Small Business Administration (SBA) has approved these definitions for 800 MHz SMR services.

164. The Commission anticipates that a total of 3,325 EA licenses will be auctioned in the lower 230 channel blocks of the 800 MHz SMR service. This figure is derived by multiplying the total number of EAs (175) by the number of channel blocks (19) in the lower 230 channels. The lower 80 channels were divided into 16 blocks of 5 channels each and the General Category channels were divided into 3 blocks of 50 channels each. This results in 19 channels blocks available for auction in each of the 175 EAs. Auctions of 800 MHz SMR licenses have not yet been held, and there is no basis to determine the number of lower 230 channel licenses that will be awarded to small entities. However, the Commission assumes, for purposes of the evaluations and conclusions in this Final Regulatory Flexibility Analysis, that all the auctioned 3,325 geographic area 800 MHz SMR licenses in the lower 230 channels will be awarded to small entities, as that term is defined by the SBA.

165. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements:* Geographic area 800 MHz SMR licensees may be required to report information concerning the location of their transmission sites under some circumstances, although generally they will not be required to file applications on a site-by-site basis. Additionally, geographic area license applicants will be subject to reporting and recordkeeping requirements to comply with the competitive bidding rules. Specifically, applicants will apply for 800 MHz SMR licenses by filing a short-form application (FCC Form 175). Winning bidders will file a long-form application (FCC Form 600) at the conclusion of the auction. Additionally, entities seeking treatment as small businesses will need to submit information pertaining to the gross revenues of the small business applicant and its affiliates and controlling principals. Such entities will also need to maintain supporting documentation at their principal place of business.

166. Section 309(j)(4)(E) of the Communications Act directs the Commission to ''require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits.'' The Commission adopted safeguards designed to ensure that the requirements of this section are satisfied, including a transfer disclosure requirement for 800 MHz SMR licenses obtained through the competitive bidding process. An applicant seeking approval for a transfer of control or assignment of a license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission a statement indicating that its license was obtained through competitive bidding. Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license.

167. With respect to small businesses, we have adopted unjust enrichment provisions to deter speculation and participation in the licensing process by those who do not intend to offer service to the public, or who intend to use the competitive bidding process to obtain a license at a lower cost than they would otherwise have to pay and to later sell it at a profit, and to ensure that large businesses do not become the unintended beneficiaries of measures meant to help small firms. Small business licensees seeking to transfer their licenses to entities which do not qualify as small businesses (or which qualify for a lower bidding credit), as a condition of approval of the transfer, must remit to the government a payment equal to a portion of the value of the benefit conferred by the government.

168. The *Second Report and Order* also adopts rules for 800 MHz SMR partitioning and disaggregation rules. These rules contain information requirements that will be used to determine whether the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. This information will be a one-time filing by any applicant requesting such a license. The information will be submitted on the FCC Form 490 (or 430 and/or 600 filed as one package under cover of the Form 490) which are currently in use and have already received OMB clearance. The Commission estimates that the average burden on the applicant is three hours for the information necessary to complete these forms. The Commission estimates that 75 percent of the respondents (which may include small businesses) will contract out the burden of responding. The Commission estimates that it will take approximately 30 minutes to coordinate information with those contractors. The remaining 25 percent of respondents (which may include small businesses) are estimated to employ in-house staff to provide the information. Applicants (including small businesses) filing the package under cover of FCC Form 490 electronically will incur a $2.30 per minute on-line charge. On-line time would amount to no more than 30 minutes. The Commission estimates that 75 percent of the applicants may file electronically. The Commission estimates that applicants contracting out the information would use an attorney or engineer (average of $200 per hour) to prepare the information.

169. *Steps Taken to Minimize Any Significant Economic Burdens on Small Entities:* Section 309(j)(3)(B) of the Communications Act provides that in establishing eligibility criteria and bidding methodologies the Commission shall, *inter alia*, promote economic opportunity and competition and ensure that new and innovative technologies are readily accessible by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. Section 309(j)(4)(A) provides that in order to promote such objectives, the Commission shall consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods. In awarding geographic area 800 MHz licenses in the lower 230 channels, the Commission is committed to meeting the statutory objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide

variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. The Commission finds that it is appropriate to establish special provisions in the 800 MHz SMR rules for the lower 230 channels for competitive bidding by small businesses. The Commission believes that small businesses applying for these licenses should be entitled to bidding credits.

170. In order to ensure the more meaningful participation of small business entities in the 800 MHz auctions, the Commission has adopted a two-tier definition of small businesses. This approach will give qualifying small businesses bidding flexibility. A small business will be defined as an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years that do not exceed $3 million. A very small business will be defined as an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding years that do not exceed $15 million. The Commission will require that in order for an applicant to qualify as a small business, qualifying small business principals must maintain control of the applicant. The Commission will establish bidding credits consistent with the two-tiered definition of a small business. Small businesses that, together with affiliates and controlling principals, have average gross revenues for the three preceding years that do not exceed $3 million, will receive a 35 percent bidding credit. Small businesses that, together with affiliates and controlling principals, have average gross revenues for the three preceding years that do not exceed $15 million, will receive a bidding credit of 25 percent.

171. The Commission is also extending geographic partitioning and disaggregation to all entities eligible to be 800 MHz and 900 MHz SMR licensees. The Commission believes that this provision will allow SMR licensees to tailor their business strategies and allow them to use the spectrum more efficiently, will allow more entities to participate in the provision of SMR services, and will facilitate market entry by small entities that have the ability to provide service only to a limited population.

172. *Significant Alternatives Considered and Rejected:* The Commission considered a number of alternative channelization plans for licensing the 150 General Category 800 MHz SMR channels. The three alternatives were: (a) a 120-channel block, a 20-channel block and a 10-channel block; (b) six 25-channel blocks; or (c) fifteen 10-channel blocks.

173. Some commenters argued that allotting large contiguous blocks would not suit the needs of smaller SMR systems, which typically trunk smaller numbers of non-contiguous channels. These commenters argued that large blocks of contiguous channels could be prohibitively expensive to bid for at auction, thereby limiting the opportunities for smaller operators to take advantage of geographic area licensing.

174. In order to accommodate licensees who wanted contiguous as well as those that wanted large blocks of spectrum, the Commission adopted the Industry Proposal and alloted three contiguous 50-channel blocks. As for the concerns of smaller entities that such blocks may be too large, the Commission found that such entities will have the opportunity to acquire smaller amounts of spectrum compatible with their existing technology through the newly-created disaggregation rules.

175. The Commission adopted a proposal to allow incumbent licensees in the lower 230 channels to make system modifications within their interference contours without prior Commission approval, so long as they do not expand the 18 dBμV/m interference contour of their systems. As noted above, the Industry Proposal called for the Commission to permit incumbent licensees in the lower 230 channels to negotiate expansion rights within each EA through a settlement process. The Commission rejected this approach finding that it would not serve the public interest. The Commission found that the Industry Proposal would foreclose new entrants from obtaining spectrum on any of the lower 230 channels that are subject to a settlement. In any market where all of the channels in an EA were allocated by such settlements, the result would be that no opportunities for geographic licensing would be available to new entrants. The Commission also found that the Industry Proposal would preclude competition in the licensing process and restrict the number of potential applicants who can obtain licenses. Thus, it could yield a higher concentration of licenses than would result if non-incumbents were allowed to compete for the spectrum at the same time. The Commission also found that the Industry Proposal would also be inconsistent with the approach it has adopted in other services where it has converted from site-by-site licensing to geographic area licensing.

176. The Commission adopted bidding credits qualified small business entities in the lower 230 channel auctions. Coral Cables sought to have eligibility for, and percentage of, bidding credits set at different levels for public safety entities. The Commission found that its rules were reasonable and met the concerns of commenters and that the bidding credits took into account the fact that different small businesses will pursue different strategies.

177. The Commission declined to adopt rules to allow licensees who qualify as small businesses in a geographic area 800 MHz SMR license auction for the lower 230 channels to pay their winning bid amount in installments over the term of the license. The Commission found that a better alternative to help small businesses, as well as ensure new services to the public is to offer a higher level of bidding credit.

178. Finally, the Commission declined to set aside a special block of 800 MHz SMR channels for entrepreneurs. The Commission found that small businesses will have significant opportunity to compete for licenses given the special bidding credit provisions it had adopted.

179. *Report to Congress:* The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Second Report and Order,* in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Final Regulatory Flexibility Analysis will also be published in the **Federal Register**.

B. Authority

180. Authority for issuance of this Second Report and Order is contained in the Communications Act, sections 4(i), 7, 303(c), 303(f), 303(g), 303(r), and 332, 47 U.S.C. 154(i), 157, 303(c), 303(f), 303(g), 303(r), 332, as amended.

C. Ordering Clauses

181. Accordingly, IT IS ORDERED that, pursuant to authority of sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j), Part 90 of the Commission's Rules, 47 CFR part 90 IS AMENDED as set forth below.

182. IT IS FURTHER ORDERED that the rule changes made herein WILL BECOME EFFECTIVE September 29, 1997. This action is taken pursuant to sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j).

183. IT IS FURTHER ORDERED that the Regulatory Flexibility Analysis, as required by section 604 of the Regulatory Flexibility Act is ADOPTED.

184. IT IS FURTHER ORDERED that all waiting lists for the lower 230 channels of 800 MHz SMR spectrum ARE ELIMINATED and all applications currently on waiting lists for such frequencies ARE DISMISSED, effective *July 10, 1997*.

D. Further Information

185. For further information concerning this proceeding, contact Shaun A. Maher or Michael Hamra, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418–0620 or Alice Elder, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau at (202) 418–0660.

List of Subjects in 47 CFR Part 90

Radio, Specialized mobile radio services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 90 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.210 is amended by revising footnote 3 in the table in the introductory paragraph to read as follows:

§ 90.210 Emission masks.

* * * * *

APPLICABLE EMISSION MASKS

* * * * *

[3] Equipment used in this band licensed to EA or non-EA systems shall comply with the emission mask provisions of § 90.691.

* * * * *

3. Section 90.615 is revised to read as follows:

§ 90.615 Spectrum blocks available in the General Category for 800 MHz SMR General Category.

TABLE 1.—806–821/851–866 MHZ BAND CHANNELS (150 CHANNELS)

Spectrum block	Channel Nos.
D	1 through 50.
E	51 through 100.
F	101 through 150.

4. Section 90.617 is amended by revising paragraph (d) and Table 4A to read as follows:

§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked or conventional system use in non-border areas.

* * * * *

(d) The channels listed in Tables 4A and 4B are available only to eligibles in the SMR category which consists of Specialized Mobile Radio (SMR) stations and eligible end users. The frequencies listed in Table 4A are available to SMR eligibles desiring to be authorized for EA-based service areas in accordance with § 90.681. SMR licensees licensed on Channels 401–600 on or before March 3, 1996, may continue to utilize these frequencies within their existing service areas, subject to the mandatory relocation provisions of § 90.699. This paragraph deals with the assignment of frequencies only in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 140 km (87) miles from the U.S./Canada border. See § 90.619 for the assignment of SMR frequencies in these border areas. For stations located within 113 km (70 miles) of Chicago, channels 401–600 will be assigned in blocks as outlined in Table 4C.

TABLE 4A.—SMR CATEGORY 806–821/851–866 MHZ BAND CHANNELS (280 CHANNELS)

Spectrum block	Channel Nos.
A	401 through 420.
B	421 through 480.
C	481 through 600.
G	201–241–281–321–361.
H	202–242–282–322–362.
I	203–243–283–323–363.
J	204–244–284–324–364.
K	205–245–285–325–365.
L	206–246–286–326–366.

TABLE 4A.—SMR CATEGORY 806–821/851–866 MHZ BAND CHANNELS (280 CHANNELS)—Continued

Spectrum block	Channel Nos.
M	207–247–287–327–367.
N	208–248–288–328–368.
O	221–261–301–341–381.
P	222–262–302–342–382.
Q	223–263–303–343–383.
R	224–264–304–344–384.
S	225–265–305–345–385.
T	226–266–306–346–386.
U	227–267–307–347–387.
V	228–268–308–348–388.

* * * * *

5. Section 90.619 is amended by revising paragraphs (a)(5) and Table 4A, (b)(8) Table 12, (b)(9) Table 16, (b)(10) Table 20, and (b)(11) Table 24 to read as follows:

§ 90.619 Frequencies available for use in the U.S./Mexico and U.S./Canada border areas.

(a) * * *

(5) Tables 4A and 4B list the channels that are available for assignment for the SMR Category (consisting of Specialized Mobile Radio systems as defined in § 90.7).

These channels are not available for inter-category sharing.

TABLE 4A.—UNITED STATES-MEXICO BORDER AREA, SMR AND GENERAL CATEGORIES 806–821/851–866 MHZ BAND (95 Channels)

Spectrum block	Offset channel Nos.
EA-Based SMR Category (83 Channels)	
A	398–399–400.
B	429–431–433–435–437–439–469–471–473–475–477–479.
C	509–511–513–515–517–519–549–551–553–555–557–559–589–591–593–595–597–599.
G	229–272–349.
H	230–273–350.
I	231–274–351.
J	232–278–352.
K	233–279–353.
L	234–280–354.
M	235–309–358.
N	236–310–359.

TABLE 4A.—UNITED STATES-MEXICO BORDER AREA, SMR AND GENERAL CATEGORIES 806–821/851–866 MHZ BAND (95 Channels)—Continued

Spectrum block	Offset channel Nos.
O	237–311–360.
P	238–312–389.
Q	239–313–390.
R	240–314–391.
S	269–318–392.
T	270–319–393.
U	271–320–394.
V	228–268–308–348–388.
General Category (12 Channels)	
D	275–315–355–395.
E	276–316–356–396.
F	277–317–357–397

(b) * * *

(8) * * *

TABLE 12.—SMR AND GENERAL CATEGORIES—95 CHANNELS

(Regions 1, 4, 5, 6)

	Spectrum block Channel Nos.
EA-Based SMR Category (90 Channels)	
A	None.
B	463 through 480.
C	493 through 510, 523 through 540, 553 through 570, 583 through 600.
G through V	None.
General Category (5 Channels)	
D	30.
E	60 and 90.
F	120 and 150.

(9) * * *

TABLE 16.—SMR AND GENERAL CATEGORIES—60 CHANNELS

(Region 2)

Spectrum block	Channel Nos.
SMR Category (55 Channels)	
A	None.
B	None.
C	518 through 528, 536 through 546, 554 through 564, 572 through 582, 590 through 600.
G through V	None.
General Category (5 Channels)	
D 18 and 36..	
E	54–72–90.

TABLE 16.—SMR AND GENERAL CATEGORIES—60 CHANNELS—Continued

(Region 2)

Spectrum block	Channel Nos.
F	None.

(10) * * *

TABLE 20.—SMR AND GENERAL CATEGORIES (135 CHANNELS)

(Region 3)

Spectrum block	Channel Nos.
SMR Category (120 Channels)	
A	417 through 420.
B	421 through 440, 457 through 480.
C	497 through 520, 537 through 560, 577 through 600.
G through V	None.
General Category (15 Channels)	
D	38–39–40–158–159.
E	78–79–80–160–198.
F	118–119–120–199–200.

(11) * * *

TABLE 24.—(REGIONS 7, 8) SMR AND GENERAL CATEGORIES—190 CHANNELS

Spectrum block	Channel Nos.
SMR Category (172 Channels)	
A	389 through 400.
B	425 through 440, 465 through 480.
C	505 through 520, 545 through 560, 585 through 600.
G	155–229–269–309–349.
H	156–230–270–310–350.
I	157–231–271–311–351.
J	158–232–272–312–352.
K	159–233–273–313–353.
L	160–234–274–314–354.
M	195–235–275–315–355.
N	196–236–276–316–356.
O	197–237–277–317–357.
P	198–238–278–318–358.
Q	199–239–279–319–359.

TABLE 24.—(REGIONS 7, 8) SMR AND GENERAL CATEGORIES—190 CHANNELS—Continued

Spectrum block	Channel Nos.
R	200–240–280–320–360.
S	225–265–305–345–385.
T	226–266–306–346–386.
U	227–267–307–347–387.
V	228–268–308–348–388.
General Category (18 Channels)	
D	35 through 40.
E	75 through 80.
F	115 through 120.

* * * * *

6. Section 90.621 is amended by revising paragraphs (b) introductory text, (b)(1) and (b)(3) introductory text to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) Stations authorized on frequencies listed in this subpart, except for those stations authorized pursuant to paragraph (g) of this section and EA-based and MTA-based SMR systems, will be afforded protection solely on the basis of fixed distance separation criteria. For Channel Blocks A, through V, as set forth in § 90.917(d), the separation between co-channel systems will be a minimum of 113 km (70 mi) with one exception. For incumbent licensees in Channel Blocks D through V, that have received the consent of all affected parties to utilize an 18 dBμV/m signal strength interference contour (see § 90.693), the separation between co-channel systems will be a minimum of 173 km (107 mi). The following exceptions to these separations shall apply:

(1) Except as indicated in paragraph (b)(4) of this section, no station in Channel Blocks A through V shall be less than 169 km (105 mi) distant from a co-channel station that has been granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California). Except as indicated in paragraph (b)(4) of this section, no incumbent licensee in Channel Blocks D through V that have received the consent of all affected parties to utilize an 18 dBμV/m signal strength interference contour shall be less than 229 km (142 mi) distant from a co-channel station that has been

granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California).

* * * * *

(3) Except as indicated in paragraph (b)(4) of this section, stations in Channel Blocks A through V that have been granted channel exclusivity and are located in the State of Washington at the locations listed below shall be separated from co-channel stations by a minimum of 169 km (105 mi). Except as indicated in paragraph (b)(4) of this section, incumbent licensees in Channel Blocks D through V that have received the consent of all affected parties to utilize an 18 dBμV/m signal strength interference contour, have been granted channel exclusivity and are located in the State of Washington at the locations listed below shall be separated from co-channel stations by a minimum of 229 km (142 mi). Locations within one mile of the geographical coordinates listed in the table below will be considered to be at that site.

* * * * * * *

7. Subpart S is amended by revising the undesignated center heading following § 90.671 to read as follows:

POLICIES GOVERNING THE LICENSING AND USE OF EA-BASED SMR SYSTEMS IN THE 806–821/851–866 BAND

8. Section 90.681 is revised to read as follows:

§ 90.681 EA-based SMR service areas.

EA licenses in Spectrum Blocks A through V band listed in Table 4A of § 90.617(d) are available in 175 Economic Areas (EAs) as defined in § 90.7.

9. Section 90.683(a) introductory text is revised to read as follows:

§ 90.683 EA-Based SMR system operations.

(a) EA-based licensees authorized in the 806–821/851–866 MHz band pursuant to § 90.681 may construct and operate base stations using any of the base station frequencies identified in their spectrum block anywhere within their authorized EA, provided that:

* * * * *

10. Section 90.685 is revised to read as follows:

§ 90.685 Authorization, construction and implementation of EA licenses.

(a) EA licenses in the 806–821/851–866 MHz band will be issued for a term not to exceed ten years. Additionally, EA licensees generally will be afforded a renewal expectancy only for those stations put into service after August 10, 1996.

(b) EA licensees in the 806–821/851–866 MHz band must, within three years of the grant of their initial license, construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of its EA-based service area. Further, each EA licensee must provide coverage to at least two-thirds of the population of the EA-based service area within five years of the grant of their initial license. Alternatively, EA licensees in Channel blocks D through V in the 806–821/851–866 MHz band must provide substantial service to their markets within five years of the grant of their initial license. Substantial service shall be defined as: ''Service which is sound, favorable, and substantially above a level of mediocre service.''

(c) *Channel Use Requirement.* In addition to the population coverage requirements described in this section, we will require EA licensees in Channel blocks A, B and C in the 816–821/861–866 MHz band to construct 50 percent of the total channels included in their spectrum block in at least one location in their respective EA-based service area within three years of initial license grant and to retain such channel usage for the remainder of the construction period.

(d) An EA licensee's failure to meet the population coverage requirements of paragraphs (b) and (c) of this section, will result in forfeiture of the entire EA license. Forfeiture of the EA license, however, would not result in the loss of any constructed facilities authorized to the licensee prior to the date of the commencement of the auction for the EA licenses.

11. Section 90.687 is revised to read as follows:

§ 90.687 Special provisions regarding assignments and transfers of authorizations for incumbent SMR licensees in the 806–821/851–866 MHz band.

An SMR licensee initially authorized on any of the channels listed in Table 4A of § 90.617 may transfer or assign its channel(s) to another entity subject to the provisions of §§ 90.153 and 90.609(b). If the proposed transferee or assignee is the EA licensee for the spectrum block to which the channel is allocated, such transfer or assignment presumptively will be deemed to be in the public interest. However, such presumption will be rebuttable.

12. Section 90.689(a) is revised to read as follows:

§ 90.689 Field strength limits.

(a) For purposes of implementing §§ 90.689 through 90.699, predicted 36 and 40 dBμV/m contours shall be calculated using Figure 10 of § 73.699 of this chapter with a correction factor of −9 dB, and predicted 18 and 22 dBμV/m contours shall be calculated using Figure 10a of § 73.699 of this chapter with a correction factor of −9 dB.

* * * * *

13. Section 90.693 is revised to read as follows:

§ 90.693 Grandfathering provisions for incumbent licensees.

(a) *General Provisions.* These provisions apply to ''incumbent licensees'', all 800 MHz SMR licensees who obtained licenses or filed applications on or before December 15, 1995.

(b) *Spectrum Blocks A through V.* An incumbent licensee's service area shall be defined by its originally-licensed 40 dBμV/m field strength contour and its interference contour shall be defined as its originally-licensed 22 dBμV/m field strength contour. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 22 dBμV/m field strength contour without prior notification to the Commission so long as their original 22 dBμV/m field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§ 90.621(b)(4) through 90.621(b)(6). The incumbent licensee must, however, notify the Commission within 30 days of the completion of any changes in technical parameters or additional stations constructed through a minor modification of their license. Such notification must be made by submitting an FCC Form 600 and must include the appropriate filing fee, if any. These minor modification applications are not subject to public notice and petition to deny requirements or mutually exclusive applications.

(c) *Special Provisions for Spectrum Blocks D through V.* Incumbent licensees that have received the consent of all affected parties to utilize an 18 dBμV/m signal strength interference contour shall have their service area defined by their originally-licensed 36 dBμV/m field strength contour and its interference contour shall be defined as their originally-licensed 18 dBμV/m field strength contour. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 18 dBμV/m field strength contour without prior notification to the Commission so long as their original 18 dBμV/m field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§ 90.621(b)(4) through 90.621(b)(6). The incumbent licensee must, however,

notify the Commission within 30 days of the completion of any changes in technical parameters or additional stations constructed through a minor modification of their license. Such notification must be made by submitting an FCC Form 600 and must include the appropriate filing fee, if any. These minor modification applications are not subject to public notice and petition to deny requirements or mutually exclusive applications.

(d) *Consolidated License. (1) Spectrum Blocks A through V.* Incumbent licensees operating at multiple sites may, after grant of EA licenses has been completed, exchange multiple site licenses for a single license, authorizing operations throughout the contiguous and overlapping 40 dBμV/m field strength contours of the multiple sites. Incumbents exercising this license exchange option must submit specific information for each of their external base sites after the close of the 800 MHz SMR auction.

(2) *Special Provisions for Spectrum Blocks D through V.* Incumbent licensees that have received the consent of all affected parties to utilize an 18 dBμV/m signal strength interference contour operating at multiple sites may, after grant of EA licenses has been completed, exchange multiple site licenses for a single license. This single site license will authorize operations throughout the contiguous and overlapping 36 dBμV/m field strength contours of the multiple sites. Incumbents exercising this license exchange option must submit specific information for each of their external base sites after the close of the 800 SMR auction.

14. Section 90.699 is revised to read as follows:

§ 90.699 Transition of the upper 200 channels in the 800 MHz band to EA licensing.

In order to facilitate provision of service throughout an EA, an EA licensee may relocate incumbent licensees in its EA by providing ''comparable facilities'' on other frequencies in the 800 MHz band. Such relocation is subject to the following provisions:

(a) EA licensees may negotiate with incumbent licensees as defined in § 90.693 operating on frequencies in Spectrum Blocks A, B, and C for the purpose of agreeing to terms under which the incumbents would relocate their operations to other frequencies in the 800 MHz band, or alternatively, would accept a sharing arrangement with the EA licensee that may result in an otherwise impermissible level of interference to the incumbent licensee's operations. EA licensees may also negotiate agreements for relocation of the incumbents' facilities within Spectrum Blocks A, B or C in which all interested parties agree to the relocation of the incumbent's facilities elsewhere within these bands. ''All interested parties'' includes the incumbent licensee, the EA licensee requesting and paying for the relocation, and any EA licensee of the spectrum to which the incumbent's facilities are to be relocated.

(b) The relocation mechanism consists of two phases that must be completed before an EA licensee may proceed to request the involuntary relocation of an incumbent licensee.

(1) *Voluntary Negotiations.* There is a one year voluntary period during which an EA licensee and an incumbent may negotiate any mutually agreeable relocation agreement. The Commission will announce the commencement of the first phase voluntary period by Public Notice. EA licensees must notify incumbents operating on frequencies included in their spectrum block of their intention to relocate such incumbents within 90 days of the release of the Public Notice that commences the voluntary negotiation period. Failure on the part of the EA licensee to notify the incumbent licensee during this 90 period of its intention to relocate the incumbent will result in the forfeiture of the EA licensee's right to request involuntary relocation of the incumbent at any time in the future.

(2) *Mandatory Negotiations.* If no agreement is reached by the end of the voluntary period, a one-year mandatory negotiation period will begin during which both the EA licensee and the incumbent must negotiate in ''good faith.'' Failure on the part of the EA licensee to negotiate in good faith during this mandatory period will result in the forfeiture of the EA licensee's right to request involuntary relocation of the incumbent at any time in the future.

(c) *Involuntary Relocation Procedures.* If no agreement is reached during either the voluntary or mandatory negotiating periods, the EA licensee may request involuntary relocation of the incumbent's system. In such a situation, the EA licensee must:

(1) Guarantee payment of relocation costs, including all engineering, equipment, site and FCC fees, as well as any legitimate and prudent transaction expenses incurred by the incumbent licensee that are directly attributable to an involuntary relocation, subject to a cap of two percent of the hard costs involved. Hard costs are defined as the actual costs associated with providing a replacement system, such as equipment and engineering expenses. EA licensees are not required to pay incumbent licensees for internal resources devoted to the relocation process. EA licensees are not required to pay for transaction costs incurred by incumbent licensees during the voluntary or mandatory periods once the involuntary period is initiated, or for fees that cannot be legitimately tied to the provision of comparable facilities;

(2) Complete all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new frequencies and frequency coordination; and

(3) Build the replacement system and test it for comparability with the existing 800 MHz system.

(d) *Comparable Facilities.* The replacement system provided to an incumbent during an involuntary relocation must be at least equivalent to the existing 800 MHz system with respect to the following four factors:

(1) *System.* System is defined functionally from the end user's point of view (*i.e.*, a system is comprised of base station facilities that operate on an integrated basis to provide service to a common end user, and all mobile units associated with those base stations). A system may include multiple-licensed facilities that share a common switch or are otherwise operated as a unitary system, provided that the end user has the ability to access all such facilities. A system may cover more than one EA if its existing geographic coverage extends beyond the EA borders.

(2) *Capacity.* To meet the comparable facilities requirement, an EA licensee must relocate the incumbent to facilities that provide equivalent channel capacity. We define channel capacity as the same number of channels with the same bandwidth that is currently available to the end user. For example, if an incumbent's system consists of five 50 kHz (two 25 kHz paired frequencies) channels, the replacement system must also have five 50 kHz channels. If a different channel configuration is used, it must have the same overall capacity as the original configuration. Comparable channel capacity requires equivalent signaling capability, baud rate, and access time. In addition, the geographic coverage of the channels must be coextensive with that of the original system.

(3) *Quality of Service.* Comparable facilities must provide the same quality

of service as the facilities being replaced. Quality of service is defined to mean that the end user enjoys the same level of interference protection on the new system as on the old system. In addition, where voice service is provided, the voice quality on the new system must be equal to the current system. Finally, reliability of service is considered to be integral to defining quality of service. Reliability is the degree to which information is transferred accurately within the system. Reliability is a function of equipment failures (*e.g.*, transmitters, feed lines, antennas, receivers, battery back-up power, etc.) and the availability of the frequency channel due to propagation characteristics (*e.g.*, frequency, terrain, atmospheric conditions, radio-frequency noise, etc.) For digital data systems, this will be measured by the percent of time the bit error rate exceeds the desired value. For analog or digital voice transmissions, this will be measured by the percent of time that audio signal quality meets an established threshold. If analog voice system is replaced with a digital voice system the resulting frequency response, harmonic distortion, signal-to-noise ratio, and reliability will be considered.

(4) *Operating Costs.* Operating costs are those costs that affect the delivery of services to the end user. If the EA licensee provides facilities that entail higher operating cost than the incumbent's previous system, and the cost increase is a direct result of the relocation, the EA licensee must compensate the incumbent for the difference. Costs associated with the relocation process can fall into several categories. First, the incumbent must be compensated for any increased recurring costs associated with the replacement facilitates (*e.g.*, additional rental payments, increased utility fees). Second, increased maintenance costs must be taken into consideration when determining whether operating costs are comparable. For example, maintenance costs associated with analog systems may be higher than the costs of digital equipment because manufacturers are producing mostly digital equipment and analog replacement parts can be difficult to find. An EA licensee's obligation to pay increased operating costs will end five years after relocation has occurred.

(e) If an EA licensee cannot provide comparable facilities to an incumbent licensee as defined in this section, the incumbent licensee may continue to operate its system on a primary basis in accordance with the provisions of this rule part.

(f) *Cost-Sharing Plan for 800 MHz SMR EA licensees.* EA licensees are required to relocate the existing 800 MHz SMR licensee in these bands if interference to the existing incumbent operations would occur. All EA licensees who benefit from the spectrum clearing by other EA licensees must contribute, on a *pro rata* basis to such relocation costs. EA licensees may satisfy this requirement by entering into private cost-sharing agreements or agreeing to terms other than those specified in this section. However, EA licensees are required to reimburse other EA licensees that incur relocation costs and are not parties to the alternative agreement as defined in this section.

(1) *Pro Rata Formula.* EA licensees who benefit from the relocation of the incumbent must share the relocation costs on a *pro rata* basis. For purposes of determining whether an EA licensee benefits from the relocation of an incumbent, benefitted will be defined as any EA licensee that:

(i) Notifies incumbents operating on frequencies included in their spectrum block of their intention to relocate such incumbents within 90 days of the release of the Public Notice that commences the voluntary negotiation period; or

(ii) Fails to notify incumbents operating on frequencies included in their spectrum block of their intention to relocate such incumbents within 90 days of the release of the Public Notice that commences the voluntary negotiation period, but subsequently decides to use the frequencies included in their spectrum block. EA licensees who do not participate in the relocation process will be prohibited from invoking mandatory negotiations or any of the provisions of the Commission's mandatory relocation guidelines. EA licensees who do not provide notice to the incumbent, but subsequently decide to use the frequencies in their EA will be required to reimburse, outside of the Commission's mandatory relocation guidelines, those EA licensees who have established a reimbursement right pursuant to paragraph (f)(3) of this section.

(2) *Triggering a Reimbursement Obligation.* An EA licensees reimbursement obligation is triggered by:

(i) Notification (*i.e.*, files a copy of the relocation notice and proof of the incumbent's receipt of the notice to the Commission within ten days of receipt), to the incumbent within 90 days of the release of the Public Notice commencing the voluntary negotiation period of its intention to relocate the incumbent; or

(ii) An EA licensee who does not provide notification within 90 days of the release of the Public Notice commencing the voluntary negotiation period, but subsequently decides to use the channels that were relocated by other EA licensees.

(3) *Triggering a Reimbursement Right.* In order for the EA licensee to trigger a reimbursement right, the EA licensee must notify (*i.e.*, files a copy of the relocation notice and proof of the incumbent's receipt of the notice to the Commission within ten days of receipt), the incumbent of its intention to relocate the incumbent within 90 days of the release of the Public Notice commencing the voluntary negotiation period, and subsequently negotiate and sign a relocation agreement with the incumbent. An EA licensee who relocates a channel outside of its licensed EA (*i.e.*, one that is in another frequency block or outside of its market area), is entitled to *pro rata* reimbursement from non-notifying EA licensees who subsequently exercise their right to the channels based on the following formula:

$$Ci = Tc \times \frac{Chj}{TCh}$$

Ci equals the amount of reimbursement

Tc equals the actual cost of relocating the incumbent

TCh equals the total number of channels that are being relocated

Chj equals the number of channels that each respective EA licensee will benefit from

(4) *Payment Issues.* EA licensees who benefit from the relocation of the incumbent will be required to submit their *pro rata* share of the relocation expense to EA licensees who have triggered a reimbursement right and have incurred relocation costs as follows:

(i) For an EA licensee who, within 90 days of the release of the Public Notice announcing the commencement of the voluntary negotiation period, provides notice of its intention to relocate the incumbent, but does not participate or incur relocation costs in the relocation process, will be required to reimburse those EA licensees who have triggered a reimbursement right and have incurred relocation costs during the relocation process, its *pro rata* share when the channels of the incumbent have been cleared (*i.e.*, the incumbent has been fully relocated and the channels are free and clear).

(ii) For an EA licensee who does not, within 90 days of the release of the Public Notice announcing the commencement of the voluntary negotiation period, provide notice to the incumbent of its intention to relocate and does not incur relocation costs during the relocation process, but subsequently decides to use the channels in its EA, will be required to submit its *pro rata* share payment to those EA licensees who have triggered a reimbursement right and have incurred relocation costs during the relocation process prior to commencing testing of its system.

(5) *Sunset of Reimbursement Rights.* EA licensees who do not trigger a reimbursement obligation as set forth in paragraph (f)(2) of this section, shall not be required to reimburse EA licensees who have triggered a reimbursement right as set forth in paragraph (f)(3) of this section ten (10) years after the voluntary negotiation period begins for EA licensees (*i.e.,* ten (10) years after the Commission releases the Public Notice commencing the voluntary negotiation period).

(6) *Resolution of Disputes that Arise During Relocation.* Disputes arising out of the costs of relocation, such as disputes over the amount of reimbursement required, will be encouraged to use expedited ADR procedures. ADR procedures provide several alternative methods such as binding arbitration, mediation, or other ADR techniques.

(7) *Administration of the Cost-Sharing Plan.* We will allow for an industry supported, not-for-profit clearinghouse to be established for purposes of administering the cost-sharing plan adopted for the 800 MHz SMR relocation procedures.

14. Section 90.813 is revised to read as follows:

§ 90.813 Partitioned licenses and disaggregated spectrum.

(a) *Eligibility.* Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment of a license pursuant to § 90.153(c).

(b) *Technical Standards.* (1) *Partitioning.* In the case of partitioning, requests for authorization for partial assignment of a license must include, as attachments, a description of the partitioned service area and a calculation of the population of the partitioned service area and the licensed geographic service area. The partitioned service area shall be defined by coordinate points at every 3 degrees along the partitioned service area unless an FCC recognized service area is utilized (*i.e.,* Major Trading Area, Basic Trading Area, Metropolitan Service Area, Rural Service Area or Economic Area) or county lines are followed. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1927 North American Datum (NAD27). Applicants may supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required (NAD27). In the case where an FCC recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of FCC designations or county names) that constitute the partitioned area.

(2) *Disaggregation.* Spectrum may be disaggregated in any amount.

(3) *Combined Partitioning and Disaggregation.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(c) *Unjust Enrichment.* (1) *Installment Payments.* Licensees that qualified under § 90.812 to pay the net auction price for their licenses in installment payments that partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for installment payments, will be subject to the provisions concerning unjust enrichment as set forth in § 90.812(b).

(2) *Bidding Credits.* Licensees that qualified under § 90.810 to use a bidding credit at auction that partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for such a bidding credit, will be subject to the provisions concerning unjust enrichment as set forth in § 90.810(b).

(3) *Apportioning Unjust Enrichment Payments.* Unjust enrichment payments for partitioned license areas shall be calculated based upon the ratio of the population of the partitioned license area to the overall population of the license area and by utilizing the most recent census data. Unjust enrichment payments for disaggregated spectrum shall be calculated based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum held by the licensee.

(d) *Installment Payments.* (1) *Apportioning the Balance on Installment Payment Plans.* When a winning bidder elects to pay for its license through an installment payment plan pursuant to § 90.812, and partitions its licensed area or disaggregates spectrum to another party, the outstanding balance owed by the licensee on its installment payment plan (including accrued and unpaid interest) shall be apportioned between the licensee and partitionee or disaggregatee. Both parties will be responsible for paying their proportionate share of the outstanding balance to the U.S. Treasury. In the case of partitioning, the balance shall be apportioned based upon the ratio of the population of the partitioned area to the population of the entire original license area calculated based upon the most recent census data. In the case of disaggregation, the balance shall be apportioned based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum allocated to the licensed area.

(2) *Parties Not Qualified For Installment Payment Plans.* (i) When a winning bidder elects to pay for its license through an installment payment plan pursuant to § 90.812, and partitions its license or disaggregates spectrum to another party that would not qualify for an installment payment plan or elects not to pay for its share of the license through installment payments, the outstanding balance owed by the licensee (including accrued and unpaid interest) shall be apportioned according to paragraph (d)(1) of this section.

(ii) The partitionee or disaggregatee shall, as a condition of the approval of the partial assignment application, pay its entire *pro rata* amount within 30 days of Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in a rescission of the grant of the partial assignment application.

(iii) The licensee shall be permitted to continue to pay its *pro rata* share of the outstanding balance and shall receive new financing documents (promissory note, security agreement) with a revised payment obligation, based on the remaining amount of time on the original installment payment schedule. These financing documents will replace the licensee's existing financing documents which shall be marked ''superseded'' and returned to the licensee upon receipt of the new financing documents. The original interest rate, established pursuant to § 1.2110(e)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the licensee's portion of the remaining government obligation. We will require, as a further condition to approval of the partial assignment application, that the licensee execute and return to the U.S. Treasury the new financing documents within 30 days of the Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result

in the automatic cancellation of the grant of the partial assignment application.

(iv) A default on the licensee's payment obligation will only affect the licensee's portion of the market.

(3) *Parties Qualified For Installment Payment Plans.* (i) Where both parties to a partitioning or disaggregation agreement qualify for installment payments, the partitionee or disaggregatee will be permitted to make installment payments on its portion of the remaining government obligation, as calculated according to paragraph (d)(1) of this section.

(ii) Each party will be required, as a condition to approval of the partial assignment application, to execute separate financing documents (promissory note, security agreement) agreeing to pay their *pro rata* portion of the balance due (including accrued and unpaid interest) based upon the installment payment terms for which they qualify under the rules. The financing documents must be returned to the U.S. Treasury within thirty (30) days of the Public Notice conditionally granting the partial assignment application. Failure by either party to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The interest rate, established pursuant to § 1.2110(e)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to both parties' portion of the balance due. Each party will receive a license for their portion of the partitioned market or disaggregated spectrum.

(iii) A default on an obligation will only affect that portion of the market area held by the defaulting party.

(iv) Partitionees and disaggregatees that qualify for installment payment plans may elect to pay some of their *pro rata* portion of the balance due in a lump sum payment to the U.S. Treasury and to pay the remaining portion of the balance due pursuant to an installment payment plan.

(e) *License Term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 90.665(a).

(f) *Construction Requirements.* (1) *Requirements for Partitioning.* Parties seeking authority to partition must meet one of the following construction requirements:

(i) The partitionee may certify that it will satisfy the applicable construction requirements set forth in § 90.665 for the partitioned license area; or

(ii) The original licensee may certify that it has or will meet the construction requirements set forth in § 90.665 for the entire market. In that case, the partitionee must only meet the requirements for renewal of its license for the partitioned license area.

(iii) Applications requesting partial assignments of license for partitioning must include a certification by each geographic area 800 MHz SMR licenses in the lower 230 channels will be awarded to small entities, as that term is defined by the SBA.

(iv) Partitionees must submit supporting documents showing compliance with the respective construction requirements within the appropriate time frames set forth in § 90.665.

(v) Failure by any partitionee to meet its respective performance requirements will result in the automatic cancellation of the partitioned or disaggregated license without further Commission action.

(2) *Requirements for Disaggregation.* Parties seeking authority to disaggregate must submit with their partial assignment application a certification signed by both parties stating which of the parties will be responsible for meeting the construction requirements for the market as set forth in § 90.665. Parties may agree to share responsibility for meeting the construction requirements. Parties that accept responsibility for meeting the construction requirements and later fail to do so will be subject to license forfeiture without further Commission action.

15. Section 90.901 is revised to read as follows:

§ 90.901 800 MHz SMR spectrum subject to competitive bidding.

Mutually exclusive initial applications for Spectrum Blocks A through V in the 800 MHz band are subject to competitive bidding procedures. The general competitive bidding procedures provided in 47 CFR part 1, subpart Q will apply unless otherwise indicated in this subpart.

16. Section 90.902 is revised to read as follows:

§ 90.902 Competitive bidding design for 800 MHz SMR licensing.

The Commission will employ a simultaneous multiple round auction design when selecting from among mutually exclusive initial applications for EA licenses for Spectrum Blocks A through V in the 800 MHz band, unless otherwise specified by the Wireless Telecommunications Bureau before the auction.

17. Section 90.903 is amended by revising paragraphs (a) and (b) and adding paragraph (f) to read as follows:

§ 90.903 Competitive bidding mechanisms.

(a) *Sequencing.* The Wireless Telecommunications Bureau will establish and may vary the sequence in which 800 MHz SMR licenses for Spectrum Blocks A through V will be auctioned.

(b) *Grouping.* (1) *Spectrum Blocks A through C.* All EA licenses for Spectrum Blocks A through C will be auctioned simultaneously, unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the auction, an alternative competitive bidding design.

(2) *Spectrum Blocks D through V.* All EA licenses for Spectrum Blocks D through V will be auctioned by the following Regions:

(i) Region 1 (Northeast): The Northeast Region consists of the following MTAs: Boston-Providence, Buffalo-Rochester, New York, Philadelphia, and Pittsburgh.

(ii) Region 2 (South): The South Region consists of the following MTAs: Atlanta, Charlotte-Greensboro-Greenville-Raleigh, Jacksonville, Knoxville, Louisville-Lexington-Evansville, Nashville, Miami-Fort Lauderdale, Richmond-Norfolk, Tampa-St. Petersburg-Orlando, and Washington-Baltimore; and, Puerto Rico and United States Virgin Islands.

(iii) Region 3 (Midwest): The Midwest Region consists of the following MTAs: Chicago, Cincinnati-Dayton, Cleveland, Columbus, Des Moines-Quad Cities, Detroit, Indianapolis, Milwaukee, Minneapolis-St. Paul, and Omaha.

(iv) Region 4 (Central): The Central Region consists of the following MTAs: Birmingham, Dallas-Fort Worth, Denver, El Paso-Albuquerque, Houston, Kansas City, Little Rock, Memphis-Jackson, New Orleans-Baton Rouge, Oklahoma City, San Antonio, St. Louis, Tulsa, and Wichita.

(v) Region 5 (West): The West Region consists of the following MTAs: Honolulu, Los Angeles-San Diego, Phoenix, Portland, Salt Lake City, San Francisco-Oakland-San Jose, Seattle (including Alaska), and Spokane-Billings; and, American Samoa, Guam, and the Northern Mariana Islands.

* * * * *

(f) *Duration of Bidding Rounds.* The Wireless Telecommunications Bureau retains the discretion to vary the duration of bidding rounds or the intervals at which bids are accepted.

18. Section 90.904 is revised to read as follows:

§ 90.904 Aggregation of EA licenses.

The Commission will license each Spectrum Block A through V in the 800 MHz band separately. Applicants may aggregate across spectrum blocks within the limitations specified in § 20.6 of this chapter.

19. Section 90.906 is revised to read as follows:

§ 90.906 Bidding application (FCC Form 175 and 175–S Short-form).

All applicants to participate in competitive bidding for 800 MHz SMR licenses in Spectrum Blocks A through V must submit applications on FCC Forms 175 and 175-S pursuant to the provisions of § 1.2105 of this chapter. The Wireless Telecommunications Bureau will issue a Public Notice announcing the availability of these 800 MHz SMR licenses and, in the event that mutually exclusive applications are filed, the date of the auction for those licenses. This Public Notice also will specify the date on or before which applicants intending to participate in a 800 MHz SMR auction must file their applications in order to be eligible for that auction, and it will contain information necessary for completion of the application as well as other important information such as the materials which must accompany the Forms, any filing fee that must accompany the application or any upfront payment that will need to be submitted, and the location where the application must be filed. In addition to identifying its status as a small business or rural telephone company, each applicant must indicate whether it is a minority-owned entity and/or a women-owned entity, as defined in § 90.912(e).

20. Section 90.907 is revised to read as follows:

§ 90.907 Submission of upfront payments and down payments.

(a) *Upfront Payments.* Bidders in a 800 MHz SMR auction for Spectrum Blocks A through V will be required to submit an upfront payment prior to the start of the auction. The amount of the upfront payment for each license auctioned and the procedures for submitting it will be set forth by the Wireless Telecommunications Bureau in a Public Notice in accordance with § 1.2106 of this chapter.

(b) *Down Payments.* Winning bidders in a 800 MHz SMR auction for Spectrum Blocks A through V must submit a down payment to the Commission in an amount sufficient to bring their total deposits up to 20 percent of their winning bids within ten (10) business days after the auction closes. Winning bidders will be required to make full payment of the balance of their winning bids ten (10) business days after Public Notice announcing that the Commission is prepared to award the license.

21. Section 90.909 is amended by revising the section heading to read as follows:

§ 90.909 License grant, denial, default, and disqualification.

* * * * *

22. Section 90.910 is revised to read as follows:

§ 90.910 Bidding credits.

(a) A winning bidder that qualifies as a very small business or a consortium of very small businesses, as defined in §§ 90.912(b)(2) and (b)(5), may use a bidding credit of 35 percent to lower the cost of its winning bid on Spectrum Blocks A through V. A winning bidder that qualifies as a small business or a consortium of small businesses, as defined in §§ 90.912(b)(1) or (b)(4), may use a bidding credit of 25 percent to lower the cost of its winning bid on Spectrum Blocks A through V.

(b) *Unjust Enrichment.* (1) If a small business or very small business (as defined in §§ 90.912(b)(1) and 90.912(b)(2), respectively) that utilizes a bidding credit under this section seeks to assign or transfer control of an authorization to an entity that is not a small business or very small business, or seeks to make any other change in ownership that would result in the licensee losing eligibility as a small business or very small business, the small business or very small business must seek Commission approval and reimburse the government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee, or licensee is eligible under this section as a condition of the approval of such assignment, transfer, or other ownership change.

(2) If a very small business (as defined in § 90.912(b)(2)) that utilizes a bidding credit under this section seeks to assign or transfer control of an authorization to a small business meeting the eligibility standards for a lower bidding credit, or seeks to make any other change in ownership that would result in the licensee qualifying for a lower bidding credit under this section, the licensee must seek Commission approval and reimburse the government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee, or licensee is eligible under this section as a condition of the approval of such assignment, transfer, or other ownership change.

(3) The amount of payments made pursuant to paragraphs (b)(1) and (b)(2) of this section will be reduced over time as follows: a transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or the difference between the bidding credit obtained by the original licensee and the bidding credit for which the post-transfer licensee is eligible); in year three of the license term the payment will be 75 percent; in year four the payment will be 50 percent; and in year five the payment will be 25 percent, after which there will be no assessment.

23. Section 90.911 is revised to read as follows:

§ 90.911 Partitioned licenses and disaggregated spectrum

(a) *Eligibility.* Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment of a license pursuant to § 90.153(c).

(b) *Technical Standards.* (1) *Partitioning.* In the case of partitioning, requests for authorization for partial assignment of a license must include, as attachments, a description of the partitioned service area and a calculation of the population of the partitioned service area and the licensed geographic service area. The partitioned service area shall be defined by coordinate points at every 3 degrees along the partitioned service area unless an FCC recognized service area is utilized (*i.e.*, Major Trading Area, Basic Trading Area, Metropolitan Service Area, Rural Service Area or Economic Area) or county lines are followed. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1927 North American Datum (NAD27). Applicants may supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required (NAD27). In the case where an FCC recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of FCC designations or county names) that constitute the partitioned area.

(2) *Disaggregation.* Spectrum may be disaggregated in any amount.

(3) *Combined Partitioning and Disaggregation.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(c) *Unjust Enrichment.* (1) *Bidding Credits.* Licensees that qualified under § 90.910 to use a bidding credit at auction that partition their licenses or

disaggregate their spectrum to entities not meeting the eligibility standards for such a bidding credit, will be subject to the provisions concerning unjust enrichment as set forth in § 90.910(b).

(2) *Apportioning Unjust Enrichment Payments.* Unjust enrichment payments for partitioned license areas shall be calculated based upon the ratio of the population of the partitioned license area to the overall population of the license area and by utilizing the most recent census data. Unjust enrichment payments for disaggregated spectrum shall be calculated based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum held by the licensee.

(d) *License Term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in §§ 90.629(a), 90.665(a) or 90.685(a).

(e) *Construction and Channel Usage Requirements—Incumbent Licensees.* Parties seeking to acquire a partitioned license or disaggregated spectrum from an incumbent licensee will be required to construct and commence ''service to subscribers'' all facilities acquired through such transactions within the original construction deadline for each facility as set forth in §§ 90.629 and 90.683. Failure to meet the individual construction deadline will result in the automatic termination of the facility's authorization.

(f) *Construction and Channel Usage Requirements—EA Licensees.*

(1) *Licensees in Channel Blocks A, B and C.* (i) *Requirements for Partitioning.* (A) The partitionee may certify that it will satisfy the applicable construction requirements set forth in § 90.685(c) for the partitioned license area; or

(B) The original licensee may certify that it has or will meet the three and five year construction requirements set forth in § 90.685(c) for the entire market.

(C) Applications requesting partial assignments of license for partitioning must include a certification by each party as to which of the above options they select.

(D) Partitionees must submit supporting documents showing compliance with the respective construction requirements within the appropriate time frames set forth in § 90.685(c).

(E) Failure by any partitionee to meet its respective construction requirements will result in the automatic cancellation of the partitioned license without further Commission action.

(ii) *Requirements for Disaggregation.* Parties seeking authority to disaggregate spectrum from an EA licensee in Spectrum Blocks A, B and C must meet one of the following channel use requirements:

(A) The partitionee may certify that it will satisfy the channel usage requirements set forth in § 90.685(d) for the disaggregated spectrum; or

(B) The original licensee may certify that it has or will meet the channel usage requirements as set forth in § 90.685(d) for the entire spectrum block. In that case, the disaggregatee must only satisfy the requirements for ''substantial service,'' as set forth in § 90.685(c), for the disaggregated spectrum within five years of the license grant.

(C) Applications requesting partial assignments of license for disaggregation must include a certification by each party as to which of the above options they select.

(D) Disaggregatees must submit supporting documents showing compliance with the respective channel usage requirements within the appropriate time frames set forth in § 90.685(c).

(E) Failure by any disaggregatee to meet its respective channel usage requirements will result in the automatic cancellation of the disaggregated license without further Commission action.

(2) *Licensees in Channel Blocks D through V.* (i) *Requirements for Partitioning.* Parties seeking authority to partition an EA license must meet one of the following construction requirements:

(A) The partitionee may certify that it will satisfy the applicable construction requirements set forth in § 90.685(c) for the partitioned license area; or

(B) The original licensee may certify that it has or will meet the construction requirements set forth in § 90.685(c) for the entire market.

(C) Applications requesting partial assignments of license for partitioning must include a certification by each party as to which of the above options they select.

(D) Partitionees must submit supporting documents showing compliance with the respective construction requirements within the appropriate time frames set forth in § 90.685(c).

(E) Failure by any partitionee to meet its respective construction requirements will result in the automatic cancellation of the partitioned license without further Commission action.

(ii) *Requirements for Disaggregation.* Parties seeking authority to disaggregate must submit with their partial assignment application a certification signed by both parties stating which of the parties will be responsible for meeting the construction requirements for the market as set forth in § 90.685. Parties may agree to share responsibility for meeting the construction requirements. Parties that accept responsibility for meeting the construction requirements and later fail to do so will be subject to license forfeiture without further Commission action.

(g) *Certification Concerning Relocation of Incumbent Licensees.* Parties seeking approval of a partitioning or disaggregation agreement pursuant to this section must include a certification with their partial assignment of license application as to which party will be responsible for meeting the incumbent relocation requirements set forth at § 90.699.

24. Section 90.912 is revised to read as follows:

§ 90.912 Definitions.

(a) *Scope.* The definitions in this section apply to §§ 90.910 and 90.911, unless otherwise specified in those sections.

(b) *Small Business; Very Small Business; Consortium of Small Businesses; Consortium of Very Small Businesses.* (1) A *small business* is an entity that together with its affiliates and controlling principals, has average gross revenues that do not exceed $15 million for the three preceding years; or

(2) A *very small business* is an entity that together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the three preceding years.

(3) For purposes of determining whether an entity meets the $3 million or $15 million average annual gross revenues size standard set forth in paragraph (b)(1) of this section, the gross revenues of the entity, its affiliates, and controlling principals shall be considered on a cumulative basis and aggregated.

(4) A *consortium of small business* is a conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies the definition of a small business in paragraphs (b)(1) of this section. In a consortium of small businesses, each individual member must establish its eligibility as a small business, as defined in this section.

(5) A *consortium of very small business* is a conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies the definition of a very small business in paragraph (b)(2) of this

section. In a consortium of small businesses, each individual member must establish its eligibility as a very small business, as defined in this section.

(c) *Gross Revenues.* Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.,* cost of goods sold). Gross revenues are evidenced by audited financial statements for the relevant number of calendar or fiscal years preceding the filing of the applicant's short-form application (FCC Form 175). If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. When an applicant does not otherwise use audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent.

(d) *Affiliate.* (1) *Basis for Affiliation.* An individual or entity is an affiliate of an applicant if such individual or entity:

(i) Directly or indirectly controls or has the power to control the applicant, or

(ii) Is directly or indirectly controlled by the applicant, or

(iii) Is directly or indirectly controlled by a third party or parties who also control or have the power to control the applicant, or

(iv) Has an ''identity of interest'' with the applicant.

(2) *Nature of control in determining affiliation.* (i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example for paragraph (d)(2)(i) of this section. An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power of control.

(ii) Control can arise through stock ownership; occupancy of director, officer, or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions if the voting stock is so widely distributed that no effective control can be established.

Example for paragraph (d)(2)(iii) of this section. In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him/her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are controlling principals of the applicant, the other entity will be deemed an affiliate of the applicant.

(3) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is controlled by a concern, persons with an identity of interest will be treated as though they were one person.

(i) *Spousal Affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States.

(ii) *Kinship Affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context ''immediate family member'' means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father or -mother, step-brother or -sister, step-son or -daughter, half-brother or -sister. This presumption may be rebutted by showing that:

(A) The family members are estranged,

(B) The family ties are remote, or

(C) The family members are not closely involved with each other in business matters.

Example for paragraph (d)(3)(ii) of this section. A owns a controlling interest in Corporation X. A's sister-in-law, B, has a controlling interest in an SMR application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) *Affiliation through stock ownership.* (i) An applicant is presumed to control or have the power to control a concern if he/she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he/she owns, controls, or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he/she owns, controls, or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements will generally be treated as though the rights held thereunder had been exercised. However, neither an affiliate nor an applicant can use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1 for paragraph (d)(5) of this section. If company B holds an option to purchase a controlling interest in company A, who holds a controlling interest in an SMR application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2 for paragraph (d)(5) of this section. If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds a controlling interest in an SMR application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its options to purchase such shares. In order to prevent BigCo from circumventing the intent of the

rule, which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3 for paragraph (d)(5) of this section. If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) *Affiliation under voting trusts.* (i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) *Affiliation under joint venture arrangements.*

(i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

25. Section 90.913 is revised to read as follows:

§ 90.913 Eligibility for small business status.

(a) *Short-Form Applications: Certifications and Disclosure.* Each applicant for an EA license which qualifies as a small business or consortium of small businesses under §§ 90.912(b) or (c) shall append the following information as an exhibit to its short-form application (FCC Form 175):

(1) The identity of the applicant's affiliates and controlling principals, and, if a consortium of small businesses (or a consortium of very small businesses), the members of the joint venture; and

(2) The applicant's gross revenues, computed in accordance with § 90.912.

(b) *Long-Form Applications: Certifications and Disclosure.* In addition to the requirements in subpart V of this part, each applicant submitting a long-form application for license(s) for Spectrum Blocks A through V and qualifying as a small business shall, in an exhibit to its long-form application:

(1) Disclose separately and in the aggregate the gross revenues, computed in accordance with § 90.912, for each of the following: the applicant, the applicant's affiliates, the applicant's controlling principals, and, if a consortium of small businesses (or consortium of very small businesses), the members of the joint venture;

(2) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as a small business, very small business, consortium of small businesses or consortium of very small businesses under §§ 90.910 and 90.912, including the establishment of *de facto* and *de jure* control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

(3) List and summarize any investor protection agreements, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

(c) *Records Maintenance.* All winning bidders qualifying as small businesses or very small businesses, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including any document necessary to establish eligibility as a small business, very small business and/or consortium of small businesses (or consortium of very small businesses) under § 90.912. Licensees (and their successors in interest) shall maintain such files for the term of the license.

(d) *Audits.* (1) Applicants and licensees claiming eligibility as a small business, very small business or consortium of small businesses (or consortium of very small businesses under §§ 90.910 and 90.912 shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (FCC Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding licensed 800 MHz SMR service and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

(3) *Definitions.* The terms affiliate, small business, very small business consortium of small businesses, consortium of very small businesses,

and gross revenues used in this section are defined in § 90.912.

[FR Doc. 97–19913 Filed 7–30–97; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–144; GN Docket No. 93–252; PP Docket No. 93–253; FCC 97–224]

Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the *First Report and Order* and *Eighth Report and Order* in PR Docket No. 93–144, GN Docket No. 93–252, and PP Docket No. 93–253, the Commission adopted final service and competitive bidding rules for the upper 200 channels of the 800 MHz Specialized Mobile Radio (SMR) band. In the *Second Further Notice of Proposed Rulemaking,* the Commission sought comment on additional service and competitive bidding rules for the remaining 800 MHz SMR spectrum and the General Category channels. After carefully reviewing the comments and petitions the Commission received following the issuance of the *Further Notice of Proposed Rulemaking,* the Commission addresses the Petitions for Reconsideration in this order.

EFFECTIVE DATE: September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Shaun Maher or Michael Hamra, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418–0620 or Alice Elder, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This *Memorandum Opinion and Order on Reconsideration* in PR Docket No. 93–144, GN Docket No. 93–252, and PP Docket No. 93–253, adopted June 23, 1997, and released July 10, 1997, is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone (202) 857–3800).

I. Background

1. In the 800 MHz Report and Order, 61 FR 6138 (February 16, 1996), the Commission restructured the licensing framework that governs the 800 MHz SMR service. For the upper 200 channels, the Commission replaced site- and frequency-specific licensing with a geography-based system similar to those used in other Commercial Mobile Radio Services (''CMRS''). The Commission designated the upper 200 channels of 800 MHz SMR spectrum for geographic licensing, and created 120-, 60- and 20-channel blocks within the U.S. Department of Commerce Bureau of Economic Analysis Economic Areas (''EAs''). The Commission concluded that mutually exclusive applications for these licenses would be awarded through competitive bidding. Additionally, the Commission granted EA licensees the right to relocate incumbent licensees out of the upper 200 channels to comparable facilities. The Commission reallocated the 150 contiguous 800 MHz General Category channels for exclusive SMR use.

2. The Commission also established competitive bidding rules for the upper 200 channels of 800 MHz SMR spectrum. Specifically, the order provided for the award of 525 EA licenses in the upper 200 channel block through a simultaneous multiple round auction. Incumbents and new entrants may bid for all EA licenses, subject to the CMRS spectrum cap in § 20.6 of the Commission's rules. The Commission also adopted a ''tiered'' approach to installment payments for small businesses in the upper 200 channel block, and allowed partitioning for rural telephone companies.

A. Geographic Licensing in the 800 MHz SMR Band

1. Geographic Licensing in Contiguous Spectrum Blocks

3. In the *CMRS Third Report and Order,* 59 FR 59945 (November 21, 1996), the Commission found that licensing 800 MHz SMR spectrum in contiguous blocks would make SMR systems more competitive with other CMRS systems by maximizing technical flexibility so that, for example, it would be possible for SMR licensees to deploy spread spectrum and other broadband technologies. In the *800 MHz Report and Order* the Commission concluded that the entire upper 200 channel block should be licensed on a contiguous basis throughout a geographic area because the SMR geographic license would then be equivalent in size to the smallest block of spectrum now authorized for broadband PCS.

4. Commenters argue that the Commission has not justified its decision to group the upper 200 channels of 800 MHz SMR spectrum into geographically licensed contiguous blocks or adequately explained how the need for contiguous spectrum justifies disruption of established SMR operators and that the Commission's rules impermissibly fail to mandate that contiguous blocks of spectrum be used to offer innovative or competitive services. They also argue that the Commission's decision should be reversed if it is based on reducing its administrative burden. It argues that scarcity of Commission resources cannot justify any changes in its rules and that geographic licensing will in fact increase the Commission's administrative burden. One commenter asserts that most incumbent licensees span all three EA frequency blocks. Thus, relocating most incumbents will require that at least four applications be filed, placed on public notice and processed by the Commission. It also claims that these burdens will be exacerbated by the burdens of site-specific licensing because the Commission has not eliminated current site-specific licenses.

5. *Discussion:* The Commission rejects the contention that it has failed to justify the need for licensing the upper 200 channels in contiguous blocks. In the *CMRS Third Report and Order,* the Commission determined that, where feasible, assigning contiguous spectrum is likely to enhance the competitive potential of CMRS geographic providers. In the *800 MHz Report and Orde*r the Commission determined that geographic licensing and contiguous spectrum are essential to the competitive viability of SMR service because they will permit use of spread spectrum and other broadband technologies and eliminate delays and transaction costs associated with site-by-site licensing.

6. The Commission disagrees with Commenters claim that geographic licensing will have a negative impact on existing SMR operators. The Commission's rules continue to protect incumbent operators from interference. In the upper 200 channels, the Commission requires EA licensees to comply with existing rules that require minimum separation from incumbents' facilities. Thus, an EA licensee must either locate its station at least 113 km (70 miles) from any incumbent's facility, or if it seeks to operate stations less than 113 km from an incumbent's facility, it must comply with the Commission's short-spacing rule, unless it negotiates a shorter distance with the incumbent. Additionally, incumbent SMRs on the

upper 200 channels also have the operational flexibility to add transmitters in their existing coverage area, without prior notification to the Commission, so long as their 22 dBu interference contours are not exceeded. The Commission cannot agree with the contention that competition and innovation will be increased by allocation of spectrum resources via a blanket regulatory prescription rather than through individual market participants' decisions. In the *800 MHz Report and Order,* the Commission stated that its goal was to provide regulatory symmetry and operational flexibility that will allow SMR providers to use new technologies and compete with other CMRS providers. By giving licensees flexibility to use spectrum on either a contiguous or non-contiguous basis, the Commission gives SMR operators more ways to provide service and more ways to compete with other CMRS providers.

7. The Commission also rejects the claim that geographic licensing will increase its administrative burden. Under the Commission's site-specific licensing rules, it has received and processed approximately 6,000 applications for individual SMR licenses and modifications a year, and in some years, as many as 20,000 applications. By contrast, geographic licensing of the upper 200 channels will be accomplished by issuing 525 EA licenses, and virtually eliminating the need for subsequent modifications of any license unless it is transferred or partitioned. Moreover, licensees will no longer be required to file an application for each base station; geographic licensees will be able to construct base-stations in pre-defined areas without the Commission's prior approval. These changes represent dramatic reductions in administrative burden for both licensees and the Commission. In this connection, the Commission rejects commenter's claim that reducing its administrative costs is an invalid basis for adopting new rules. While the Commission's rule changes are driven by numerous considerations other than administrative cost, *e.g.*, promoting more efficient spectrum use and creating a regulatory framework that will allow 800 MHz SMR operators to compete more effectively with other CMRS providers, the Commission considers improving its efficiency and reducing its cost to be valid public interest considerations.

2. Size of EA Spectrum Blocks

8. *Background.* In the *800 MHz Report and Order,* the Commission concluded that dividing the upper 200 channels into various-sized channel blocks would create opportunities for SMR providers with differing spectrum needs. The Commission rejected proposals to assign the upper 200 channels in five- and/or ten-channel blocks, concluding instead that allocating one 120-channel block, one 60-channel block, and one 20-channel block for licensing on an EA basis would equitably balance the interests of all potential and existing licensees.

9. Commenters argue that the record does not support the Commission's decision to group currently allocated channels into contiguous blocks. They contend that the aggregation of 20, 60, and 120 contiguous channels restricts the number of small business entities that can compete effectively at auction because relocation channels will either be unavailable or impracticably costly and that the cost of relocating 20 or more channels will be prohibitive for small business.

10. Commenters claim that smaller channel blocks would require an EA applicant desiring adjacent channels to bid more aggressively, and thus the public would receive more value for the spectrum. They also argue that 5-channel geographic licenses would facilitate bidding for designated entities such as small businesses.

11. *Discussion.* The Commission rejects commenters' argument that the public interest would be better served by five-channel spectrum blocks. The Commission stated in the *800 MHz Report and Order,* that the use of such small spectrum blocks make it more difficult to obtain sufficient spectrum to establish a viable and competitive wide-area system, and to use broadband technologies such as CDMA and GSM. The Commission also rejects the claim that the aggregation of 20, 60, and 120 channels will reduce opportunities for small businesses. Under Commission rules, small businesses may form coalitions to raise needed capital and finance any desired relocations. The Commission has adopted provisions in its auction rules enabling small businesses to receive bidding credits.

12. The Commission also rejects Commenter's claim that five-channel blocks would increase spectrum valuation. The Commission's geographic licensing system is designed to enhance the competitive potential of the 800 MHz SMR operators. To accomplish this, the Commission has tailored the channel blocks to the needs of various users by creating large, medium and small channel blocks and by placing these blocks to accommodate the spectrum needs of different-sized SMR providers. As the Commission recognized in the *800 MHz Report and Order,* placing the 120-channel block closest to the cellular spectrum allocation will assist operators in providing wide-area service by facilitating dual-mode operation. Placing the 20-channel block in the portion of spectrum nearest to the lower 80 SMR channels will allow small to medium-sized operators to expand capacity while minimizing costs and disruption to existing customers. Similarly, the Commission expects that in many EA's medium-sized SMR operators or consortia of smaller SMR operators may find the 60-channel block suitable to their needs.

13. The Commission similarly is not persuaded by the claim that allocating spectrum in five-channel blocks will reduce the burdens of, and number of entities involved in, relocation negotiations. To the contrary, the Commission's relocation mechanism provided for cost sharing and collective negotiations so that relocation can efficiently occur. Additionally, the Commission notes that in the lower 80 channels, where the current five-channel blocks are non-contiguous and interleaved with blocks of non-SMR channels, it is adopting the proposal to license in five-channel blocks.

3. 800 MHz SMR Spectrum Aggregation Limit

14. *Background.* In the *CMRS Third Report and Order,* the Commission adopted a 45 MHz limit on aggregation of broadband PCS, cellular, and SMR spectrum. It concluded that in light of the broadband CMRS spectrum cap, no separate limitation was necessary on aggregation of spectrum in the upper 200 channel block. In the *800 MHz Report and Order,* the Commission reasoned that the 800 MHz SMR service is one of many competitive services within the CMRS marketplace, and that allowing unrestricted aggregation of SMR spectrum would not impede CMRS competition so long as 800 MHz SMR licensees were subject to the 45 MHz CMRS spectrum aggregation limit.

15. *Petitions.* Commenters argue that the Commission has failed to consider that its actions will increase the current state of concentration in the SMR industry. Accordingly, the Commission must limit EA licensees to something less than the entire 200 channels to ensure a wide variety of applicants. One commenter suggests that the Commission prohibit any EA licensee from acquiring more than one third of the Upper 200 channels in any EA, thus, providing adequate opportunities for designated entities while avoiding excessive concentration of licenses.

Commenters also argue that unlimited spectrum aggregation is critical to regulatory parity because an SMR operator aggregating all 200 channels in a market would still operate on only 10 MHz of spectrum, as compared to the 25 MHz for cellular and 30 MHz for A, B and C block PCS licensees.

16. *Discussion.* The Commission sees no need to adopt a spectrum aggregation limit for the upper 200 channels beyond the CMRS spectrum aggregation limit set forth in 47 CFR 20.6. Market forces—not regulation—should shape the developing CMRS marketplace, and the Commission is unpersuaded that further constraints on SMR providers' ability to acquire spectrum are necessary. In fact, the proposed restriction could handicap all SMR providers—including small businesses, rural telephone companies and women-owned and minority-owned businesses—by limiting their ability to compete with cellular and broadband PCS. The Commission has determined that the relevant market for examining concentration of SMR licenses is the CMRS market as a whole, not SMR only. Thus, even if one licensee were to acquire all 10 MHz of spectrum in an EA, this would not be sufficient to have an anti-competitive effect on the relevant market.

4. Licensing in Mexican and Canadian Border Areas

17. *Background:* In the *800 MHz Report and Order,* the Commission determined that EA licenses would be made available without distinguishing border from non-border areas. Thus, the Commission determined that EA licensees can use available border area channels within their spectrum blocks, subject to international assignment and coordination. Although, reduced channel availability and operating restrictions may reduce values of border area EA licenses, the Commission concluded that EA applicants would consider such factors when bidding on such licenses. The Commission also noted that EA licensees could privately negotiate with other licensees to acquire additional SMR spectrum in border areas.

18. *Petitions.* Petitioners seek clarification of the Commission's border area licensing plan. They note that in border areas some of the upper 200 channels are assigned to non-SMR categories. They seek clarification that these channels are not subject to EA licensing and that incumbent licensees are not subject to mandatory relocation. Petitioners note that in many EAs adjacent to either the Canadian or Mexican borders, no frequencies are available for SMR use in the 120-channel, and 60-channel blocks, and few are available in the 20-channel block and are concerned that bidders will be unaware of this and may overvalue the spectrum.

19. *Discussion.* The Commission clarifies that non-SMR channels in the border area are not subject to EA licensing and thus are unaffected by this rulemaking. The Commission further clarifies that non-SMR channels that have been allocated to SMR eligibles in border areas, but to non-SMR eligibles elsewhere in the country, have been allocated to the upper 200 channel EA licensees on a *pro rata* basis. Prospective bidders should be aware that these channels, which are not available to them anywhere else except in the border regions, will be assigned for their use in the Canadian and Mexican border regions. Most importantly, EA licensees must afford full interference protection to non-SMR licensees operating in adjacent areas on these channels.

20. The Commission notes that its rules already specify which channels are available for EA licensing in the border regions. The Commission believes that license applicants are best situated to decide whether reduced channel availability in border areas affects the value of particular licenses. Nonetheless, to help alleviate ITA's concern about applicant awareness, the Commission will also provide information regarding channel availability border area in the auction bidders package.

B. Rights and Obligations of EA Licensees

1. Spectrum Management Rights

21. *Background.* In the *800 MHz Report and Order,* the Commission determined that if an SMR incumbent fails to construct, discontinues operations, or otherwise has its license terminated by the Commission, the licensed spectrum automatically reverts to the EA licensee. The Commission thus eliminated all waiting lists for SMR category channels within the upper 200 channel block and terminated its finder's preference program for the 800 MHz SMR service. Finally, the Commission created a presumption that permanent transfers and assignments between an EA licensee and incumbents operating within its spectrum block would serve the public interest. The Commission reasoned that this would give EA licensees more flexibility to manage their spectrum, be more consistent with their cellular and PCS rules, and reduce regulatory burdens on both licensees and the Commission.

22. *Petitions.* Petitioner claims that the Commission's approach to spectrum management violates Congressional intent and its goal of regulatory symmetry by disadvantaging non-EA winning SMR licensees vis-a-vis EA licensees. They argue, that incumbents are disadvantaged because they will be restricted from expanding on wide-area blocks and that the Commission's construction requirements favor EA licensees over incumbents. One petitioner claims that the Commission violated section 553(b) of the Administrative Procedure Act by failing to give notice of the elimination of the finder's preference program. It also argues that the Commission should temporarily retain the finder's preference program so that all persons knowing of unconstructed or discontinued facilities can request a finder's preference, take the channels, and provide balance among those applying for the wide-area SMR frequency blocks.

23. *Discussion.* The Commission rejects the claim that it has violated Congressional intent by conferring spectrum management rights on EA licensees, including the right to recover spectrum lost by incumbents who cease operations or violate its rules. The contention that these rules discriminate against incumbent licensees is without merit. Incumbents retain all of the rights to operate that they held under their pre-existing licenses. Thus, incumbents who operate in compliance with the Commission's rules are not affected by the spectrum recovery rule, while incumbents who cease operations or violate the Commission's rules would lose their spectrum rights under either the old rules or the new rules. The only difference in the Commission's new rules is that they have provided for unused spectrum to revert to the EA licensee rather than to be relicensed by the Commission. This procedure does not discriminate against incumbents: any incumbent who seeks the ''superior'' spectrum management rights of an EA license has the same opportunity to obtain it as any other applicant: by bidding for the EA license through the auction process.

24. The Commission also rejects the claim that it gives no notice of the possible elimination of the finder's preference program. Such notice was inherent in the Commission's proposal that rights to unconstructed or non-operational channels would automatically revert to the EA licensee. The elimination of the Commission's finder's preference program was thus both necessarily implicit in and a

logical outgrowth of, the Commission's proposals.

25. Finally, the Commission declines to retain the finders preference program, even on a temporary basis. The Commission's move to geographic licensing makes the finder's preference program unnecessary because EA licensees will have incentive to identify and make use of unused spectrum within their blocks. Additionally, the finder's preference program is inconsistent with the Commission's objective of assigning spectrum through geographic licensing because it would perpetuate site-by-site licensing.

2. Treatment of Incumbent Systems

a. Mandatory Relocation of Incumbents From the Upper 200 Channels

26. *Background.* In the *800 MHz Report and Order,* the Commission adopted a mandatory relocation mechanism for incumbents on the upper 200 channels. In order to minimize the impact on existing licensees, the Commission adopted two key provisions: (1) If an EA licensee is unable or unwilling to provide an incumbent licensee with ''comparable facilities,'' such an incumbent would not be subject to mandatory relocation; and (2) any incumbent that is relocated from the upper 200 channels, either voluntarily or involuntarily, will not be required to relocate again if the Commission adopts its geographic area licensing proposal for the lower 80 and General Category channels.

27. *Petitions.* Several petitioners challenge the Commission's decision to authorize mandatory relocation of incumbent SMR licensees. They argue that the Commission's licensing framework does not require mandatory relocation, and that relocations should occur through private negotiations between EA licensees and incumbents. Other petitioners object that there are no alternative channels on which to relocate incumbents. Still, other commenters are concerned that mandatory relocation will reduce the amount of competitive service offered to the public and thus be harmful to end users and subscribers. These petitioners argue that requiring relocation of an incumbent's entire system effectively excludes most bidders from the auction, including small businesses. Another petitioner adds that the public interest is not served by displacing existing SMRs so other SMRs can provide the same service. And, another argues that the Commission has behaved inconsistently with respect to 800 MHz and paging services, two comparably encumbered frequency bands, because they have concluded that ''alternative'' spectrum for relocation exists in the 800 MHz band but does not exist in the paging bands.

28. *Discussion.* In the *800 MHz Report and Order,* the Commission concluded that while voluntary negotiations are important and to be encouraged, mandatory relocation is necessary to achieve the transition to geographic area licensing and to enhance the flexibility of EA licensees on the upper 200 channels. The Commission rejects petitioners' contention that the Commission could accomplish these goals by relying on voluntary negotiations alone. While the Commission expects most relocation to occur through voluntary negotiations, it is concerned that EA licensees will be unable to realize the potential of their spectrum without some mandatory mechanism in the event voluntary negotiations prove unsuccessful. The Commission reaffirms its conclusion that a narrowly tailored mandatory relocation mechanism is necessary to the achievement of the goals of this proceeding.

29. The Commission also rejects the argument that relocation should not be required because EA licensees will provide the same service as incumbents who are relocated. The Commission expects that EA licensees will use their spectrum to provide a wide variety of services. While some of these services may be of the same type provided by incumbents who are relocated, the ability to clear contiguous spectrum will give EA licensees operational flexibility to provide new and innovative services that were far more difficult to develop under site-by-site, channel-by-channel licensing rules. Thus, relocation will not merely replace one SMR licensee with an identical licensee, but will allow both parties to move towards more efficient use of the spectrum.

30. Many petitioners who challenge the Commission's adoption of mandatory relocation argue it will harm incumbent licensees, particularly small system operators. The Commission disagrees with this view. The Commission's rules do not require any incumbent to relocate unless the EA licensee provides comparable facilities and a seamless transition. Moreover, the rules the Commission is adopting for the lower 80 and General Category channels provide positive incentives for small businesses who relocate, including bidding credits. Bidding credits assist small business in obtaining licenses and thus, provide small business with an incentive to relocate to the lower channels. In addition, because the Commission is allowing incumbents on the lower channels to operate within their 18 dBu contours, incumbents on these channels (including incumbents who relocate from the upper 200 channels) will have greater operational flexibility and protection from interference than incumbents on the upper 200 channels.

31. Some petitioners argue that the Commission's mandatory relocation rules make relocation impractical for all but a few large SMR operators who have spectrum on the lower 80 and General Category channels that can be used for relocation. Even if this is so, the Commission does not agree with petitioners that this is an argument against mandatory relocation: the Commission considers it preferable to allow relocation where it is feasible rather than to prohibit it because it is not feasible in every instance. Moreover, the Commission disagrees with the premise that small businesses will be discouraged from participating in the upper 200 channel auction because of the practical difficulty of relocating incumbents. Many of those small businesses may themselves be incumbents who choose to bid (individually or in combination with other small incumbents) for the upper 200 channel blocks rather than relocate. In addition, small businesses may develop business strategies that do not depend on relocation, e.g., entering into partitioning agreements with incumbents or providing niche services on available channels. The Commission believes that market forces should be relied upon for these types of decisions.

32. Finally, the Commission rejects the claim that its decision conflicts with its decision not to adopt mandatory relocation in the Commission's recently completed paging rulemaking. The Commission's adoption of geographic licensing rules in paging did not require relocation because paging channels are technically identical to one another and paging technology is generally consistent and compatible regardless of the channel used. Thus, there is no advantage in spectrum efficiency to be gained from encouraging paging incumbents in a particular band to migrate to another band. In contrast, the 800 MHz SMR allocation is a mixture of contiguous and non-contiguous channels, which has led to the development of sometimes incompatible technologies. Relocation is therefore beneficial because it creates incentives for SMR providers to operate on the spectrum most suitable for their particular technologies.

b. Mandatory Relocation Implementation Issues

i. Pre-Auction Negotiations

33. *Background:* In the *CMRS Third Report and Order,* the Commission suspended acceptance of new 800 MHz applications pending adoption of new 800 MHz service and auction rules. On October 4, 1995, the Wireless Bureau imposed a similar freeze on new applications for the General Category channels. Under both of these freezes, assignment and transfer of control applications continued to be processed if the location of the licensed facilities remained unchanged.

34. In the *800 MHz Report and Order,* the Commission partially lifted the freeze on new applications for SMR and General Category channel licenses. Specifically, the Commission allowed filing of new applications to permit assignments and transfers of control involving modifications to licensed facilities that were intended to accommodate market-driven, voluntary relocation arrangements between incumbents and potential EA applicants; and (1) would not change the 22 dBu service contour of the facilities relocated, (2) the assignment or transfers would relocate a licensee out of the upper 200 channels block, and (3) the potential EA applicant and relocating incumbent(s) were unaffiliated. The Commission took these actions to begin the relocation process and thus ease the transition to a wide-area licensing scheme for the upper 200 channels.

35. *Petitions.* Petitioner requests two modifications of the Commission's partial lifting of the application freeze. First, it asks that the Commission ''clarify'' that only incumbent 800 MHz SMR licensees be treated as ''potential EA applicants.'' It argues that absent this restriction, anyone could negotiate with an incumbent and avoid the licensing freeze—regardless of eligibility or intent to bid in the auctions. Petitioner believes that the ability to participate in pre-auction settlements should ''travel with the license.'' Second, the petitioner requests that prior to the auction the Commission accept only those applications that facilitate relocation of incumbents off the upper 200 channels, as opposed to moves from one upper 200 channel to another. Petitioner argues that allowing incumbents to move within the upper 200 channels could be used by potential EA applicants for anti-competitive purposes. Such a limitation on pre-auction settlements would prejudice incumbent licensees without lower band channels to trade and may reduce the number of auction participants for certain channels and satisfy Congressional intent that the Commission use negotiations to avoid mutual exclusivity in application and licensing procedures.

36. *Discussion.* The Commission goal in partially lifting the freeze was to facilitate the voluntary relocation of incumbents off of the upper 200 channels. In order to facilitate this goal, the Commission believes that anyone who intends to bid in the upper 200 auction should be able to use this procedure to obtain spectrum that could be used for relocation of incumbents. While the Commission anticipates that most bidders for EA licenses will themselves be incumbents, it is possible that non-incumbents will bid as well. Therefore, the Commission declines to limit the filing of new applications to incumbent 800 MHz SMR licensees as requested. The Commission is concerned that such a restriction could arbitrarily limit the flexibility of participants in pre-auction negotiations.

37. The Commission agrees that new applications should only be accepted if they facilitate relocation of incumbents off of the upper 200 channels. In order for the auction of the upper 200 channels to occur, bidders must have certainty regarding the channels that are currently licensed to incumbents. Continuing to accept applications for new authorizations on the upper 200 channels would deprive bidders of such certainty and delay the auction process. In addition, the Commission sees no relocation benefit to allowing licensees to acquire new spectrum on the upper 200 channels prior to the auction. Therefore, pre-auction applications will be accepted for relocation purposes only on the lower 230 channels, and only if they meet the conditions specified in the *800 MHz Report and Order.* The Commission notes, however, that this policy only applies to initial applications for new spectrum, not to transfers and assignments of *existing* authorizations, which have never been subject to the 800 MHz licensing freeze. Therefore, incumbents may continue to transfer and assign existing authorizations on either the upper 200 channels or the lower 230 channels.

ii. Relocation Negotiations

38. *Background.* To encourage negotiation between EA licensees and incumbents the Commission adopted a multi-phase, post-auction relocation mechanism in the *800 MHz Report and Order.* In the initial one-year voluntary period, the EA licensee and incumbents may negotiate any mutually agreeable relocation agreement. If no agreement is reached, the EA licensee may initiate a two-year mandatory negotiation period, during which the parties are required to negotiate in ''good faith.'' If the parties still fail to reach an agreement, the EA licensee may then initiate involuntary relocation of the incumbent's system. However, such relocation must be to comparable facilities and must be seamless, *i.e.,* without any significant disruption in the incumbent's operations.

39. *Petitions.* Several commenters argue that the Commission's phased negotiation plan does not serve the public interest and object to the one-year voluntary period and two year mandatory period. They argue that the Commission recently recognized the advantages of a two-year voluntary period and have no compelling reason to deviate from this precedent and that a two-year voluntary period gives incumbents the flexibility in timing their relocation and minimizes the adverse impact of relocation on existing SMR service subscribers.

40. Some commenters argue that the Commission should reduce the mandatory negotiation period to one year, because the 800 MHz relocation process will be less complex than that faced by PCS licensees and 2 GHz microwave incumbents. Others support the adopted relocation process of one-year voluntary and two-year mandatory negotiation periods, although they want relocation safeguards to apply to all incumbents, including non-SMR licensees.

41. Commenters complain that the Commission's rules do not require EA licensees to begin negotiations at any particular time and do not require an EA licensee to relocate incumbents during the initial year. It is argued that EA licensees should be required to notify the incumbent that mandatory negotiations have begun, lest an EA licensee wait out the voluntary period and then declare later that mandatory negotiations have begun, leaving incumbents unprepared. Another argues that the EA licensee must show that it has made a bona fide attempt to negotiate during the voluntary period.

42. Commenters also complain that the Commission has not explained how disputes over whether negotiations have been conducted in ''good faith'' are to be adjudicated. They also argue that since the Communications Act authorizes the Commission neither to reject nor delegate its authority to resolve licensing disputes, the Commission must either (1) expeditiously resolve these disputes or (2) reject mandatory frequency relocation and let the market determine whether frequency relocation

will occur. They also ask that the Commission allow incumbents to decide who will retune end-user equipment. They note that hundreds of thousands of mobile units and control stations are included in incumbent SMR systems. Thus, it is concerned that the Commission's requirement that EA licensees build and test the new [relocated] system could be read to permit or require that EA licensees intervene in relations between an incumbent and its customers.

43. *Discussion:* The Commission agrees with commenters that the mandatory negotiations period be limited to one year. The Commission agrees that such a reduction will serve the public interest by facilitating the clearing of incumbents from the EA blocks so that the EA licensees can implement their wide-area systems. Moreover, this reduction will minimize the period during which incumbents will experience uncertainty concerning relocation. Finally, the Commission notes that this approach is consistent with its recent decision in PCS to adopt a one-year voluntary period and a one-year mandatory period for the C, D, E, and F blocks.

44. The Commission rejects the proposal that we extend voluntary negotiations to two years. A one-year voluntary period and a one-year mandatory period balances the desirability of giving parties flexibility to negotiate voluntarily with the need to ensure that relocation, where feasible, occurs expeditiously. The Commission sees no need to extend the voluntary period for an additional year. The Commission finds that petitioners have not supported their claims that another year of voluntary negotiations would ''minimize the adverse impact'' of relocation. In fact, although the voluntary period has not yet commenced, incumbents and potential EA licensees can begin voluntary negotiations at any time, thus affording themselves more than a year to reach a voluntary agreement. The Commission finds that it would not serve the public interest to delay for another year. Finally, the Commission notes that in recent decisions they have reduced voluntary negotiation periods to one year.

45. In response to the argument that the Commission has not explained how disputes over good faith will be resolved, the Commission notes that in this case as in all others, licensees may bring infractions of the Commission's rules to its attention. Nevertheless, the Commission strongly encourage parties to use expedited alternative dispute resolution procedures, such as binding arbitration, mediation or other alternative dispute techniques. Further, since relocation agreements are pursuant to private contracts, the Commission anticipates that parties will pursue common law contract remedies in the court of competent jurisdiction if alternative dispute resolution is not successful.

46. Finally, the Commission clarifies that its relocation rules are not intended to require the mandatory disclosure of incumbents' proprietary information or customer lists. Incumbents must cooperate with the EA licensees and facilitate the testing of their relocated equipment, but incumbents need not disclose competitively sensitive information.

iii. Notice

47. *Background.* In the *800 MHz Report and Order,* the Commission recognized that incumbents need prompt information about the EA licensees' relocation plans. As such, the Commission required EA licensees within 90 days of the release of the Public Notice commencing the voluntary negotiation period to notify incumbents operating in their spectrum block of their intent to relocate such incumbents. Moreover, if an incumbent does not receive timely notice of the EA licensees intent to relocate, the EA licensee can no longer require that incumbent to relocate.

48. Because such notice affects an EA licensee's relocation rights, the Commission decided that the EA licensee must file a copy of the relocation notice and proof of the incumbent's receipt of the notice within ten days of such receipt, or the Commission will presume that the incumbent was not notified of the intended relocation. An incumbent licensee notified of intended relocation will be able to require joint negotiations with all notifying EA licensees. These requirements should ensure that possible relocation will be properly noticed and coordinated.

49. *Petitions.* Commenters ask the Commission to amend its notice rule to recognize proof of an attempt to notify at the address in the Commission's database as proper notice and that the Commission clarify that *any* EA licensees relocation notice informs the incumbent that it could be relocated out of *any* EA license block on which its SMR system is operating—even those not licensed to the EA licensee providing notice. Otherwise *any* EA licensee's failure to provide notice could provide the incumbent a defense to the relocation of part of its system (and, thus, the entire system).

50. *Discussion.* The Commission's rules already require licensees to update its data base with their current address. The Commission thus agrees that proof of an attempt to notify at the address in its database constitutes sufficient evidence of notice. The Commission also agrees that notice by an EA licensee shall constitute notice with respect to the incumbent's entire system, including portions of the system outside the EA licensees' own spectrum block.

c. Incumbent Operational Flexibility

51. *Background.* In the *800 MHz Report and Order* the Commission declined to allow non-EA licensees to expand their systems at will after geographic licensing has occurred because such expansion would devalue geographic licenses by creating continuing uncertainty about the amount of spectrum available under the EA license. The Commission recognized, however, that incumbents should be allowed to make minor alterations to their service areas to preserve the viability of their systems. Thus, in the *800 MHz Report and Order,* the Commission concluded that incumbent licensees on the upper 200 channels should be allowed to make modifications within their current 22 dBu interference contour without prior notice to the Commission. The Commission reasoned that this would increase incumbents' operational flexibility without significantly affecting the EA licensee's wide-area system in the same market. The Commission stated, however, that incumbents must still comply with its short-spacing criteria even if the modifications do not extend their 22 dBu interference contours. Finally, the Commission also decided to allow 800 MHz SMR incumbents who are not relocated to convert their current site-by-site licenses to a single license authorizing operations throughout the contiguous and overlapping service area contours of the incumbent's constructed multiple sites.

52. *Petitions.* Commenters asked that the Commission clarify that the rule allowing incumbents to modify their systems within existing 22 dBu contours does not apply to aggregate 22 dBu contours but must be applied on a channel-specific basis. For example, if an incumbent is operating on more than one station within a geographic area, petitioner contends that the incumbent should not be allowed to use a channel licensed at one station at a site inside the 22 dBu contour of another station if that channel is not licensed at both sites. Thus, an incumbent would be allowed to re-use a channel throughout

the composite 22 dBu contour only of those stations on which that channel is licensed.

53. One commenter supports the Commission's decision to permit incumbent licensees to convert their current site-by-site licenses to a single license, but argues that incumbent licensees might abuse the procedure by filing spurious requests that would enable unaffiliated systems to obtain a single geographic license. Commenter proposed that the Commission allow affected EA licensees to oppose such requests.

54. *Discussion.* The Commission clarifies that the rule allowing incumbents to modify their systems within their existing 22 dBu contours will be applied on a channel-specific basis. The Commission is concerned that by allowing incumbents to unilaterally redeploy channels to sites where they were not previously authorized would create continuous uncertainty for EA licensees as to which channels they could use at particular locations. Thus, an incumbent may use a channel within the 22 dBu contour of all facilities authorized on that channel, but may not redeploy the channel to another facility (or within the 22 dBu contour of such a facility) where that channel is not previously authorized, unless the EA licensee agrees to the change. The Commission emphasizes, however, that incumbents and EA licensees may negotiate alternative arrangements with respect to the deployment of channels for their respective systems.

55. The Commission rejects the request to allow EA licensees to formally oppose incumbent requests to convert multiple site-by site licenses to a single geographic license. The Commission does not believe this process will be susceptible to abuse by incumbents, as Nextel contends. Converting site-by-site licenses to a geographic license will not in any way expand the spectrum rights of incumbents; it is simply an administrative vehicle for simplifying the licensing process. In addition, the Commission is requiring incumbents seeking geographic licenses to show that their facilities are constructed and operational, and that no other licensee would be able to use the channels within the designated geographic area.

3. Co-Channel Interference Protection

a. Incumbent SMR Systems

56. *Background.* In the *CMRS Third Report and Order,* the Commission retained most of its existing co-channel protection rules for CMRS licensees, including its existing station-specific interference criteria for 800 MHz SMR co-channel stations.

57. In the *800 MHz Report and Order,* the Commission concludes that EA licensees on the upper 200 channels must afford interference protection to incumbent SMR systems as provided in § 90.621 of the Commission's rules. As a result, an EA licensee must either (1) locate its stations at least 113 km (70 miles) from any incumbent's facilities; (2) comply with the Commission's short-spacing rule; or (3) negotiate with the incumbent licensee if it wishes to operate closer than these rules allow. The Commission concluded that these requirements will adequately protect incumbents while EA licensees to build stations in their authorized service areas. The Commission believes that the short-spacing rule provides flexibility to EA licensees, allows incumbents to fill in ''dead spots,'' and protects incumbent licensees from actual interference.

58. *Petitions.* Commenters argue that the Commission's decision improperly gives geographic licensees more rights than incumbent licensees. They believe that the Commission's proposal will preclude affected parties from equitably balancing one operator's desire to expand against another operator's desire to obtain full value for an existing investment. Another commenter requests that the Commission require EA licensees to file an application for each proposed station and serve a copy on any incumbent within 70 miles of the proposed station. It claims that some authorized wide-area licensees have violated the Commission's rules when selecting co-channel station locations. Additionally, it argues that the Commission should not proceed until it reviews its database of currently authorized wide-area stations, confirm those authorizations comply with the Commission's interference protection rules, and cancel any wide-area authorizations which were erroneously granted.

59. Consumers also request clarifications of certain aspects of the interference protection rules. Consumers asks the Commission to clarify that the full primary co-channel protection standards of § 90.621(b) must be afforded by non-border area EA auction winners to co-channel I/LT category licensees. They also ask that the Commission clarify that EA licensees operating in California and the Pacific Northwest must comply with the unique co-channel interference protection rules applicable to certain transmitter sites in mountainous areas of California and Washington state.

60. *Discussion.* The Commission disagrees that it must give incumbent and EA licensees identical co-channel protection rights. In other auctions, incumbents obtained the benefits of being geographic area providers by obtaining geographic area licenses. To protect incumbents who do not want to provide service in a predetermined geographic area, the Commission has maintained the technical co-channel interference standards under which such incumbents were originally licensed. These measures give incumbents the flexibility provided in their original license. The Commission also permits them to freely add sites within their existing 22 dBu interference contour.

61. The Commission also declines to adopt the suggestion that it require EA licensees to file applications on a per-site basis. Such a procedure is counterproductive to the Commission's goal of providing EA licensees additional operational flexibility, and would reintroduce some of the administrative burdens associated with site-by-site licensing.

62. Finally, as requested by commenters, the Commission clarifies that (1) full primary co-channel protection pursuant to the standards of § 90.621(b) must be afforded to co-channel I/LT category licensees by non-border area EA licensees and (2) the EA licensees must comply with co-channel separation rules in § 90.621(b) for designated transmitter sites in California and Washington.

b. Adjacent EA Licensees

63. *Background.* In the *CMRS Third Report and Order,* the Commission concluded that the co-channel interference protection between geographic area licensees would be similar to those in the cellular and PCS services, which impose interference protection criteria for border areas in Commission-defined service areas. In the *800 MHz Report and Order,* the Commission determined that 40 dBuV/m is an appropriate measure for the desired signal level at the service border area. Thus, the Commission prohibited EA licensees from exceeding a signal level of 40 dBuV/m at their service area boundaries, unless the bordering EA licensee(s) agree to a higher field strength.

64. *Petitions.* One commenter claims that the Commission should replace the 40 dBuV/m signal level standard with a 22 dBu standard as proposed. It also claims that the Commission should adopt a stricter protection standard because entities operating at a signal level of 40 dBuv/m at the same

geographic boundary will interfere with one another. It further argues that under the proposal, resulting ''dead spots'' at borders could be resolved by negotiations between operators.

65. *Discussion.* The Commission rejects the suggestion that it replace the 40 dBuV/m signal level standard with a 22 dBu standard. The Commission's approach here is consistent with its approach in setting signal strength thresholds in PCS and cellular services. In all three instances, the Commission has used a threshold that allows the geographic area licensee to deliver a reliable signal throughout its licensing area. While the commenter is correct that this could lead to interference between adjacent licensees operating at full power at a common service area border, the Commission's experience has shown that actual interference is uncommon because not all licensees extend coverage to their licensing area borders. Moreover, the Commission has found that in those instances where actual interference does occur, adjacent licensees can and do resolve these situations by mutual agreement. If the Commission were to use the 22 dBu standard, on the other hand, an EA licensee seeking to provide reliable coverage at the border of its licensing area would require the consent of the adjacent EA licensee even if the adjacent licensee was not operating close enough to the border to suffer actual interference. The Commission believes such a requirement would be unnecessarily restrictive.

4. Emission Masks

66. *Background.* In the *CMRS Third Report and Order,* the Commission affirmed its out-of-band emission rules for CMRS services and decided that out-of-band emission rules should apply only if emissions could potentially affect other licensees operations. Moreover, the Commission decided to apply out-of-band emission rules to licensees having exclusive use of a block of contiguous channels only if needed to protect operations outside of the licensee's authorized spectrum. In the *800 MHz Report and Order,* the Commission decided to apply out-of-band emission rules only to the ''outer'' channels included in an EA license and to spectrum adjacent to interior channels used by incumbents. The Commission also adopted and modified a proposed emission mask rule to maintain the existing level of adjacent channel interference protection.

67. *Petitions.* Commenters supports the emission mask rule described in § 90.691, but believes that it should also apply to any non-EA 800 MHz part 90 CMRS system. They propose to amend § 90.210 of the Commission's rules by adding the following sentence to footnote 3: ''Equipment used in this band by non-EA systems shall comply with this section or the emission mask provisions of Section 90.691.''

68. *Discussion.* The Commission agrees with petitioners that its § 90.691 emission mask rules should also apply to non-EA 800 MHz part 90 CMRS systems, and thus it will adopt the proposed change to § 90.210 of the Commission's rules. By making this change, the Commission will provide incumbent licensees who do not submit a winning bid in the auction process the opportunity to use the more flexible emission mask that it has adopted for EA licensees. Moreover, it will aid CMRS operators who are operating on non-SMR pool channels to have the same capabilities as those operating in the SMR category. Thus, the Commission amends § 90.210 by adding the suggested sentence to footnote 3.

C. Construction Requirements

1. EA Licensees

69. *Background.* In the *800 MHz Report and Order,* the Commission adopted a five-year construction requirement for EA-based licensees beginning when the license issues and applying to all of the licensee's stations within the EA spectrum block, including any stations previously subject to an earlier construction deadline. The Commission recognized that it had adopted a ten-year period adopted for PCS systems, but concluded that the already-substantial construction of 800 MHz systems made a five-year period sufficient. Moreover, the Commission recognized that geographic-area licensees that have invested in existing systems or that have incurred bidding costs must construct facilities and provide service promptly, to recover these costs.

70. *Petitions.* A petitioner argues that EA licensees should not be able to obtain an additional five years to construct facilities previously subject to earlier construction deadlines and that the Commission's approach rewards spectrum warehousing and is inconsistent with regulatory symmetry because prior construction deadlines were issued on a site-specific basis. Other petitioners believe that the Commission's construction requirements discriminate between EA licensees and non-EA licensees and that the Commission's rationale for a five-year construction period is flawed because it rested, in part, on an order finding that a two-year construction period was sufficient for existing SMRs.

71. Finally, the petitioner argues that 50 percent minimum channel use should be required at more than a single location within the EA or otherwise, a licensee could meet this requirement by building a multi-channel facility in a rural portion of an EA and avoid serving a metropolitan area. They contend that this would enable EA licensees to avoid constructing true wide-area systems and to warehouse spectrum.

72. *Discussion.* The Commission declines to reconsider its five-year construction deadline. The Commission is unpersuaded by the unsupported assertion that a five-year construction period for EA licensees does not serve the public interest and that its EA construction requirements will allow those who warehouse to be unjustly enriched at auction. To the contrary, the auctions process requires licensees to purchase the rights to, and thereby compensate the American taxpayer for, the spectrum that they use. Thus, the Commission's auction rules discourage speculation and spectrum warehousing. Moreover, the Commission does not agree that its five-year construction requirement will result in or reward spectrum warehousing. The five-year requirement assures that geographic licensees promptly build out and provide service.

73. The Commission also rejects claims that it has acted discriminatorily by adopting a two year construction requirement for site-by-site licenses and a five-year build out for EA licensees. Further, the Commission rejects the claim that its rationale for granting EA licensees a five-year build out period, while limiting existing site licensees to an additional two years, is flawed. The Commission imposes a two-year build out period on site licensees because, by definition, they are seeking authority to build and operate a particular site. EA licensees, in contrast, will be building multiple sites throughout their licenses entire geographical area and thus require a longer build out period. Moreover, the competitive bidding process provides incentives for EA licensees to build out quickly, and thus reduces the likelihood that a longer construction period would lead to spectrum warehousing.

74. Finally, the Commission rejects the proposed expansion of the 50 percent channel use requirement because it finds that its concerns are too speculative, and its suggested approach too rigid. It would be economically irrational for a licensee to construct multiple channels in areas where there is limited demand while leaving areas

where demand is greatest covered by only a single channel. Moreover, licensees should have the flexibility to determine how best to provide services in response to consumer demand. The Commission does not believe that it should micromanage how the EA licensee chooses to provide service.

2. Extended Implementation Authority

a. Dismissal of Pending Extended Implementation Requests

75. *Background.* In the *800 MHz Report and Order,* the Commission stopped accepting requests for extended implementation authority, accelerated the termination date of pending extended implementation periods, and dismissed pending requests for extended implementation authority. The Commission reasoned that retaining extended implementation authority for up to five years would impede EA licensees construction efforts, and that parties still wanting extended implementation could apply for EA licenses under the Commission's new rules.

76. *Petitions.* A Commenter seeks reconsideration of the Commission's dismissal of pending requests for extended implementation and its decision to reduce previously granted construction periods from five to two years. They argue that eliminating existing extended implementation periods unfairly harms incumbent SMR providers. They also argue that eliminating extended implementation authority is an unlawful deprivation of the property interest which it contends it has in its FCC licenses and the continuation of those licenses, and argues that to deny or revoke such a license without cause violates the licensee's due process rights.

77. The commenter also claims that eliminating extended implementation periods will harm the public and the CMRS industry by excluding small and mid-sized SMR providers from the CMRS marketplace. They argue that small SMR providers may lack the resources to acquire spectrum for their current markets at auction. It asserts that eliminating extended implementation compounds this problem by stranding investment in SMR systems whose construction periods will be cut short.

78. Finally, another commenter argues that the Commission has recognized that public safety agencies need extended implementation because complex government funding mechanisms impede rapid deployment of public safety systems. It argues that extended implementation should be available to public safety systems in the General Category. Still, another commenter argues that extended implementation should be available for all private radio licensees in the General Category, because problems such as budgetary constraints affect the I/LT and Business users as much as Public Safety licensees.

79. *Discussion.* The Commission rejects the claim that eliminating extended implementation interferes with legitimate business expectations. First, these licensees have already been given significant time to complete construction. Second, upon adequate rejustification, licensees will have up to two years to complete build out of their systems. Far from being a ''drastic change'' that will strand investment, as contended, this is an equitable transition to a more efficient method of providing service and using spectrum. Finally, one commenter's reliance on the public interest analysis in the *OVS NPRM,* 61 FR 10496 (March 14, 1996), is also misplaced. While, the *OVS* proceeding did acknowledge a strong public interest in establishing a level of certainty in business plans, the Commission did not suggest that a licensees' business expectations were entitled to absolute protection, nor did the Commission imply that these expectations would always dictate the course of future regulation.

80. The claim of a property interest in its license is also without merit. Both section 301 of the Communications Act and relevant case law establish that licensees have no ownership interest in their FCC licenses. Moreover, the Commission does not agree that ending extended implementation will decrease competition. To the contrary, competitive bidding, which allocates resources to those who value them most, is a more efficient and competitive method than the Commission's prior rules for licensing spectrum on an extended basis. The Commission also disagrees that terminating extended implementation will limit small business participation. To the contrary, the Commission has adopted special provisions, such as bidding credits, in order to assist small businesses at auction.

Finally, the Commission notes that it only curtailed extended implementation for SMR licensees. Thus, non-SMR licensees with existing extended implementation grants are not affected by this proceeding. In addition, non-SMR licensees on 800 MHz channels that are not subject to EA licensing (i.e. Business, I/LT and Public Safety channels may still obtain extended implementation authority under § 90.629).

b. Rejustification of Extended Implementation Authority

82. *Background.* In the *800 MHz Report and Order,* the Commission required incumbent 800 MHz licensees with extended implementation grants to submit showings rejustifying the need for extended time to construct their facilities. The Commission provided that if the Bureau approved a licensee's showing, the licensee would receive a construction period of two years or the remainder of its current extended implementation period, whichever was shorter. Licensees making an insufficient or incomplete showing would have six months to construct the remaining facilities covered under their implementation plans.

83. *Petitions:* Several petitioners seek reconsideration or clarification of the extended implementation rejustification procedures adopted in the *800 MHz Report and Order.* One petitioner argues that wide-area systems that received extended implementation via waiver should not be required to submit rejustification showings because their waivers were predicated on the existence of underlying constructed analog facilities. Another asks that the Commission delineate the evidence that a licensee must provide to rejustify its extended implementation grant. Petitioners also ask that the Commission clarify whether licensees who received license grants in the processing of the 800 MHz SMR backlog in October 1995 are eligible for extended implementation.

84. *Discussion.* In the *800 MHz Report and Order,* the Commission specified that all licensees with extended implementation grants would be required to file rejustification showings, regardless of whether they sought extended implementation under § 90.629 to construct new systems or had obtained waivers to reconfigure existing high-power analog systems into low-power digital systems within the existing analog footprint. One petitioner argues that licensees who are converting their systems should be exempt from the rejustification requirement because they are not seeking to occupy previously unlicensed spectrum. The Commission disagrees. The waivers that were granted to licensees to convert existing analog facilities gave them considerable latitude to redeploy channels throughout the aggregate footprint of their systems, in effect allowing them to obtain new spectrum (i.e., spectrum on additional channels) within their existing footprints. In order to provide EA licensees with reasonable certainty regarding what spectrum is available to

them, the Commission believes it is necessary that these licensees be subject to the same timetable for constructing their systems and returning unconstructed channels as licensees who received extended implementation grants to build entirely new systems. Therefore, the Commission denies the request for reconsideration.

85. Since the filing of the petitions for reconsideration, the Wireless Bureau has solicited and received rejustification showings from 37 licensees, and has acted on the showings in a recent order. The Commission also notes that prior to the filing of these showings, the Bureau issued a Public Notice describing the information to be provided in the rejustifications and clarifying that licensees who obtained license grants in the October 31, 1995 Bureau Public Notice, and who had extended implementation requests associated with such applications, could treat such requests as granted for purposes of the rejustification filing requirement. Therefore, the Commission dismisses two petitioners' reconsideration requests as moot.

D. EA License Initial Eligibility

86. *Background.* In the *800 MHz Report and Order,* the Commission concluded that restrictions on EA licensee eligibility were not warranted, except for foreign ownership restrictions required by section 310(b) of the Communications Act.

87. *Petitions.* A petitioner argues that the Commission's relocation requirements have created a *de facto* eligibility limitation. According to the petitioner, if EA licensees must relocate incumbent licensees onto ''comparable facilities,'' then only entities having sufficient ''comparable spectrum'' to offer to incumbents can become EA licensees, and it contends that this relocation requirement will reduce the number and quality of auction participants and the amount of revenue raised. It therefore argues that the Commission should limit eligibility for wide-area licenses on the upper 200 channels to applicants who do not currently hold any wide-area SMR authorizations. It argues that this eligibility restriction will create more competition for EA authorizations and will increase the number of wide-area CMRS service providers.

88. *Discussion.* The Commission rejects the suggested eligibility limitation because it confuses protecting individual competitors with promoting competition. In many instances, the proposal would preclude entities from bidding to obtain geographic area licenses that encompass spectrum they are already using. Such a restriction would be inefficient and contrary to the goals of this proceeding. By contrast, open eligibility for EA licensees is pro-competitive because it enables the market, not regulation, to determine who values the spectrum the most.

E. Redesignation of Other 800 MHz Spectrum—General Category Channels and Inter-Category Sharing

1. General Category Channels

89. *Background.* In the Commission's *800 MHz Report and Order,* the Commission redesignated the General Category channels exclusively for SMR use. The Commission's licensing records showed that there are three times as many SMR licensees in the General Category as any other type of part 90 licensee. The Commission concluded that SMR providers' demand for additional spectrum significantly exceeds the demand of non-SMR services. Moreover, the Commission anticipated that SMR providers' demand for this spectrum would be increased by geographic area licensing of the upper 200 channels and its mandatory relocation policy.

90. *Petitions.* A number of petitioners challenge the Commission's decision to reclassify the General Category based on its finding that SMR licensees outnumber non-SMR licensees on these channels. Some commenters argue that many of these licensees are speculators who have not constructed and are not using the spectrum. Others contend that the SMR licensing freeze and the elimination of intercategory sharing have artificially increased SMR demand for General Category channels and argue that the Commission has arbitrarily reversed its prior treatment of the General Category without adequate explanation. They note that in the *Competitive Bidding Second Report and Order,* 59 FR 26741 (May 24, 1994), the Commission declined to subject the General Category to competitive bidding, whereas it has now determined that the General Category should be reclassified and subject to auction. It contend that the pattern of licensing on the General Category channels has not changed dramatically since the *Competitive Bidding Second Report and Order* was adopted, and that the Commission therefore has no basis for treating it differently now.

91. Some petitioners also argue that reclassifying the General Category will harm non-SMR operations on General Category channels by stranding existing investment in internal communications systems. They contend that it will have to re-engineer its nationwide network if the General Category is redesignated. Another adds that the Commission's decision will make American industry less competitive internationally by limiting its flexibility and that denying public safety operators access to General Category channels will jeopardize police and ambulance communications systems. It adds that redesignating the General Category channels will harm non-SMR licensees whose needs cannot be met by commercial carriers and that redesignation of the General Category channels will not facilitate relocation from the upper 200 channels, because it will make it more difficult to accommodate the relocation of non-SMR incumbents currently operating on those channels. One petitioner argues that a reallocation of the General Category channels is ill-advised unless the Commission identifies additional spectrum to accommodate private systems.

92. *Discussion.* In the *800 MHz Report and Order,* the Commission concluded based on comments in the proceeding and on its licensing records that the primary demand for General Category channels came from SMR operators. Petitioners' arguments do not persuade the Commission that this conclusion was incorrect. Petitioners concede that SMR licensees far outnumber non-SMR licensees on these channels. Moreover, at the time the Commission froze General Category licensing in 1995, it noted that the number of SMR applications for these channels had risen markedly. Even if some of this increased licensing activity was attributable to speculation, as petitioners contend, the Commission believes that such activity is itself an indication that demand for the spectrum exists. The Commission also anticipates that with the advent of geographic area licensing on the upper 200 channels, there will be substantial demand for General Category channels among legitimate small SMR operators, including incumbents who relocate from the upper 200 channels. Based on these factors, and on the fuller record relating to 800 MHz developed in this proceeding, the Commission believes that it was fully justified in reaching a different conclusion with respect to the General Category from that reached in the earlier *Competitive Bidding Second Report and Order.*

93. The Commission believes, however, that petitioners have raised valid concerns with respect to the interests of non-SMR licensees operating on the General Category channels. As several petitioners note, the Commission's decision in the *800 MHz Report and Order,* to reclassify the

General Category as SMR-only would preclude non-SMRs from seeking additional authorizations on these channels to expand their systems. On reconsideration, the Commission sees no reason why non-SMRs should not continue to be eligible for licensing in the General Category. By allowing non-SMRs to obtain spectrum in this band, the Commission gives non-SMRs more options and greater flexibility for continued growth of their systems.

94. While the Commission concludes that non-SMRs should continue to be eligible for General Category licensing, the Commission emphasizes that this in no way affects its decision to license General Category channels geographically, with competing applications resolved through competitive bidding. The Commission has not altered its conclusion in the *800 MHz Report and Order*, that General Category channels are used primarily for subscriber-based services, and thus are subject to competitive bidding under section 309(j). Moreover, competitive bidding will further the public interest by encouraging efficient spectrum use, promoting competition, recovering portions of the value of the spectrum for the public and promote the rapid deployment of service. The Commission rejects petitioners' view that this approach will harm the interests of non-commercial licensees by requiring them to compete for spectrum with commercial systems. To the contrary, there are several ways in which non-SMRs can benefit from the Commission's geographic licensing rules. For example, non-commercial operators may not only apply individually for geographic area licenses, but may also participate in joint ventures (with other non-commercial operators or with commercial service providers) or obtain spectrum through partitioning and disaggregation to meet their spectrum needs. The Commission also expects that geographic area licensing of SMR and General Category spectrum will free up non-SMR spectrum in the 800 MHz band, providing more options for non-commercial operators where availability of General Category spectrum is limited. Finally, the Commission is continuing with its initiatives to provide sufficient spectrum for non-commercial operations through its *Refarming* proceeding and its participation in the Public Safety Wireless Activity Committee.

2. Inter-Category Sharing

95. *Background.* Prior to the *800 MHz Report and Order*, the Wireless Bureau imposed a freeze on applications for intercategory sharing among 800 MHz Industrial/Land Transportation (I/LT), Business, and Public Safety channels (collectively, ''Pool Channels''). This freeze was intended to stem the increase in intercategory applications for Public Safety channels by I/LT and Business licenses whose own channels were subject to increased demand from SMR applicants. In the *800 MHz Report and Order*, the Commission eliminated intercategory sharing by SMR licensees on all of the Pool Channels. The Commission also concluded that non-SMR licensees would no longer be eligible for intercategory sharing on SMR channels.

96. *Petitions.* Petitioners representing I/LT and Business Radio operators oppose the elimination of intercategory sharing to the extent that it prevents them from obtaining spectrum where channels in their own pools are unavailable. They argue that the intercategory sharing freeze has harmed the wireless industry by prohibiting licensees from expanding in areas lacking I/LT or Business channels and that utilities and pipelines need intercategory sharing to expand their radio systems to meet current communications requirements. They add that commercial demand for 800 MHz spectrum has made it virtually impossible for private system operators to obtain channels in their own pools.

97. In contrast, one commenter defends the current freeze on intercategory sharing with respect to Public Safety channels and opposes any effort to reopen these channels to non-Public Safety applicants. It argues that because of the limited availability of Business and I/LT channels and the Commission's proposals for geographic licensing of the General Category, a lifting of the intercategory freeze would cause more Business and I/LT entities to seek Public Safety channels as a ''safe harbor.'' It argues therefore, that a permanent bar on non-public safety applications in the Public Safety pool is needed to ensure that such channels will be available for current and future public safety use.

98. *Discussion.* The Commission will retain the current prohibitions on intercategory sharing between SMR and non-SMR channels. By prohibiting SMRs from applying for Pool Channels, the Commission preserves the availability of those channels for non-commercial and public safety uses. Similarly, eliminating intercategory sharing for SMR-only channels ensures that they will be available exclusively for licensing to SMR operators. In addition, the Commission believes that the concerns of ITA and others regarding the availability of spectrum for I/LT and Business systems are sufficiently addressed by its decision to restore non-SMR eligibility for General Category channels.

F. Auctionability

99. *Background.* In the *800 MHz Report and Order*, the Commission reiterated its conclusion that competitive bidding is an appropriate licensing mechanism for the 800 MHz SMR service. The Commission concluded that the 800 MHz SMR service satisfies the criteria set forth by Congress for determining when competitive bidding should be used. It noted that competitive bidding will further the public interest requirements of the Communications Act by promoting rapid deployment of services, fostering competition, recovering a portion of the value of the spectrum for the public, and encouraging efficient spectrum use. The Commission further noted that where competitive bidding is used, a diverse group of applicants including incumbent licensees and potential new entrants into this service will be able to participate in the auction process because it has decided not to restrict eligibility for EA licenses. Finally, the Commission adopted special provisions for small businesses seeking EA licenses.

100. *Petitions.* Several petitioners once again request that the Commission use procedures other than competitive bidding to license 800 MHz SMR. In essence, petitioners contend that this band does not fit within the congressional criteria for auctions because (i) Congress did not intend for the 800 MHz SMR band to be auctioned; (ii) the competitive bidding design for the upper 10 MHz channels of the 800 MHz SMR band does not promote the objectives contained in section 309(j) of the Communications Act; and (iii) the Commission has failed to consider alternative licensing mechanisms which avoid mutually exclusive applications.

101. *Discussion.* The Commission reaffirms its conclusion that competitive bidding is an appropriate tool to resolve mutually exclusive license applications for the upper 10 MHz channels of the 800 MHz SMR service. Moreover, the criteria for auctionability set forth in section 309(j) of the Communications Act are met. The Commission has fully considered the issues raised here by petitioners both in the *800 MHz Report and Order* and the *Competitive Bidding Second Report and Order.* The Commission continues to believe that competitive bidding is appropriate for the upper 10 MHz of the 800 MHz SMR spectrum and that employing this

procedure strikes a reasonable balance in protecting the public interest in the use of the spectrum while promoting the objectives specified in the Communications Act.

102. The Commission disagrees with petitioners' contention that Congress did not intend that the upper 10 MHz of the 800 MHz SMR spectrum be auctioned. Those petitioners contend that Congress intended auctions to be used for the licensing of new services and not for currently allocated services, such as the upper 10 MHz of the 800 MHz SMR. The Commission disagrees with this position because section 309(j) of the Communications Act does not distinguish between new services and existing services in terms of whether initial licenses in a given service should be subject to competitive bidding. Furthermore, there is nothing in the legislative history to indicate that Congress intended to limit the applicability of auctions to new services. As the Commission noted in the *Competitive Bidding Second Report and Order,* the principal use of 800 MHz SMR is to provide service to eligible subscribers for compensation. The Commission concludes that the use of competitive bidding in the upper 10 MHz block is fully consistent with section 309(j) of the Communications Act and its legislative history.

103. In the *Competitive Bidding Second Report and Order,* the Commission concluded that its auction designs are calculated to meet the policy objective of introducing new technologies to the public. Several petitioners contend that the competitive bidding procedures for the upper 10 MHz of the 800 MHz SMR do not promote the section 309(j) objectives. One petitioner contends that the Commission's auctioning policies do not ensure that winning bidders will employ advanced technologies to serve the public. However, no commenter raises any new arguments that persuade the Commission to change its conclusion that making the 800 MHz SMR spectrum available for public use through auctioning will lead, most efficiently and effectively, to the deployment of new technologies and services to the public. As the Commission noted in the *Competitive Bidding Eight Report and Order,* it believes that competitive bidding furthers the public interest by promoting rapid development of service, fostering competition, recovering a portion of the value of the spectrum for the public and encouraging efficient spectrum use.

104. The Commission does not agree with the contention of some petitioners that the administrative procedures associated with licensing through auctions are not as efficient as site-specific licensing. The Commission previously addressed the advantages to both the Commission and licensees of geographic area licensing. Petitioners do not raise any new arguments that would persuade the Commission to reconsider the adoption of EA licensing for the 800 MHz SMR service. The Commission again emphasizes that geographic area licensing offers a flexible licensing scheme that eliminates the need for many of the complicated and burdensome licensing procedures that hampered SMR development in the past.

105. In response to requests by petitioners, the Commission considers yet again whether auctioning allows for the dissemination of licenses among a wide variety of entities in the 800 MHz SMR spectrum. Several petitioners, for example, believe that auctioning will lead to the concentration of licenses in the hands of a few operators in each market to the detriment of small businesses. The Commission disagrees with the contention that small businesses will not be able to participate in these auctions. The auction rules for the upper 800 MHz SMR include small business provisions such as bidding credits and other measures that are intended to meet the statutory objective of providing opportunities for small businesses in the upper 10 MHz channels of the 800 MHz SMR service. The results of prior auctions demonstrate that these provisions have ensured small businesses participation in other auctionable services. The Commission further notes that because the 800 MHz SMR service falls within the definition of the Commercial Mobile Radio Services (CMRS), it is subject to the 45 MHz aggregate spectrum cap on CMRS. The spectrum cap has been placed on CMRS licensees in order to promote and preserve competition in the CMRS marketplace by limiting the number of licenses any one entity can acquire.

106. The Commission has further considered various alternative licensing procedures for the 800 MHz SMR band as requested by several petitioners. These petitioners contend that section 309(j)(6)(E) of the Communications Act prohibits the Commission from conducting an auction unless it first attempts alternative licensing mechanisms to avoid mutual exclusivity. In the course of this proceeding, the Commission has evaluated the appropriateness of other licensing mechanisms for the upper 800 MHz SMR, but concluded those methods are not in the public interest. The Commission has found that ''first-come, first-served'' licensing in the 800 MHz service leads to processing delays. For the upper channels of the 800 MHz SMR frequency band, the use of competitive bidding is the most appropriate licensing procedure because the Commission anticipates a considerable number of applications for these licenses and competitive bidding will allow the most expeditious access to the spectrum if any of these applications is mutually exclusive. Therefore, the Commission rejects once again other licensing procedures for the upper 800 MHz SMR spectrum. In doing so, the Commission must emphasize that it has made every effort to include the SMR industry in the decision-making process to make certain that the concerns of the industry and, particularly, incumbents are addressed by the Commission.

G. Bidding Issues

1. Bid Increment

107. *Background.* In the *800 MHz Report and Order* for the upper 10 MHz block, the Commission adopted the same procedures for bid increments as those used in auctions for MTA-based PCS licenses. The Commission also indicated that it would retain the discretion to set and, by announcement before or during the auction, vary the minimum bid increments for individual licenses or groups of licenses over the course of the auction.

108. *Petitions.* One petitioner supports a minimum bid increment but believes that tying the minimum bid to the absolute minimum bid establishes an artificial value for each license rather than allowing the marketplace to determine the value of the licenses. Instead, petitioner supports a five percent minimum bid increment because it will ensure active participation by bidders without requiring a disparate increase from one round to the next.

109. *Discussion.* After considering the record, the Commission modified its rules to delegate authority to the Bureau to set appropriate bid increments. The Commission's experience with other auctions indicates that flexibility is necessary to set appropriate bidding levels to account for the pace of the auction, the needs of the bidders, and the value of the spectrum. While the Commission believes that a bid increment of $0.02 MHz-pop is appropriate here, it will delegate authority to the Bureau to vary the minimum bid increment over the course of the auction as it deems necessary.

The Bureau will announce by Public Notice prior to the auction the general guidelines for bid increments.

2. Upfront Payment

110. *Background.* In the *800 MHz Report and Order,* the Commission determined that the upfront payment for the upper 800 MHz SMR service should be $0.02 per MHz-pop, with a minimum payment of $2500. The Commission indicated that in the initial Public Notice, it would announce population information and upfront payments corresponding to each EA license. Further, the Commission notes that population coverage for each channel block in each EA will be based on a formula that takes into account the presence of incumbent licenses.

111. *Petitions.* Petitioners request the Commission to set a lower upfront payment contending that $0.02 per MHz-pop is too high given the value of these licenses and that the Commission reconsider its decision to use upfront payments that take into account the presence of incumbent licenses because of the uncertainty that results from ongoing channel relocation by incumbents. Petitioner believes that prospective bidders would be better served by being advised that the band in heavily encumbered, by being provided with either a list of those incumbents or information as to how that information may be obtained.

112. *Discussion.* The Commission reaffirms its upfront payment formula of $0.02 MHz-pop and uniform discounting for incumbency. The Commission also reaffirms a minimum upfront payment of $2500 and believes that it is necessary to set an adequate upfront payment to ensure participation by qualified bidders. However, as commenters suggest, the Commission recognizes that for purposes of these particular licenses the standard upfront payment formula may yield higher payment as compared to the values of the license. The Commission will modify its rules to delegate authority to the Bureau to vary the minimum upfront payment when it determines that the standard $0.02 per MHz-pop formula would result in an unreasonably high upfront payment. In determining an appropriate upfront payment, the Bureau may take into account such factors as the population and the approximate amount of usable spectrum in each EA. The Bureau will announce any such modification by Public Notice.

3. Activity Rules

113. *Background.* In the *800 MHz Report and Order,* the Commission adopted the three-stage Milgrom-Wilson activity rule in conjunction with the simultaneous stopping rule. The Commission noted that an activity rule ensures that an auction will close within a reasonable period of time by requiring a bidder to remain active throughout the auction. The Commission further noted that under the Milgrom-Wilson approach, bidders are required to declare their maximum eligibility in terms of MHz-pops, and to make an upfront payment equal to $0.02 per MHz-pop. The Commission also notes that the population calculation in each EA will be discounted to take into consideration the presence of incumbent licensees.

114. *Petitions.* Petitioner requests the Commission to reconsider the decision to adjust the bidding unit of an EA based on the occupation of channel blocks by incumbents unless the incumbent has constructed facilities. It contends that the allowance of a downward adjustment irrespective of whether facilities have been constructed unjustly enriches those entities holding unconstructed authorizations.

115. *Discussion.* The Commission affirms its decision to use a three-stage Milgrom-Wilson activity rule for the upper 10 MHz channels of the 800 MHz SMR service. The Commission also reaffirms the use of a uniform discount on the upfront payment to take into consideration the presence of incumbent licenses. The Commission disagrees with the recommendation that a downward adjustment should be made for constructed facilities only. This proposal would require the Commission to make an unsupported assumption that none of the entities holding unconstructed authorizations ever intend to build out their systems.

H. Treatment of Designated Entities

1. Bidding Credits

116. *Background. In the 800 MHz Report and Order,* the Commission does not adopt bidding credits for designated entities participating in the auctions for the upper 10 MHz channels of the 800 SMR service. Bidding credits initially had been proposed for businesses owned by women and minorities. As a result of the Supreme Court's decision in *Adarand,* in the *800 MHz Report and Order* the Commission concluded there was an insufficient record to support the adoption of special provisions solely benefitting minority-and women-owned business (regardless of size) for the upper 10 MHz block auction.

117. *Petitions.* Petitioners request that the Commission provide bidding credits to small businesses in order to provide these entities with a meaningful opportunity to obtain licenses in the 800 MHz SMR service auction.

118. *Discussion.* In this instance, the Commission grants petitioners' request and will provide bidding credits to small businesses. The Commission notes that in the *800 MHz Report and Order,* it concluded that special provisions for small businesses are appropriate for the 800 MHz SMR service. The Commission also recognizes that smaller businesses have more difficulty accessing capital and thus may need a higher bidding credit. Accordingly, the Commission will adopt tiered bidding credits that are narrowly tailored to the varying abilities of businesses to access capital. Tiering also takes into account that different small businesses will pursue different strategies. In determining eligibility for these bidding credits, the Commission will employ the same tiered definitions of small businesses as used in the *800 MHz Report and Order* to determine eligibility for installment payments in the upper 10 MHz, with an adjustment to reflect the unavailability of installment payment plans for the 800 MHz SMR services. Accordingly, a small business with average gross revenues that do not exceed $15 million will be eligible for a bidding credit of 25 percent. A small business having revenues that do not exceed $3 million will be eligible for a bidding credit of 35 percent. Revenues will be defined as average gross revenues for the last three years including affiliates. These are the same levels of bidding credits used in the WCS auction.

2. Installment Payments

119. *Background.* In the *800 MHz Report and Order,* the Commission adopted rules which provided small businesses participating in this auction with tiered installment payment plans. The Commission noted that it adopts the same tiered installment payment approach as in the 900 MHz SMR auction.

120. *Petitions.* Petitioner requests that the Commission eliminate all installment payment plans for the upper 200 channels on the basis of its belief that in prior auctions, the availability of installment payments has encouraged speculation and warehousing. Another petitioner disagrees, stating that installment payments are the only means by which independent, incumbent SMR operators will be able to participate in the auctions. One petitioner believes that the tiered approach to installment payments is insufficient to ensure meaningful participation by small businesses, and

as an alternative asks for 50 percent bidding credits.

121. *Discussion*. As petitioned, the Commission will not adopt installment payments for the upper 200 channels. While the Commission disagrees with the petitioner's contention that installment payments encourage speculation and warehousing of spectrum, its experience with the installment payment program leads the Commission to conclude that installment payments may not always serve the public interest. The Commission has found, for example, that obligating licensees to pay for their licenses as a condition of receipt requires greater financial accountability from applicants. Currently, in several proceedings the Commission is reviewing a number of issues related to administration of installment payment programs. Nonetheless, given that applications for new 800 MHz SMR licenses have not been accepted since 1994, the Commission's priority is to facilitate the licensing of the upper 200 channels without further delay. Therefore, the Commission believes that the public interest is best served by going forward with the auction for the upper 200 channels without extending installment payments to small businesses while it considers installment payment issues generally.

122. The Commission disagrees with petitioner's contention that installment payments are the only means by which small SMR operators will be able to participate in auctions. The Commission notes that in other auctions in which installment payments were not available, small businesses were the high bidders on a significant number of licenses. Further, section 309(j)(4) requires the Commission to consider alternative methods to allow for dissemination of licenses among a wide variety of applicants, including small businesses. To encourage small business participation, the Commission has raised the bidding credits available to small businesses and very small businesses to 25 percent and 35 percent respectively. The Commission believes that higher bidding credits will both fulfill the mandate of section 309(j)(4)(D) to provide small business with the opportunity to participate in auctions and ensure that new services are offered to the public without delay.

123. In view of the Commission's decision here, all winning bidders will be required to supplement their upfront payments with down payments sufficient to bring their total deposits to 20 percent of their winning bid(s). Consistent with the Commission's determination in the *Second Report and Order*, it will allow bidders up to ten days following the close of the auction to make their down payments.

3. Attribution of Gross Revenues of Investors and Affiliates

124. *Background*. In the *800 MHz Report and Order*, the Commission adopts a definition of small business which included attributing the gross revenues of investors owning 20 percent or more in the applicant. In light of the pending petitions for reconsideration, the Commission, on its own motion, retains jurisdiction to reconsider the attribution rule.

125. *Discussion*. In determining eligibility for small business provisions, the Commission will modify its attribution rule to substitute the ''controlling principal'' concept for the attribution model as it recently did for auctions involving other services. Specifically, the Commission will eliminate the rule attributing the revenues of certain investors. The Commission will only attribute the gross revenues of all controlling principals in the small business applicant as well as the gross revenues of the affiliates of the applicant. The Commission will require that in order for an applicant to qualify as a small business, qualifying small business principals must maintain both *de jure* and *de facto* control of the applicant. Typically, *de jure* control is evidenced by ownership of 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. An entity must demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant: (1) The entity constitutes or appoints more than 50 percent of the board of directors or partnership management committee; (2) the entity has authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; and (3) the entity plays an integral role in all major management decisions. This simplified procedure was adopted for auctions involving other services. The Commission believes this modification of its attribution rule will enhance the opportunity for a wide variety of applicants to obtain licenses. Specifically, the Commission will follow the attribution rules discussed in the Lower 80 and General Category licenses section of the *Second Report and Order* in section 2(a), Small Business Definition.

II. Ordering Clauses

126. *It is ordered* that, pursuant to the authority of sections 4(i), 302, 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(r), and 332(a), the rule changes specified in the related final rule (FCC 97–223) published elsewhere in this issue of the **Federal Register** are adopted.

127. *It is further ordered* that the rule changes set forth in FCC 97–223 will become effective September 29, 1997.

128. *It is further ordered* that the referenced Petitions for Reconsideration are granted to the extent discussed herein, and are otherwise denied.

List of Subjects in 47 CFR Part 90

Radio, Specialized mobile radio services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–19914 Filed 7–30–97; 8:45 am]

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federal register

Thursday
July 31, 1997

Part V

Department of Agriculture

Cooperative State Research, Education, and Extension Service; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Request for Proposals (RFP): Fund for Rural America Program.

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Announcement of availability of grant funds and request for proposals for The Fund for Rural America—Rural Information Infrastructure Program.

SUMMARY: The Federal Agriculture Improvement and Reform Act of 1996 established an account in the Treasury of the United States to provide funds for rural development programs and a competitive grant program to support research, education, and extension activities.

This notice pertains only to the competitive grant program for research, education, and extension telecommunications activities. It identifies eligible participants in the program, the program areas to be supported, and the funding levels for each area; provides instructions for preparing and submitting proposals; and describes the selection process and evaluation criteria to be used to make funding decisions. To obtain program application materials, please contact the Proposal Services Unit, Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245; Telephone: (202) 401–5048. When calling the Proposal Services Unit, please indicate that you are requesting materials for The Fund for Rural America—Rural Information Infrastructure Program. These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov which states that you want a copy of the application materials for the Fiscal Year 1997 Fund for Rural America—Rural Information Infrastructure Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

DATES: Project grant applications must be received on or before September 29, 1997. Proposals received after September 29, 1997, will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: Cathy Bridwell, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2207, 1400 Independence Avenue, SW., Washington, DC 20250–2207; telephone (202) 720–6084.

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Part I. General Information

A. Legislative Authority

The Fund for Rural America (The Fund), authorized under section 793 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) (7 U.S.C. 2204(f)), provides $100 million annually for the next three years. One-third of the fund is available for research, education, and extension grants. These grants will be awarded on a competitive basis and are not targeted to specific priorities. One-third of the fund is available for rural development and must be administered through existing rural development programs. One-third of the fund is available either for research, education, and extension or rural development, or both at the Secretary's discretion. Note that the Emergency Supplemental Appropriations Act, Pub. L. No. 105–18, rescinded $20 million of The Fund in Fiscal Year 1997. As a result of this rescission, research and rural development will each sustain a reduction of $10 million. The $10 million reduction of the research component of The Fund will be applied proportionately across all areas of the component.

On January 29, 1997, the program solicited proposals for two initiatives: The Fund Core Initiative and The Secretary's Initiative. The Fund Core Initiative was funded from the one-third of the fund dedicated to research, education, and extension. The Secretary's Initiative was funded from the one-third of the fund to be used at the Secretary's discretion. While the Fund for Rural America—Rural Information Infrastructure Program also is being funded from the discretionary funds, it is separate from the solicitation of January 29, 1997.

This portion of the discretionary monies will be used for telecommunications research to provide the same economic opportunity for those living in small towns and rural areas as for those living in cities. To help achieve this goal, approximately $2.1 million in competitive grants will be awarded through this separate request for proposals (RFP). If an applicant submitted a proposal to The Fund under the January 29, 1997, RFP which relates to telecommunications research, they also may submit the proposal under this RFP so long as the proposal conforms to the guidelines contained in this RFP.

These funds are to be competitively awarded as grants on the basis of merit, quality, and relevance to advancing the purposes of federally supported agricultural research, extension, and education provided in Section 1402 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101). Section 1402 identifies the following purposes:

''(1) Enhance the competitiveness of the United States agriculture and food industry in an increasingly competitive world environment;

(2) Increase the long-term productivity of the United States agriculture and food industry while maintaining and enhancing the natural resource base on which rural America and the United States agricultural economy depend;

(3) Develop new uses and new products for agricultural commodities, such as alternative fuels, and develop new crops;

(4) Support agricultural research and extension to promote economic opportunity in rural communities and to meet the increasing demand for information and technology transfer throughout the United States agriculture industry;

(5) Improve risk management in the United States agriculture industry;

(6) Improve the safe production and processing of, and adding of value to, United States food and fiber resources using methods that maintain the balance

between yield and environmental soundness;

(7) Support higher education in agriculture to give the next generation of Americans the knowledge, technology, and applications necessary to enhance the competitiveness of United States agriculture; and

(8) Maintain an adequate, nutritious, and safe supply of food to meet human nutritional needs and requirements.''

This program has the capability of addressing each of the purposes through the use of telecommunications; however, the specific purposes to be addressed is dependent on the funded projects.

Section 793(c)(2)(A) of the FAIR Act authorizes the Secretary to use The Fund for competitive research, education, and extension grants to:

''(i) Increase international competitiveness, efficiency, and farm profitability;

(ii) Reduce economic and health risks;

(iii) Conserve and enhance natural resources;

(iv) Develop new crops, new crop uses, and new agricultural applications of biotechnology;

(v) Enhance animal agricultural resources;

(vi) Preserve plant and animal germplasm;

(vii) Increase economic opportunities in farming and rural communities; and

(viii) Expand locally-owned, value-added processing.''

B. General Definitions

For the purpose of awarding grants under this program, the following definitions are applicable:

(1) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department to whom the authority involved may be delegated.

(2) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(3) *Authorized organizational representative* means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

(4) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(5) *College or university* means an educational institution in any State which admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, is legally authorized within such State to provide a program of education beyond secondary education, provides an educational program for which an associate's degree, a bachelor's degree or any other higher degree is awarded, is a public or other nonprofit institution, and is accredited by a nationally recognized accrediting agency or association.

(6) *Communities of interest* means interests which bond individuals together for the purpose of achieving a common goal. Communities of interest may coalesce around common locations, commodity or production interests, environmental concerns, economic development opportunities, or other shared commitments.

(7) *Core initiative* means the programs encompassing the one-third of The Fund designated for research, education, and extension activities.

(8) *Department* or *USDA* means the United States Department of Agriculture.

(9) *End users* means the intended audience or beneficiary of the program or project.

(10) *Grant* means the award by the Secretary of funds to a Federal research agency, a national laboratory, a college or university or a research foundation maintained by a college or university, or a private research organization to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in these guidelines.

(11) *Grantee* means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

(12) *The National Information Infrastructure (NII)* includes, but is not limited to, the physical facilities used to transmit, store, process, and display voice, data, and images, as well as a wide range and ever-expanding range of equipment including cameras, scanners, keyboards, telephones, fax machines, computers, switches, compact disks, video and audio tape, cable, wire, satellites, optical fiber transmission lines, microwave nets, switches, televisions, monitors, and printers.

(13) *Partners* are defined as all those who will collaborate on and have a substantial role and interest in the project.

(14) *Peer review panel* means a group of experts qualified by training and experience in particular fields to give expert advice on the merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

(15) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in (2) above.

(16) *Private research organization* means any non-governmental corporation, partnership, proprietorship, trust, or other organization with an established and demonstrated capacity to perform research or technology transfer which (1) conducts any systematic study directed toward new or fuller knowledge and understanding of the subject studied, or (2) systematically relates or applies the findings of research or scientific experimentation to the application of new approaches to problem solving, technologies, or management practices; and (3) has facilities, qualified personnel, independent funding, and prior projects and accomplishments in research or technology transfer.

(17) *Project* means the particular activity within the scope of the program supported by a grant award.

(18) *Project director* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

(19) *Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(20) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

(21) *Secretary's initiative* means the programs encompassing the one-third of The Fund for rural development and/or research, education, and extension activities according to the Secretary's discretion.

(22) *Smaller institution* means a college or university or a research foundation maintained by a college or university that ranks in the lower one-third of such institutions on the basis of Federal research funds received (excepting monies received under the Fund).

(23) *Stakeholder* means those who have a substantial interest in the project, but are not the intended audience of the program or project.

(24) *The Fund* means the Fund for Rural America.

C. Eligibility

Proposals may be submitted by Federal research agencies, national laboratories, colleges or universities or research foundations maintained by a college or university, or private research organizations. National laboratories include Federal laboratories that are government-owned contractor-operated or government-owned government-operated. If the applicant is a private organization, documentation must be submitted establishing that the private organization has an established and demonstrated capacity to perform research or technology transfer. A programmatic decision on the eligibility status of the private organization will be made based on the information submitted.

D. Available Funds and Award Limitations

Under this program, subject to the availability of funds, the Secretary may award competitive grants, for periods not to exceed five years, for the support of research, education, and extension projects to further the programs of the USDA. The first allocation to The Fund from the U.S. Treasury is $100,000,000 on January 1, 1997. No less than one-third of the amount must be used for rural development and competitively awarded research, education, and extension grants according to the Secretary's discretion. Funds for the competitive grants program are available to the Department for award during a two-year period. Note that the Emergency Supplemental Appropriations Act, Pub. L. No. 105–18, rescinded $20 million of The Fund in Fiscal Year 1997. As a result of this rescission, research and rural development will each sustain a reduction of $10 million. The $10 million reduction of the research component of The Fund will be applied proportionately across all areas of the component. The Department expects to award approximately $2.1 million as grants to meritorious eligible applicants under this request for proposals (RFP).

Not less than 15 percent of the total funds awarded by CSREES under The Fund for research, education, and extension activities will be used for grants to colleges, universities, or research foundations maintained by a college or university that rank in the lowest one-third of such entities based on Federal research funds received (excepting monies received under The Fund).

Funds awarded under this RFP may not be used for the construction of a new building or the acquisition, expansion, remodeling, or alteration of an existing building.

Part II. Program Description

A. Purpose of the Program

The ability of rural Americans to access and use rural and agriculturally based information is critical to ensuring equal opportunity for economic growth. The purpose of the program is to examine ways to improve delivery of rural economic, community development and agricultural knowledge to rural communities in order to provide the same economic opportunity for those living in small towns and rural areas as for those living in cities.

B. Scope of the Program

Proposals must address which purposes described in Section 1402 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101) will be incorporated in the application of the proposed telecommunications. In Fiscal Year 1997, the Fund for Rural America—Rural Information Infrastructure Program will support projects in three program categories: (1) Rural Telecommunications Technologies and Systems; (2) Information Infrastructure; and (3) Human Capacity Building. Applicants must clearly state to which category they are applying; each proposal will be rated against other proposals in that category; and applicants may not submit identical proposals to more than one category.

1. Rural Telecommunications Technologies and Systems

Applicants may submit a proposal in the Rural Telecommunications Technologies and Systems category to examine the special needs, limitations, applicability, and use of existing and cutting-edge telecommunications technologies and systems in rural America. Proposals in this category must clearly target the telecommunications infrastructure needs of rural citizens not currently connected to the National Information Infrastructure (NII) and must substantiate the choice of technology in relation to the needs of the rural citizens targeted by the project. Examples might include, but are not limited to, application of technology to solve the education needs of a particular community, or implementation of technology systems to link citizens to information, two-way interactive communications and/or formal or non-formal educational opportunities.

2. Information Infrastructure

Applicants may submit a proposal in the Information Infrastructure category to examine ways to build the information infrastructure to further the education of rural Americans and to improve access to research and extension tools/sources. Proposals in this category must clearly target the development of the informative and educational content of the NII specifically relating to rural and agricultural research, education and extension. Proposals must seek to enhance the applicability and usefulness of this content to rural citizens. Examples include, but are not limited to, development of interactive non-formal and formal distance education opportunities and the digitization and organization of subject matter information for rural citizens.

3. Human Capacity Building

Applicants may submit a proposal to the Human Capacity category to examine the interaction among people, technology, and knowledge. Proposals in this category must clearly target the human interface to technology, as well as to information and formal and non-formal education made available through telecommunications. Examples include, but are not limited to, development of new and more user friendly applications of the information and the technology and programs designed to remove barriers to adoption and use of technology by citizens of rural America.

The Fund for Rural America—Rural Information Infrastructure Program will not fund the following types of projects:

Hardware or Software Development Projects. While some hardware or software development may be required to implement a project, it may not be a major emphasis of any project.

Internal Projects. While some internal training and infrastructure may be required to implement a project, this program will not support projects whose primary emphasis is on the internal education, technology, or information needs of an organization.

Replacement or Upgrade of Existing Facilities. This program will not support any projects whose primary emphasis is the upgrade or replacement of existing facilities.

Planning Projects. While planning is an appropriate and encouraged activity as a component of a project, this program will not support projects whose sole emphasis is on planning.

C. Proposal Narrative

The narrative should contain the following sections set in the context of

the category under which funding is requested:

1. Introduction

Include a clear statement of the goal(s) and objective(s) of the project. The problem should be set within the context of work that has been previously done in the category applied for, as well as in the context of the present-day situation. Summarize the body of knowledge which substantiates the need for the proposed project. Preliminary information pertinent to the proposed work should also be cited.

2. Rationale and Significance

Substantiate the need for the proposed project. Describe the impact of the project on the end user. Describe the project's specific relationship to the purposes of The Fund and to the identified need to be addressed.

3. Objectives and Approach

Cite and discuss the specific objective(s) to be accomplished under the project. A detailed description of the approach must include:

- Techniques and/or procedures used to carry out the proposed activities and for accomplishing the objectives
- The results expected
- Limitations
- Time table

4. Evaluation

Provide a plan for assessing and evaluating the accomplishments of the stated objectives during the conduct of the project and describe ways to determine the effectiveness of the end results upon conclusion of the project.

5. Relationship to Partners, Communities of Interest, Stakeholders, and End Users

Describe how the project will involve partners and communities of interest. Describe how and by whom the focus and scope of the project were determined, how partners will be involved during the course of the project, and how end users will be impacted by results. Evidence must be provided via letters by the parties involved that arrangements necessary for collaborative partnerships have been discussed with the parties involved and can realistically be expected to come to fruition, or have actually been finalized contingent on an award under this program. A letter from a university must be signed by the dean or research director, a representative of the university's central administration, or a higher university official. A letter from a business or industry must be signed by an official who has the authority to commit the resources of the organization. Such letters should be placed immediately following the Project Narrative in the proposal.

6. Outreach and Dissemination Plan

Clearly describe how results and information will be disseminated or transferred to end users, partners, communities of interest, and stakeholders.

7. Coordination and Management Plan

Describe how the project will be coordinated among the various participants and clearly describe the nature of the collaborations. Describe plans for management of the project to ensure its proper and efficient administration.

Part III. Preparation of a Proposal

A. Program Application Materials

Program application materials will be made available to eligible entities upon request. These materials include information about the purpose of the program, how the program will be conducted, and the required contents of a proposal, as well as the forms needed to prepare and submit grant applications under the program.

To obtain application materials, please contact the Proposal Services Unit, Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245; Telephone (202) 401–5048. When calling the Proposal Services Unit, please indicate that you are requesting forms for The Fund for Rural America—Rural Information Infrastructure Program. These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov and state that you want a copy of the application materials for the Fiscal Year 1997 Fund for Rural America—Telecommunications Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

B. Content of a Proposal

A proposal should contain the following:

1. Cover Page

Complete the ''Application for Funding'', Form CSREES–661, in its entirety.

a. Note that providing a Social Security Number is voluntary, but the number is an integral part of the CSREES information system and will assist in the processing of the proposal.

b. One copy of the ''Application for Funding'' form must contain the pen-and-ink signatures of the project director(s) and authorized organizational representative for the applicant organization.

c. Note that by signing the ''Application for Funding'' form the applicant is providing the required certifications set forth in 7 CFR part 3017, as amended by 61 **Federal Register** 250, January 4, 1996, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR part 3018, regarding Lobbying. The certification forms are included in the application package for informational purposes only. It is not necessary to submit the forms to USDA.

2. Table of Contents

For ease in locating information, each proposal must contain a detailed Table of Contents immediately after Form CSREES–661, ''Application for Funding.'' The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

3. Project Summary

The proposal must contain a project summary of 250 words or less on a separate page. This page must include the title of the project and the names of the primary project director(s) and the applicant organization, followed by the summary. The summary should be self-contained, and should describe the overall goals and relevance of the project. The summary should also contain a listing of all organizations involved in the project. The Project Summary should immediately follow the Table of Contents.

4. Application Category

Each proposal must state the category under which funds are requested (1) Rural Telecommunications Technologies and Systems (2) Information Infrastructure; or (3) Building Human Capacity.

5. Project Narrative

All proposals are to be submitted on standard 8.5'' x 11'' paper with typing on one side of the page only. In addition, margins must be at least one inch, type must be 12 characters per inch (12 pitch or 10 point) or larger, no more than 6 lines per inch, and there should be no page reductions. If applicable, proposals should include original illustrations (photographs, color prints, etc.) in all copies of the proposal

to prevent loss of meaning through poor quality reproduction. Such illustrations are not included in the page limitation for project narratives.

The narrative portion of the proposal is limited to 20 pages of text and should contain the required information described under section (c) of Part II. Program Description.

6. Key Personnel

Identify the primary project director and the co-project director(s) and other key personnel required for this project. Include vitae that provide adequate information so that proposal reviewers can make an informed judgment as to their capabilities and experience.

7. Conflict of Interest List

A Conflict of Interest List must be provided for individuals identified as key personnel. Each list should be on a separate page and include alphabetically the full names of the individuals in the following categories: (1) All collaborators on projects within the past five years, including current and planned collaborations; (2) all co-authors on publications within the past five years, including pending publications and submissions; (3) all persons in your field with whom you have had a consulting or financial arrangement within the past five years who would stand to gain by seeing the project funded; and (4) all thesis or postdoctoral advisees/advisors within the past five years.

8. Budget

A. Budget Form: Prepare the budget, Form CSREES–55, in accordance with instructions provided with the form. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project.

The following guidelines should be used in developing your proposal budget(s):

1. *Salaries and Wages.* Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of CSREES Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment.

2. *Fringe Benefits.* Funds may be requested for fringe benefit costs if the usual accounting practices of your organization provide that organizational contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project.

3. *Nonexpendable Equipment.* Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost and justified.

In addition, pursuant to Section 716(b) of Pub. L. No. 104–180 (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997), in the case of any equipment or product that may be authorized to be purchased with funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

4. *Materials and Supplies.* The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs.

5. *Travel.* The type and extent of travel and its relationship to project objectives should be described briefly and justified. If foreign travel is proposed, the country to be visited, the specific purpose of the travel, a brief itinerary, inclusive dates of travel, and estimated cost must be provided for each trip. Airfare allowances normally will not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR part 3015.205(b)(4) for further guidance.

6. *Publication Costs/Page Charges.* Anticipated costs of preparing and publishing results of the research being proposed (including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) may be estimated and charged against the grant.

7. *Computer (ADPE) Costs.* Reimbursement for the costs of using specialized facilities (such as a university- or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

8. *All Other Direct Costs.* Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified on a separate sheet of paper attached to Form CSREES–55. This also applies to revised budgets, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, and charges for consulting services. You are encouraged to consult the ''Instructions for Completing Form CSREES–55, Budget,'' of the Application Kit for detailed guidance relating to this budget category.

9. *Indirect Costs.* If requested, the current rate negotiated with the cognizant Federal negotiating agency should be used. Indirect costs may not exceed the negotiated rate. If no rate has been negotiated, a reasonable dollar amount in lieu of indirect costs may be requested, which will be subject to approval by CSREES. In the latter case, if a proposal is recommended for funding, an indirect cost rate proposal must be submitted to support the amount of indirect costs requested. CSREES will request an indirect cost rate proposal and provide instructions, as necessary.

In that grants supported by The Fund may include numerous activities other than traditional instruction or research, the institution may choose to request indirect costs rates that are lower than the institution approved negotiated research or instructional rate.

Applications from colleges and universities that are not submitted through an Office of Sponsored Programs (or equivalent thereto) must provide a statement in the budget narrative verifying that the indirect costs requested are in accordance with institutional policies.

B. *Budget Narrative:* All salaries and wages, nonexpendable equipment, foreign travel, subcontracts, and all other direct costs for which support is requested must be individually listed (with costs) and justified on a separate sheet of paper and placed immediately following the budget.

9. Current and Pending Support

All proposals must contain Form CSREES–663 listing other current public or private support (including in-house support) to which key personnel

identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to the possible sponsors will not prejudice proposal review or evaluation by the Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. NOTE: This proposal should be identified in the pending section of Form CSREES–663.

10. Compliance with the National Environmental Policy Act (NEPA)

As outlined in 7 CFR part 3407 (CSREES regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, ''NEPA Exclusions Form,'' must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form CSREES–1234 and supporting documentation should be included as the last page of the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

Part IV. Submission of a Proposal

A. What to Submit

An original and 15 copies must be submitted. Each copy of each proposal must be stapled in the upper left-hand corner. (DO NOT BIND.) All copies of the proposal must be submitted in one package.

B. Where and When to Submit

Applications must be received by September 29, 1997. Proposals sent by First Class mail must be sent to the following address: Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, STOP 2245, 1400 Independence Avenue, S.W., Washington, DC 20250–2245, Telephone: (202) 401–5048

Note: Hand-delivered proposals or those delivered by overnight express service should be brought to the following address: Proposal Services Unit, Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington DC 20024. The telephone number is (202) 401–5048.

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing and this acknowledgment will contain an identifying proposal number. Once your proposal has been assigned an identification number, that number should be cited in future correspondence.

Part V. Selection Process and Evaluation Criteria

A. Selection Process

Each proposal will be evaluated in a two-part process. First, each proposal will be screened to ensure it meets the requirements as set forth in this RFP. Proposals that meet these requirements will be technically evaluated. Each proposal will be judged on its own merits.

B. Technical Evaluation Criteria

The review of applications submitted for funding consideration will consist of a technical evaluation conducted by CSREES using the competitive peer review process. Applications will receive a technical evaluation using the following criteria:

1. Merit

Scientific, technical, or educational merit: Well defined problem; clearly defined objectives; appropriateness of approach, (including selection of proper approach to address systems, multifaceted, or multidisciplinary problems); demonstrated integration of components (such as research, education and extension components); degree of feasibility; soundness and effectiveness of management plan.

2. Quality

Creativity and innovativeness in addressing problem and issues; selection of most appropriate and qualified individuals to address problem; competence and experience of personnel; effective utilization of knowledge base in addressing problem; potential to contribute solutions to stated problem; identified potential for technology transfer and information dissemination.

3. Relevance

Proposal advances purposes of The Fund for Rural America; potential to contribute solutions to priority problems in agriculture; identification and involvement of stakeholders; involvement of communities of interest and stakeholders in the identification of problems set forth in proposal; partnership with those affected by the outcome.

C. Programmatic Relevance Review

The National Agricultural Research, Education and Economics Advisory Board will review collective groups of recommended proposals (based on technical evaluation) to ensure the relevance of the work proposed for funding toward achieving the programmatic goals of The Fund.

Part VI. Supplementary Information

A. Access to Peer Review Information

After final decisions have been announced, CSREES will, upon request, inform the project director of the reasons for its decision on a proposal. Copies of summary reviews, not including the identity of the reviewers, will be made available to respective project directors upon specific request.

B. Grant Awards

1. General

Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this request for proposals. The date specified by the Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project

is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practicable so that project goals may be attained within the funded project period. All funds granted by CSREES under this request for proposals shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, these application guidelines, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015, 3016, and 3019 of 7 CFR).

2. Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis prior to the award of a grant identified under these application guidelines if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the sponsoring agency as part of the preaward process.

3. Grant Award Document and Notice of Grant Award

The grant award document shall include at a minimum the following:

a. Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this request for proposals;

b. Title of Project;

c. Name(s) and address(es) of project director(s) chosen to direct and control approved activities;

d. Identifying grant number assigned by the Department;

e. Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

f. Total amount of Departmental financial assistance approved by the Administrator during the project period;

g. Legal authority(ies) under which the grant is awarded;

h. Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

i. Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

C. Use of Funds; Changes

1. Delegation of Fiscal Responsibility

The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

2. Changes in Project Plans

a. The permissible changes by the grantee, project director(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the project director(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination.

b. Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes. In no event shall requests be approved for changes which are outside the scope of the original approved project.

c. Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes.

d. Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers.

e. Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of a grant.

f. Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb an increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded; or

(3) Involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

D. Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include but are not limited to:

7 CFR part 1.1—USDA implementation of the Freedom of Information Act.

7 CFR part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR part 3017, as amended by 61 FR 250, January 4, 1996—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR part 3019—USDA implementation of OMB Circular No. A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3051—USDA implementation of OMB Circular No. A–133 regarding audits of institutions of

higher education and other nonprofit institutions.

7 CFR part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

48 CFR part 31—Contract Cost Principles and Procedures of the Federal Acquisition Regulation.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in federally assisted programs (implementing regulations are contained in 37 CFR part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

Done at Washington, D.C., on this 25th day of July 1997.

Colien Hefferan,

Associate Administrator, Cooperative State Research, Education, and Extension Service.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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