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

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1703

RIN 0572–AB31

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations for its Distance Learning and Telemedicine (DLT) Loan and Grant Program. These amendments will clarify the requirements for the different types of financial assistance offered; streamline policies and procedures for obtaining loans and expanding the purposes for which loan funds can be used; and award grants on a competitive basis.

DATES: This rule will become effective on May 10, 1999, unless we receive written adverse comments or notice of intent to submit adverse comments on or before April 26, 1999. Written comments must be received by RUS not later than April 26, 1999. If we receive such comment or notice, we will publish a document in the **Federal Register** prior to the effective date withdrawing the direct final rule.

ADDRESSES: Submit any written comments or notice of intent to submit adverse comments to Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1590, Room 4056, South Building, Washington, DC 20250–1590. RUS requires a signed original and three copies of all comments (7 CFR part 1700). All comments received will be made available for public inspection at room 4056, South Building, U.S. Department of Agriculture, Washington, DC, between 8:00 a.m. and 4:00 p.m. (7 CFR part 1.27(b)). Telephone number (202) 720–9554.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1590, Room 4056, South Building, Washington, DC 20250–1590. Telephone number (202) 720–9556.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and administrative appeal procedures, if any, are required to be exhausted prior to initiating litigation against the Department (7 U.S.C. 6912(e)).

Regulatory Flexibility Act Certification

RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*). The RUS DLT Loan and Grant Program provides recipients with grants and with loans at interest rates and terms that are more favorable than those generally available from the private sector. Recipients, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572–0096.

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden to F. Lamont Heppe, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4034—South Building, Washington D.C. 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under number 10.855, Distance Learning and Telemedicine Loan and Grant Program. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This program is subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

RUS is amending its regulations for the Distance Learning and Telemedicine Loan and Grant Program (DLT program). These amendments will (1) clarify the requirements for the different types of financial assistance offered; (2) streamline policies and procedures for obtaining loans and expanding purposes for which loans can be used; (3) award grants on a competitive basis; and (4) provide applicants with additional

offices to submit applications. Currently, the regulations covering the administration of the DLT program are contained in one subpart. This amendment will revise subpart D to address all criteria related to the overall program and add three subparts that address specifically the different types of financing options offered by the DLT program. Subpart E addresses applications for grants. Subpart F addresses applications for a combination loan and grant. Subpart G addresses applications for loans.

The current regulations implemented the provisions of the Federal Agriculture Improvement Act of 1996 (1996 Act, 7 U.S.C. 950aaa *et seq.*) which added a loan program component to the grant program. During its first two years, the loan program has struggled to effectively utilize its available loan funds, in part because applicants seeking financial assistance were either unable to enter into loan agreements or could not pay back a loan. The amendments to the regulations will seek to retarget available loan funds to entities that are capable of supporting debt service payments for the purpose of providing distance learning and telemedicine services in rural areas.

This rule establishes three application processes to finance necessary equipment and telecommunications facilities that will enable schools and libraries and rural medical clinics to offer the best services possible: (1) grants, contained in subpart E; (2) combination loan and grant, contained in subpart F; and (3) loans, contained in subpart G. The three application processes by which applicants can request consideration for financial assistance will enable the government to more effectively and efficiently utilize the limited financial assistance available. By segregating the three different application processes, RUS will be able to target entities that qualify for the different types of financial assistance. The rule seeks to assure repayment to the government of any loan.

Grants will be awarded to the neediest applicants on a competitive basis subject to the availability of funds. Instead of ''categorizing'' applicants based on the percentage of students eligible to participate in the National School Lunch Program (NSLP), RUS will instead use the NSLP eligibility levels as an indicator of poverty and award points based on the percentage of the students eligible to participate located in the proposed end user sites of the project (higher eligibility percentages will receive more points). In addition, applicants will be able to submit for consideration additional indicators which address the economic disparity of the community the project will serve. All eligible applications for grants will be scored and ranked in accordance with the provisions of subpart E. Grants will be awarded on a competitive basis to applications receiving the highest number of points.

Loans and combination loans and grants will be made to applicants able to enter into a loan agreement, execute a note for more than one year, demonstrate loan feasibility, and otherwise qualify under subparts F and G. RUS will determine the specific amounts to be made available for a combination loan and grant, generally at a ratio of 10 to 1, loans to grants, respectively (e.g., $100,000 of grant funds for every $1,000,000 of loan funds). Loans and combination loan and grant applications will generally be processed on a first-in, first-out basis, based on the amount of funding available for the fiscal year and the number of applications received. RUS believes that sufficient funding is generally available to fund all eligible combination loan and grant and loan applications received during the fiscal year, and therefore will process and approve each application as it is received. However, if RUS determines that the amount of combination loan and grant and loan funds available for funding is insufficient to process all eligible applications, RUS may prioritize such applications using evaluation criteria similar to that set forth for processing grants. The purposes for which loans can be used will be expanded to allow for the financing of purposes and facilities that are restricted under approved grant purposes in this rule and under any financing purpose in the current rule. For example, in some instances, loans may be used to cover initial operating start-up costs or for the construction of buildings and purchase of land necessary for the delivery of educational and health care services to rural areas. Loans afford applicants the most flexibility in terms of the types of approved purposes for financial assistance and provide the highest amount of financial assistance available per applicant.

In addition to establishing three distinct financial assistance application processes, this rule will amend several of the scoring criteria used to rank grant applications.

List of Subjects in 7 CFR Part 1703

Community development, Grant programs-education, Grant programs-health care, Grant programs-housing and community development, Loan programs-education, Loan programs-health care, Loan programs-housing and community development, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, 7 CFR Chapter XVII is amended as follows:

PART 1703—RURAL DEVELOPMENT

1. The authority citation for part 1703 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*

2. In part 1703, subpart E is redesignated as subpart H, subpart D is revised, and new subparts E, F, and G are added to read as follows:

Subpart D—Distance Learning and Telemedicine Loan and Grant Program—General

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1703.100 Purpose.
1703.101 Policy.
1703.102 Definitions.
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Subpart E—Distance Learning and Telemedicine Grant Program

1703.120 Use of grants.
1703.121 Approved purposes for grants.
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1703.124 Maximum and minimum grant amounts.
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Subpart F—Distance Learning and Telemedicine Combination Loan and Grant Program

1703.130 Use of combination loan and grant.
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Subpart G—Distance Learning and Telemedicine Loan Program

1703.140 Use of loan funds.
1703.141 Approved purposes for loans.
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1703.144 Completed application.
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Subpart D—Distance Learning and Telemedicine Loan and Grant Program—General

§ 1703.100 Purpose.

The purpose of the Distance Learning and Telemedicine (DLT) Loan and Grant Program is to encourage and improve telemedicine services and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies by students, teachers, medical professionals, and rural residents. This subpart describes the general policies for administering the DLT program. Subpart E contains the policies and procedures related to grants; subpart F contains the policies and procedures related to a combination loan and grant; and subpart G contains the policies and procedures related to loans.

§ 1703.101 Policy.

(a) The transmission of information is vital to the economic development, education, and health of rural Americans. To further this objective, RUS will provide financial assistance to distance learning and telemedicine projects that will improve the access of people residing in rural areas to educational, learning, training, and health care services.

(b) In providing financial assistance, RUS will give priority to rural areas that it believes have the greatest need for distance learning and telemedicine services. RUS believes that generally the need is greatest in areas that are economically challenged, costly to serve, and experiencing outward migration. This program is consistent with the provisions of the Telecommunications Act of 1996 that designate telecommunications service discounts for schools, libraries, and rural health care centers. RUS will take into consideration the community's involvement in the proposed project and the applicant's ability to leverage grant funds.

(c) In administering this subpart, RUS will not favor or mandate the use of one particular technology over another.

(d) Rural institutions are encouraged to cooperate with each other, with applicants, and with end-users to promote the program being implemented under this subpart.

(e) RUS staff will make diligent efforts to inform potential applicants in rural areas of the programs being implemented under this subpart.

(f) The Administrator will provide only loans under this subpart to any entity that has received a telecommunications or electric loan under the Rural Electrification Act of 1936. Telecommunications and Electric borrowers are encouraged to seek a loan under this subpart to bolster educational and health care opportunities in the rural communities they serve. A borrower receiving a loan shall:

(1) Make the loan available to entities that qualify as distance learning or telemedicine projects satisfying the requirements of this subpart, under any terms it so chooses as long as the terms are no more stringent than the terms under which it received the financial assistance.

(2) Use the loan to acquire, install, improve, or extend a distance learning or telemedicine system referred to in this subpart.

(g) The Administrator will allocate funds that are appropriated each fiscal year for the subparts E, F, and G, of this part respectively. Not more than 30 days before the end of the fiscal year, the Administrator may transfer any funds not committed to grants in the combination loan and grant program to the grant program.

(h) Financial assistance may be provided for end user sites. Financial assistance may also be provided for hubs located in rural or non-rural areas if they are necessary to provide distance learning or telemedicine services to rural residents at end user sites.

(i) The Administrator will publish, at the end of each fiscal year, a notice in the **Federal Register** of all applications receiving financial assistance under this subpart. Subject to the provisions of the Freedom of Information Act, (5 U.S.C. 552), applications will be available for public inspection at the U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C., 20250.

§ 1703.102 Definitions.

1996 Act means the Federal Agriculture Improvement Act of 1996.

Act means the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*).

Administrator means the Administrator of the Rural Utilities Service, or designee or successor.

Applicant means an eligible organization that applies for financial assistance under this subpart.

Approved purposes means project purposes for which grant, loan, or combination loan and grant financial assistance may be expended.

Champion community means any community that submitted a valid application to become a USDA Empowerment Zone/Enterprise Community (EZ/EC) area, that met the requirements to be designated an EZ/EC area, but not chosen because their score was not high enough to be selected.

Combination loan and grant means a grant in combination with a loan made under the DLT program.

Completed application means an application that includes all those items specified in §§ 1703.125, 1703.134, and 1703.144 in form and substance satisfactory to the Administrator.

Computer networks mean computer hardware and software, terminals, signal conversion equipment including both modulators and demodulators, or related devices, used to communicate with other computers to process and exchange data through a telecommunication network in which signals are generated, modified, or prepared for transmission, or received, via telecommunications terminal equipment and telecommunications transmission facilities.

Consortium means a combination or group of eligible entities formed to undertake the purposes for which the distance learning and telemedicine financial assistance is provided. Each consortium shall be composed of a minimum of one eligible organization that meets the requirements of § 1703.103.

Construct means to acquire, construct, extend, improve, or install a facility or system.

Data terminal equipment means equipment that converts user information into data signals for transmission, or reconverts the received data signals into user information, and is normally found on the terminal of a circuit and on the premises of the end user.

Distance learning means a telecommunications link to an end user through the use of eligible equipment to:

(1) Provide educational programs, instruction, or information originating

in one area, whether rural or not, to students and teachers who are located in rural areas; or

(2) Connect teachers and students, located in one rural area with teachers and students that are located in a different rural area.

DLT borrower means an entity that has an outstanding loan under the provisions of the DLT program.

DLT program means the Distance Learning and Telemedicine Loan and Grant Program administered by RUS.

Economic useful life as applied to equipment and facilities financed under the DLT program means the number of years resulting from dividing 100 percent by the depreciation rate (expressed as a percent) based on Internal Revenue Service depreciation rules or recognized telecommunications industry guidelines.

Eligible equipment means computer hardware and software, audio or video equipment, computer network components, telecommunications terminal equipment, data terminal equipment, inside wiring, interactive video equipment, or other facilities that would further telemedicine services or distance learning services.

Eligible facilities means land, buildings, or building construction needed to carry out an eligible distance learning or telemedicine project for loan financial assistance only.

Eligible organization means an entity that meets the requirements of § 1703.103.

Empowerment Zone and Enterprise Community (EZ/EC) means any community whose designation as such by USDA pursuant to 26 U.S.C. 1391 *et seq.*, is in effect at the time RUS agrees to provide financial assistance.

End user is one or more of the following:

(1) Rural elementary, secondary schools, and other educational institutions, such as institutions of higher education, vocational and adult training and education centers, libraries, and teacher training centers, and students, teachers and instructors using such rural educational facilities, that participate in a rural distance learning telecommunications program through a project funded under this subpart;

(2) Rural hospitals, primary care centers or facilities, such as medical centers, nursing homes, and clinics, and physicians and staff using such rural medical facilities, that participate in a rural telemedicine program through a project funded under this subpart; and

(3) Other rural community facilities, institutions, or entities that receive distance learning or telemedicine services.

End user site means a facility that is part of a network or telecommunications system that is utilized by end users.

Financial assistance means a grant, combination loan and grant, or loan.

GFR means RUS telecommunications program General Field Representative.

Grant documents means the grant agreement, including any amendments and supplements thereto, between RUS and the grantee.

Grantee means a recipient of a grant from RUS to carry out the purposes of the DLT program.

Guarantee means a guarantee for a loan provided by a RUS borrower or other qualified third party.

Hub means a facility that is part of a network or telecommunications system that provides educational or medical services to end user sites.

Instructional programming means educational material, including computer software, which would be used for educational purposes in connection with eligible equipment but does not include salaries, benefits, and overhead of medical or educational personnel.

Interactive equipment means equipment used to produce and prepare for transmission audio and visual signals from at least two distant locations so that individuals at such locations can orally and visually communicate with each other. Such equipment includes monitors, other display devices, cameras or other recording devices, audio pickup devices, and other related equipment.

Loan means a loan made under the DLT program bearing interest at a rate equal to the then current cost-of-money to the government.

Loan documents mean the loan agreement, note, and security instrument, including any amendments and supplements thereto, between RUS and the DLT borrower.

Local exchange carrier means a commercial, cooperative or mutual-type association, or public body that is engaged in the provision of telephone exchange service or exchange access.

Matching contribution means the applicant's contribution for approved purposes.

National school lunch program (NSLP) means the federally assisted meal program established under the National School Lunch Act of 1946 (42 U.S.C. 1751).

Project means approved purposes for which financial assistance has been provided.

Project service area means the area in which at least 90 percent of the persons to be served by the project are likely to reside.

Recipient means a grantee, borrower, or both of a DLT program grant, loan or combination loan and grant.

Rural community facilities mean facilities such as schools, libraries, learning centers, training facilities, hospitals, medical centers, and similar facilities, primarily used by residents of rural areas, that will use a telecommunications, computer network, or related advanced technology system to provide educational or health care benefits primarily to residents of rural areas.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture, successor to the Rural Electrification Administration.

Secretary means the Secretary of Agriculture.

Technical assistance means:

(1) Assistance in learning to manage, operate, or use equipment or systems; and

(2) Studies, analyses, designs, reports, manuals, guides, literature, or other forms of creating, acquiring, or disseminating information.

Telecommunications carrier means any provider of telecommunications services.

Telecommunications or electric borrower means an entity that has outstanding RUS or Rural Telephone Bank electric or telecommunications loans or loan guarantees under the provisions of the Act.

Telecommunications systems plan means the plan submitted by an applicant in accordance with § 1703.125 for grants, § 1703.134 for a combination loan and grant, or § 1703.144 for loans.

Telecommunications terminal equipment means the assembly of telecommunications equipment at the end of a circuit or path of a signal, including but not limited to facilities that receive or transmit over the air broadcast, satellite, and microwave, normally located on the premises of the end user, that interfaces with telecommunications transmission facilities, and that is used to modify, convert, encode, or otherwise prepare signals to be transmitted via such telecommunications facilities, or that is used to modify, reconvert, or carry signals received from such facilities, the purpose of which is to accomplish the goal for which the circuit or signal was established.

Telecommunications transmission facilities means facilities that transmit, receive, or carry voice, video, or data between the telecommunications terminal equipment at each end of the telecommunications circuit or path. Such facilities include microwave antennae, relay stations and towers,

other telecommunications antennae, fiber-optic cables and repeaters, coaxial cables, communication satellite ground station complexes, copper cable electronic equipment associated with telecommunications transmissions, and similar items.

Telemedicine means a telecommunications link to an end user through the use of eligible equipment which electronically links medical professionals at separate sites in order to exchange health care information in audio, video, graphic, or other format for the purpose of providing improved health care services primarily to residents of rural areas.

§ 1703.103 Applicant eligibility and allocation of funds.

(a) To be eligible to receive financial assistance under this subpart, the applicant must be organized in one of the following corporate structures:

(1) An incorporated organization, partnership, Indian tribe and tribal organization as defined in 25 U.S.C. 450b (b) and (c), or other legal entity, including a municipal corporation or a private corporation organized on a for-profit or not-for-profit basis, which operates, or will operate a school, college, university, learning center, training facility, or other educational institution, including a regional educational laboratory, library, hospital, medical center, medical clinic, or any rural community facility. A political subdivision of a State government, other than a political subdivision of a State government that operates a rural community facility, is not considered an eligible applicant; or

(2) A consortium, as defined in § 1703.102. A consortium which includes a political subdivision of a State government is only eligible if the political subdivision of the State government operates a rural community facility; or

(3) An incorporated organization, partnership, Indian tribe, and tribal organization as defined in 25 U.S.C. 450b (b) and (c), or other legal entity which is providing or proposes to provide telemedicine service or distance learning service to other legal entities or consortia at rates calculated to ensure that the economic value and other benefits of the distance learning or telemedicine grant is passed through to such other legal entities or consortia.

(b) At least one of the entities in a partnership or consortium must be eligible individually, and the partnership or consortium must provide written evidence of its legal capacity to contract with RUS and to obtain the applicable financial assistance. If a partnership or consortium lacks the capacity to contract, each individual entity must contract with RUS on its own behalf.

(c) Electric or telecommunications borrowers are eligible for loans only.

§ 1703.104 [Reserved]

§ 1703.105 Processing of selected applications.

(a) During the period between the submission of an application and the execution of documents, the applicant must inform RUS if the project is no longer viable or the applicant no longer is requesting financial assistance for the project. When the applicant so informs RUS, the selection will be rescinded or the application withdrawn and written notice to that effect sent to the applicant.

(b) If an application has been selected and the scope of the project changes substantially, the applicant may be required to submit a new application to RUS for review and consideration depending on the degree of change. A new application will be subject to review in accordance with this subpart. The financial assistance may not be transferred by the applicant for use for another project.

(c) If State or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 90 days of the Administrator's selection of the application, the Administrator will rescind the selection and written notice to that effect will be sent to the applicant. The Administrator, in his sole discretion may extend the 90 day period if it appears resolution is eminent.

(d) RUS may request additional information to complete the appropriate documents covering financial assistance.

(e) Financial assistance documents. (1) The documents will include a grant agreement for grants; loan documents, including third party guarantees, notes and security instruments for loans; or any other legal documents the Administrator deems appropriate, including suggested forms of certifications and legal opinions.

(2) The grant agreement and the loan documents will include, among other things, conditions on the release or advance of funds and include at a minimum, a project description, approved purposes, the maximum amount of the financial assistance, supplemental funds required for the project, and certain agreements or commitments the applicant may have proposed in its application. In addition, the loan documents may contain covenants and conditions the Administrator deems necessary or desirable to provide additional assurance that loans will be repaid and the purposes of the loan will be accomplished.

(3) The recipient of a loan will be required to execute a security instrument in form and substance satisfactory to RUS and must, before receiving any advance of loan funds, provide security that is adequate, in the opinion of RUS, to assure repayment, within the time agreed, of all loans to the borrower under the DLT program. This assurance will generally be provided by a first lien upon all facilities and equipment financed by the loan. RUS may require additional security as it deems necessary.

(4) Adequate security may also be provided by third-party guarantees, letters of credit, pledges of revenue, or other forms of security satisfactory to RUS.

(5) The security instrument and other loan documents required by RUS in connection with a loan under the DLT program shall contain such pledges, covenants, and other provisions as may, in the opinion of RUS, be required to secure repayment of the loan.

(6) If the project does not constitute a complete operating system, the DLT borrower shall provide evidence, in form and substance satisfactory to RUS, demonstrating that the borrower has sufficient contractual, financing, or other arrangements to assure that the project will provide adequate and efficient service.

(f) Prior to the execution of a grant and loan document, RUS reserves the right to require any changes in the project or legal documents covering the project to protect the integrity of the DLT program and the interests of the government.

(g) If the applicant fails to submit, within 120 calendar days from the date of RUS' selection of an application, all of the information that RUS determines to be necessary to prepare legal documents and satisfy other requirements of this subpart, RUS may rescind the selection of the application.

§ 1703.106 Disbursement of loans and grants.

(a) For financial assistance of $100,000 or greater, prior to the disbursement of a grant and a loan, the recipient, if it is not a unit of government, will provide evidence of fidelity bond coverage as required by 7 CFR part 3019.

(b) Grants and loans will be disbursed to recipients on a reimbursement basis,

or with unpaid invoices for the eligible purposes contained in this subpart, by the following process:

(1) An SF 270, ''Request for Advance or Reimbursement,'' will be completed by the recipient and submitted to RUS not more frequently than once a month;

(2) RUS will review the SF 270 for accuracy when received and will schedule payment if the form is satisfactory. Payment will ordinarily be made within 30 days; and

(3) For financial assistance approved during and subsequent to FY 1999, funds will be advanced in accordance with 7 CFR 1744.69.

(c) The recipient's share in the cost of the project must be disbursed in advance of the loan and grant, or if the recipient agrees, on a pro rata distribution basis with financial assistance during the disbursement period. Recipients will not be permitted to provide their contributions at the end of the project.

(d) A combination loan and grant will be disbursed on a pro rata basis based on the respective amounts of financial assistance provided.

§ 1703.107 Reporting and oversight requirements.

(a) A project performance activity report will be required of all recipients on an annual basis until the project is complete and the funds are expended by the applicant.

(b) A final project performance report must be provided by the recipient. It must provide an evaluation of the success of the project in meeting the objectives of the program. The final report may serve as the last annual report.

(c) RUS will monitor recipients, as it determines necessary, to assure that projects are completed in accordance with the approved scope of work and that the financial assistance is expended for approved purposes.

(d) Recipients shall diligently monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Recipients are to submit an original and one copy of all project performance reports, including, but not limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) A description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(3) Objectives and timetable established for the next reporting period.

§ 1703.108 Audit requirements.

A recipient of financial assistance shall provide RUS with an audit for each year, beginning with the year in which a portion of the financial assistance is expended, in accordance with the following:

(a) If the recipient is a for-profit entity, a Telecommunications or Electric borrower, or any other entity not covered by the preceding paragraph, the recipient shall provide an independent audit report in accordance with 7 CFR part 1773, ''Policy on Audits of RUS Borrowers.''

(b) If the recipient is a State or local government, or non-profit organization, the recipient shall provide an audit in accordance with 7 CFR part 3052, ''Audits of States, Local Governments, and Non-Profit Organizations.''

§ 1703.109 Grant and loan administration.

RUS will conduct reviews as necessary to determine whether the financial assistance was expended for approved purposes. The recipient is responsible for ensuring that the project complies with all applicable regulations, and that the grants and loans are expended only for approved purposes. The recipient is responsible for ensuring that disbursements and expenditures of funds are properly supported by invoices, contracts, bills of sale, canceled checks, or other appropriate forms of evidence, and that such supporting material is provided to RUS, upon request, and is otherwise made available, at the recipient's premises, for review by the RUS representatives, the recipient's certified public accountant, the Office of Inspector General, U. S. Department of Agriculture, the General Accounting Office, and any other official conducting an audit of the recipient's financial statements or records, and program performance for the grants and loans made under this subpart. The recipient shall permit RUS to inspect and copy any records and documents that pertain to the project.

§ 1703.110 Changes in project objectives or scope.

The recipient shall obtain prior written approval by RUS for any material change to the scope or objectives of the project, including any changes to the scope of work or the budget submitted to RUS. Any material change shall be contained in a revised scope of work plan to be prepared by the recipient, submitted to, and approved by RUS in writing.

§ 1703.111 Grant and loan termination.

(a) The financial assistance may be terminated when RUS and the recipient agree upon the conditions of the termination, the effective date of the termination, and, in the case of a partial termination of the financial assistance, any unadvanced portion of the financial assistance to be terminated and any advanced portion of the financial assistance to be returned.

(b) The recipient may terminate the financial assistance by written notification to RUS, providing the reasons for such termination, the effective date, and, in the case of a partial termination, the portion of the financial assistance to be terminated. In the case of a partial termination, if RUS believes that the remaining portion of the financial assistance will not accomplish the approved purposes, then, RUS may terminate the financial assistance in its entirety, pursuant to the provisions of paragraph (a) of this section.

§ 1703.112 Expedited telecommunications loans

RUS will expedite consideration and determination of an application submitted by an RUS telecommunications borrower for a loan under the Act or an advance of such loan funds to be used in conjunction with financial assistance under subparts E, F, or G of this part. See 7 CFR part 1737 for loans and 7 CFR part 1744 for advances under this section.

§§ 1703.113—1703.119 [Reserved]

Subpart E—Distance Learning and Telemedicine Grant Program

§ 1703.120 Use of grants

(a) Grants may be used by eligible organizations for distance learning and telemedicine projects to finance up to 70 percent of the amount designated for approved purposes; at least 30 percent of the project must be funded by matching contributions. For purposes of determining the applicant's ability to leverage resources in § 1703.126(b)(4), the minimum matching contribution of 30 percent of the amount designated for approved purposes equals 42.85 percent of the grant requested.

(b) Only projected costs for approved grant purposes will be considered in determining the amount of DLT grant

eligibility in accordance with paragraph (a) of this section.

(c) Funding from Federal sources other than RUS cannot be considered as matching contributions under this subpart.

§ 1703.121 Approved purposes for grants.

Grants shall be expended only for the costs associated with the initial capital assets associated with the project. The following are approved grant purposes:

(a) Acquiring, by lease or purchase, eligible equipment as defined in § 1703.102;

(b) Acquiring instructional programming; and

(c) Providing technical assistance and instruction for using eligible equipment, including any related software; developing instructional programming; providing engineering or environmental studies relating to the establishment or expansion of the phase of the project that is being financed with the grant (this purpose shall not exceed 10 percent of the grant).

§ 1703.122 Matching contributions.

(a) The grant applicant's minimum matching contribution (as specified in § 1703.120) for approved purposes, generally must be in the form of cash. However, in-kind contributions for the purposes listed in § 1703.121 may be substituted for cash.

(b) In-kind items listed in § 1703.121 must be non-depreciated or new assets with established monetary values. Manufacturers' or service providers' discounts are not considered in-kind matching.

(c) Costs incurred by the applicant, or others on behalf of the applicant, for facilities or equipment installed, or other services rendered prior to submission of a completed application, shall not be considered as an eligible in-kind matching contribution.

(d) Costs incurred for non-approved purposes for grant outlined in § 1703.123 shall not be used as an in-kind matching contribution.

§ 1703.123 Nonapproved purposes for grants.

(a) A grant made under this subpart will not be provided or used:

(1) To cover the costs of installing or constructing telecommunications transmission facilities, other than those facilities not available and necessary for the completion of the proposed project and not otherwise available;

(2) To pay for medical equipment not having telemedicine as its essential function;

(3) To pay salaries, wages, or employee benefits to medical or educational personnel;

(4) To pay for the salaries or administrative expenses of the applicant or the project;

(5) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider;

(6) To duplicate facilities providing distance learning or telemedicine services in place or to reimburse the applicant or others for costs incurred prior to RUS' receipt of the completed application;

(7) To pay costs of preparing the application package for financial assistance under this program;

(8) For projects whose sole objective is to provide links between teachers and students or between medical professionals who are located at the same facility;

(9) For site development and the destruction or alteration of buildings;

(10) For the purchase of land, buildings, or building construction;

(11) For projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*);

(12) For any purpose that the Administrator has not specifically approved;

(13) Except for leases provided for in § 1703.105, to pay the cost of recurring or operating expenses for the project; or

(14) For any other purposes not specifically contained in § 1703.105.

(b) Except as otherwise provided in § 1703.112, grants shall not be used to finance a project, in part, when the success of the project is dependent upon the receipt of additional financial assistance under this subpart or is dependent upon the receipt of other financial assistance that is not assured.

§ 1703.124 Maximum and minimum grant amounts.

Applications for grants under this subpart will be subject to limitations on the proposed amount of grant funds. The Administrator will establish the maximum amount of a grant to be made available to an individual recipient for each fiscal year under this subpart by publishing notice of the maximum amount in the **Federal Register** not sooner than 45 days before the period for accepting applications begins. The minimum amount of a grant is $50,000.

§ 1703.125 Completed application.

The following items are required to be submitted to RUS in support of an application for grant funds:

(a) *An application for Federal Assistance.* A completed Standard Form 424.

(b) *An executive summary of the project.* The applicant must provide RUS with a general project overview that addresses the following 8 categories:

(1) A description of why the project is needed;

(2) An explanation of how the applicant will address the need cited in paragraph (b)(1) of this section, why the applicant requires financial assistance, the types of educational or medical services to be offered by the project, and the benefits to rural residents;

(3) A description of the applicant, documenting eligibility in accordance with § 1703.103;

(4) An explanation of the total project cost including a breakdown of the grant required and the source of matching contribution and other financial assistance for the remainder of the project;

(5) A statement specifying whether the project is either a distance learning or telemedicine facility as defined in § 1703.102. If the project provides both distance learning and telemedicine services, the applicant must identify the predominant use of the system;

(6) A general overview of the telecommunications system to be developed, including the types of equipment, technologies, and facilities used;

(7) A description of the participating hubs and end user sites and the number of rural residents that will be served by the project at each end user site; and

(8) A certification by the applicant that facilities constructed with grants do not duplicate adequate established telemedicine or distance learning services.

(c) *Scoring criteria documentation.* Each grant applicant must address and provide documentation on how it meets each of the scoring criteria contained in § 1703.126.

(d) *A scope of work.* The scope of work must include, at a minimum:

(1) The specific activities to be performed under the project;

(2) Who will carry out the activities;

(3) The time-frames for accomplishing the project objectives and activities; and

(4) A budget for all capital expenditures reflecting the line item costs for approved purposes for both the grant funds and other sources of funds for the project. Separately, the budget must specify any line item costs that are nonapproved purposes for grants as contained in § 1703.123.

(e) *Financial information.* The applicant must provide financial information to support the need for the financial assistance requested for the project and the applicant's ability and financial capacity to carry out the proposed project. It must show its

financial and other ability to carry out the proposed work. All institutions participating in a project application (including all members of a consortium), must include an income statement (or equivalent revenue and expense reports) and balance sheet reports, reflecting net worth, for the most recent annual reporting period preceding the date of the application. When the applicant is a partnership, company, corporation or other entity, current balance sheets, reflecting net worth, are needed from each of the entities that has at least a 20 percent interest in such partnership, company, corporation, or other entity. When the applicant is a consortium, a current balance sheet, reflecting net worth, is needed from each member of the consortium and from each of the entities that has at least a 20 percent interest in such member of the consortium.

(1) Applicants must include sufficient pro-forma financial data to demonstrate feasibility of the project and the financial capability of the project participants to continue a sustainable project for a minimum of 10 years after completion of the project. This documentation should include non-contingent sources of income or revenues that are sufficient to pay operating expenses including telecommunications access and toll charges, system maintenance, salaries, training, and any other general operating expenses, and provide for replacement of depreciable items.

(2) For each hub and end user site, the applicant must identify and provide reasonable evidence of each source of revenue. If the projection relies on cost sharing arrangements among hub and end user sites, the applicant must provide evidence of agreements made among project participants.

(3) For applicants eligible under § 1703.103(a)(3), an explanation of the economic analysis justifying the rate structure to ensure that the benefit, including cost saving, of the financial assistance is passed through to those receiving telemedicine or distance learning services.

(f) *A statement of experience.* The applicant must provide a written narrative (not exceeding three single spaced pages) describing its demonstrated capability and experience, if any, in operating an educational or health care endeavor and any project similar to the project. Experience in a similar project is desirable but not required.

(g) *Funding commitment from other sources.* The applicant must provide evidence, in form and substance satisfactory to RUS, that funding agreements have been obtained to ensure completion of the project. These agreements shall be sufficient to ensure:

(1) Payment of all proposed expenditures for the project;

(2) All required matching contribution in 1703.120;

(3) any additional matching funding provided in accordance with § 1703.126(b)(4); and

(4) Any other funds necessary to complete the project.

(h) *A telecommunications system plan.* A telecommunications system plan consisting of the following:

(1) The capabilities of the telecommunications terminal equipment, including a description of the specific equipment which will be used to deliver the proposed service. The applicant must document discussions with various technical sources which could include consultants, engineers, product vendors, or internal technical experts, provide detailed cost estimates for operating and maintaining the end user equipment and provide evidence that alternative equipment and technologies were evaluated.

(2) A listing of the proposed purchases or leases of telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the telecommunications system designed to further the purposes of this subpart, that the applicant intends to build or fund using RUS financial assistance.

(3) A description of the consultations with the appropriate telecommunications carriers (including other interexchange carriers, cable television operators, enhanced service providers, providers of satellite services and telecommunications equipment manufacturers and distributors) and the anticipated role of such providers in the proposed telecommunications system.

(i) *Compliance with other Federal statutes.* The applicant must provide evidence of compliance with other Federal statutes and regulations including, but not limited to the following:

(1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375 and as supplemented by regulations contained in 41 CFR part 60;

(2) Anti-Kickback Act (18 U.S.C. 874);

(3) Davis Bacon Act (40 U.S.C. 276a–a–7);

(4) Contract Work and Safety Standards Act (40 U.S.C. 327–333);

(5) Clean Air Act (42 U.S.C. 7401, *et seq.*);

(6) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);

(7) E.O.s 12549 and 12689, Debarment and Suspension;

(8) Resource Conservation and Recovery Act (42 U.S.C. 6962);

(9) Drug-Free Workplace Act of 1988 (41 U.S.C. 701);

(10) Assistance and Real Property Acquisition Policies Act of 1970; and

(11) Office of Management and Budget Circulars A–110 and A–102.

(j) *Environmental impact and historic preservation.* (1) The applicant must provide details of the project's impact on the environment and historic preservation. Grants made under this part are subject to part 1794 of this chapter which contains RUS' policies and procedures for implementing a variety of Federal statutes, regulations, and executive orders generally pertaining to the protection of the quality of the human environment that are listed in 7 CFR 1794.1. The application shall contain a separate section entitled ''Environmental Impact of the Project.''

(2) The applicant may use the ''Environmental Questionnaire,'' available from RUS, to assist in complying with the requirements of this section.

(k) *Evidence of legal authority and existence.* The applicant must provide evidence of its legal existence and authority to enter into a grant agreement with RUS and perform the activities proposed under the grant application.

(l) *Federal debt certification.* The applicant must provide a certification that it is not delinquent on any obligation owed to the government (7 CFR parts 3016 and 3019).

(m) *Consultation with USDA State Director, Rural Development.* The applicant must provide evidence that it has consulted with the USDA State Director, Rural Development, concerning the availability of other sources of funding available at the State or local level.

(n) *State strategic plan conformity.* The applicant must provide evidence from the USDA State Director, Rural Development, that the application conforms with the State strategic plan as prepared under section 381D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*). The applicant should indicate if such a plan does not exist.

(o) *Supplemental information.* The applicant should provide any additional information it considers relevant to the project and likely to be helpful in determining the extent to which the project would further the purposes of the 1996 Act.

(p) *Additional information required by RUS.* The applicant must provide any additional information RUS may consider relevant to the application and necessary to adequately evaluate the application. RUS may request modifications or changes, including changes in the amount of financial assistance requested, in any proposal described in an application submitted under this subpart.

§ 1703.126 Criteria for scoring grant applications.

(a) *Criteria.* The criteria in this section will be used by RUS to score applications that have been determined to be in compliance with the requirements of this subpart. Applications for grants must meet the rurality requirements in paragraph (a)(2) of this section and address each of the following scoring criteria:

(1) The need for services and benefits derived from services (up to 55 points);

(2) The comparative rurality of the project service area (up to 45 points);

(3) The economic need of the applicant's service area as estimated by the NSLP or other supplemental objective criteria (up to 35 points);

(4) The ability of the applicant to leverage resources (up to 35 points);

(5) Innovativeness of the project (up to 15 points);

(6) The cost effectiveness of the system (up to 35 points);

(7) Project participation in EZ/ECs (Empowerment Zone and Enterprise Communities) and Champion Communities (up to 15 points).

(b) Scoring criteria:

(1) *The need for services and benefits derived from services—Up to 55 Points.*

(i) This criterion will be used by RUS to score applications based on the documentation in support of the need for services, benefits derived from the services proposed by the project, and local community involvement in planning, implementing, and financial assistance of the project. Applicants may receive up to 45 points for documenting the need for services and benefits derived from service as explained in this section. Applicants with an average NSLP percentage less than 50 percent as determined in paragraph (b)(3) of this section may receive up to an additional 10 points based on information submitted that evidences the economic need of the project's service area. This determination will be made by RUS based on information submitted by the applicant under paragraph (b)(1) of this section.

(ii) RUS will consider the extent of the applicant's documentation explaining the economic, education, or health care challenges facing the community; the applicant's proposed plan to address these challenges; how the grant can help; and why the applicant cannot complete the project without a grant. RUS will also consider the extent to which the applicant provides evidence that economic, education, or health care challenges could not be addressed without employing advanced technology. The Administrator will also consider any support by recognized experts in the related educational or health care field, any documentation substantiating the educational or health care underserved nature of the applicant's proposed service area, and any justification for specific educational or medical services which are needed and will provide direct benefits to rural residents.

(A) Some examples of benefits to be provided by the project include, but are not limited to:

(*1*) Improved educational opportunities for a specified number of students;

(*2*) Travel time and money saved by telemedicine diagnoses;

(*3*) Number of doctors retained in rural areas;

(*4*) Number of additional students electing to attend higher education institutions;

(*5*) Lives saved due to prompt medical diagnoses and treatment;

(*6*) New education courses offered, including college level courses;

(*7*) Expanded use of educational facilities such as night training;

(*8*) Number of patients receiving telemedicine diagnoses;

(*9*) Provision of training, information resources, library assets, adult education, lifetime learning, community use of technology, jobs, connection to region, nation, and world.

(B) Other matters that will be considered by RUS under this criterion include:

(*1*) That rural residents, and other beneficiaries, desire the educational or medical services to be provided by the project. A strong indication of need is the willingness of local end users or institutions, to the extent possible, to contribute to the capital costs of establishing the project. This could include letters of financial commitment toward the project from local institutions.

(*2*) The extent of the project's planning, development, and support by local residents and institutions. This may include evidence of community involvement, as exemplified in community meetings, public forums, and surveys. In addition, applicants should provide evidence of local residents' participation in the project planning and development.

(*3*) The extent to which the application addresses the problems of population out-migration and how the project seeks to slow, halt, or prevent population loss.

(*4*) The extent to which the application is consistent with the State strategic plan prepared by the Rural Development State Director of the United States Department of Agriculture.

(2) *The comparative rurality of the project service area—Up to 45 Points.* This criterion will be used to evaluate the relative rurality of service areas for various projects. Under this system, the end user sites and hubs (as defined in § 1703.102) contained within the project service area are identified and given a score according to the population of the area where the end user sites are located.

(i) The following definitions are used in the evaluation of rurality:

(A) Exceptionally Rural Area means any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 5,000 inhabitants.

(B) Rural Area means any area of the United States included within the boundaries of any incorporated or unincorporated city, village, or borough having a population over 5,000 and not in excess of 10,000 inhabitants.

(C) Mid-Rural Area means any area of the United States included within the boundaries of any incorporated or unincorporated city, village, or borough having a population over 10,000 and not in excess of 20,000 inhabitants.

(D) Urban Area means any area of the United States included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants.

(ii) There are a total of 45 possible points for this criterion. Each end user site will receive points based on its location in accordance with paragraph (b)(2)(i) of this section. If a hub is utilized as an end user site, the hub will be considered as an end user site. The applicant will receive points as follows:

(A) If the end user site is located in an Exceptionally Rural Area, it will receive 45 points.

(B) If the end user site is located in a Rural Area, it will receive 30 points.

(C) If the end user site is located in a Mid-Rural Area, it will receive 15 points.

(D) If the end user site is located in an Urban Area, it will receive 0 points.

(iii) The total score for this criterion will be based on the average score for all the end user sites included in the project.

(iv) An application must receive a minimum of 20 points as an average score for all the end user sites under this criterion to be eligible for a grant.

(3) *The economic need of the applicant's service area as estimated by NSLP—Up to 35 points.* This criterion will be used to evaluate the relative financial need of the applicant, community, and project. All applicants are required to provide the applicable percentage of students eligible to participate in the NSLP for each area to be served by the end user site. The appropriate State or local organization administering the program must certify the percentages as being correct. The applicant must provide RUS with a listing of the location of each end user site (city, town, village, borough or rural area plus the State) discussing how the appropriate NSLP percentage was determined in accordance with this section. These percentages may be obtained from the State or local organization that administers the program and must be certified by that organization as being correct. For purposes of this subpart, the NSLP percentage will reflect the percentage of eligibility rather than the percentage of actual participation.

(i) The following guidelines will be used to determine the applicable NSLP percent for a particular application:

(A) Public schools or non-profit private schools of high school grade or under will use the actual eligibility percentage for that particular school.

(B) Schools and institutions of higher learning ineligible to participate in the NSLP and non-school end user sites (medical facilities, libraries, etc.) will use the eligibility percentage of all students in the school district where the end user will be located.

(C) Percentage ratios will be rounded up to the next highest or rounded down to the next lowest whole number for fraction of percentages at or greater than .5 or less than .5, respectively.

(D) The project NSLP percentage will be determined by the average of the NSLP percentages of the end user sites. If end user sites fall within different percentile categories, the eligibility percentages associated with each end user site will be averaged to determine the percentile category. For purposes of averaging, if a hub is also utilized as an end user site, the hub will be considered as an end user site.

(ii) The applicant will receive points as follows:

(A) NSLP percentage greater than or equal to 75 percent—35 points

(B) NSLP percentage greater than or equal to 50 percent but less than 75 percent—25 points

(C) NSLP percentage greater than or equal to 25 percent but less than 50 percent—15 points

(D) NSLP percentage less than 25% percent—0 points

(4) *The ability of the applicant to leverage resources—Up to 35 points.*

This criterion will be used to evaluate the ability of the applicant to provide a matching contribution for the project using other non-Federal financial assistance. Documentation submitted in support of the application should reflect any additional financial support for the project from non-Federal sources above the applicant's matching contribution as required by § 1703.120. Based on the maximum RUS financial assistance percentage of 70 percent of eligible project costs, the minimum matching as a percentage of the grant requested is 42.85 percent. The applicant must include evidence from authorized representatives of the sources that the funds are available and will be used for the project. The applicant will receive points as follows:

(i) Matching contribution for a grant for approved purposes greater than 42.85 percent, but less than or equal to 70 percent of the grant—0 points.

(ii) Matching contribution for a grant for approved purposes greater than 70 percent, but less than or equal to 100 percent of the grant—15 points.

(iii) Matching contribution for a grant for approved purposes greater than 100 percent, but less than or equal to 150 percent of the grant—25 points.

(iv) Matching contribution for a grant for approved purposes greater than 150 percent, but less than or equal to 200 percent of the grant—30 points.

(v) Matching contribution for a grant for approved purposes greater than 200 percent of the grant—35 points.

(5) *Innovativeness of the project—Up to 15 points.* This criterion will be used to evaluate the innovativeness of application based on documentation that shows how the project utilizes advanced telecommunications in a unique way to address the needs of the community. Innovativeness should be addressed in the context of how the project will deliver distance learning or telemedicine services more effectively or at a lower cost. The following issues may be addressed to show how the project differs from a typical distance learning and telemedicine network as follows:

(i) The extent to which the project differs from a technical standpoint;

(ii) The extent to which the project differs from an educational or medical programmatic standpoint;

(iii) The extent to which the project reflects a unique adaptation of technology based on the special needs or circumstances of the proposed area to be served by the project; and

(iv) The potential of the project to influence or lead changes in how telecommunications services can be delivered in other areas.

(6) *The cost-effectiveness of the project*—Up to 35 points. This criterion will be used to evaluate the cost effectiveness of the application based on the extent that cost-efficiency is considered in delivering the services in the project. The following issues should be addressed under this criterion:

(i) The extent to which the applicant has considered various technological options for delivering the services. The applicant must provide sufficient documentation reflecting accepted analytical and financial methodologies to substantiate its choice of technology as the most cost-effective option. RUS will consider the applicant's documentation and analysis comparing various systems and technologies.

(ii) Whether buying or leasing specific equipment is more cost effective.

(iii) The extent to which the project will utilize other existing networks at the regional, statewide, national or international levels. To the extent possible, educational and health care networks should be designed to utilize the widest practicable number of other networks that expand the capabilities of the project, thereby affording rural residents opportunities that may not be available at the local level. The ability to connect to the Internet alone cannot be used as the sole basis to fulfill this criteria.

(iv) The extent to which the facilities being constructed with financial assistance, particularly financial assistance under this chapter provided to entities other than the applicant, will be utilized to extend or enhance the benefits of the project.

(v) The extent to which the project utilizes existing telecommunications transmission facilities that could provide the transmission path for the needed services. For projects that do not utilize existing transmission facilities, RUS will consider documentation explaining the necessity of this option. RUS will also consider any agreements

between the applicant and other entities for sharing transmission facilities to lower the fixed costs of such facilities.

(7) *Project participation in EZ/ECs and champion communities*—(Up to 15 Points). This criterion will be used by RUS to score applications based on the number of end user sites within an EZ/EC and Champion Community. Ten (10) points will be assigned if at least one end user site is located in an EZ/EC. Five (5) points will be assigned if at least one end user site is located in a Champion Community.

§ 1703.127 Application selection provisions.

(a) Applications will be selected for approval based on scores assigned, availability of funds, and the provisions of this section. RUS will make determinations regarding the reasonableness of all numbers; dollar levels; rates; the nature and design of the project; costs; location; and other characteristics of the application and the project to determine the number of points assigned to a grant application for all selection criteria.

(b) Regardless of the number of points an application receives in accordance with § 1703.126, the Administrator may, based on a review of the applications in accordance with the requirements of this subpart:

(1) Limit the number of applications selected for projects located in any one State during a fiscal year;

(2) Limit the number of selected applications for a particular project;

(3) Select an application receiving fewer points than another higher scoring application if there are insufficient funds during a particular funding period to select the higher scoring application. In this case, however, the Administrator will provide the applicant of the higher scoring application the opportunity to reduce the amount of its grant request to the amount of funds available. If the applicant agrees to lower its grant request, it must certify that the purposes of the project can be met, and the Administrator must determine the project is financially feasible at the lower amount in accordance with § 1703.125(e)(1). An applicant or multiple applicants affected under this paragraph will have the opportunity to be considered for loan financing in accordance with subparts F and G of this part.

(c) RUS will not approve a grant if RUS determines that:

(1) The applicant's proposal does not indicate financial feasibility or is not sustainable in accordance with the requirements of § 1703.115(e)(1);

(2) The applicant's proposal indicates technical flaws, which, in the opinion of RUS, would prevent successful implementation, operation, or sustainability of the project;

(3) Other applications would provide more benefit to rural America based on a review of the financial and technical information submitted in accordance of § 1703.125(e).

(4) Any other aspect of the applicant's proposal fails to adequately address any requirement of this subpart or contains inadequacies which would, in the opinion of RUS, undermine the ability of the project to meet the general purpose of this subpart or comply with policies of the DLT Program contained in § 1703.101.

(d) Grant applications will be ranked by the type of application (health care or educational) and total points scored. Grants available for medical and educational applicants may be allocated based on the total number of medical and educational applications scoring in the top 50 percent of all applications received for that fiscal year. Based on the number and type of applications received, applications may be ranked only in one category based on the predominant use of the project.

(e) RUS may reduce the amount of the applicant's grant based on insufficient program funding for the fiscal year in which the project is reviewed. RUS will discuss its findings informally with the applicant and make every effort to reach a mutually acceptable agreement with the applicant. Any discussions with the applicant and agreements made with regard to a reduced grant amount will be confirmed in writing, and these actions shall be deemed to have met the notification requirements set forth in paragraph (f) of this section.

(f) RUS will provide the applicant with an explanation of any determinations made with regard to paragraphs (c)(1) through (c)(4) of this section prior to making final project selections for the year. The applicant will be provided 15 days from the date of RUS' letter to respond, provide clarification, or make any adjustments or corrections to the project. If, in the opinion of the Administrator, the applicant fails to adequately respond to any determinations or other findings made by the Administrator, the project will not be funded, and the applicant will be notified of this determination. If the applicant does not agree with this finding an appeal may be filed in accordance with § 1703.129.

(g) Grantees shall comply with all applicable provisions of 7 CFR parts 3015, 3016, and 3019.

§ 1703.128 Submission of applications.

(a) Applications for grants shall be submitted to the RUS, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Washington, DC 20250–1590. Applications should be marked ''Attention: Assistant Administrator, Telecommunications Program''.

(b) Applications must be submitted to RUS postmarked not later than the application filing deadline established by the Administrator if the applications are to be considered during the period for which the application was submitted. The deadline for submission of applications each fiscal year will be published, and provided through other notices, by RUS in the **Federal Register**, at least 30 days before the deadline occurs. It is suggested that applications be submitted prior to the respective deadline to ensure they can be reviewed and considered complete by the deadline. RUS will review each application for completeness in accordance with § 1703.125, and notify the applicant, within 15 working days of the receipt of the application, of the results of this review, citing any information that is incomplete. To be considered for a grant, the applicant must submit the information to complete the application within 15 working days of the date of RUS' written response. If the applicant has submitted an application prior to the application filing deadline, the applicant will have 15 working days from RUS' response or until the application filing deadline to submit information, whichever provides the applicant more time. If the applicant fails to submit such information by the appropriate deadline, the application will be considered during the next established application period.

(c) All applicants must submit an original and two copies of a completed application. Applicants must also submit a copy of the application to the State government point of contact, if one has been designated for the State, at the same time it submits an application to RUS. All applications must include the information required by § 1703.125.

§ 1703.129 Appeals.

All qualifying applications under this subpart will be scored based on the criteria contained in § 1703.126. Awards will be made by RUS based on the highest ranking applications and the amount of financial assistance available for grants. All applicants will be notified in writing of the score each application receives, and included in this notification will be a tentative minimum required score to receive financial assistance. If the score

received by the applicant could result in the denial of its application, or if its score, while apparently sufficient to qualify for financial assistance, may be surpassed by the score awarded to a competing application after appeal, that applicant may appeal its numerical scoring. Any appeal must be based on inaccurate scoring of the application by RUS and no new information or data that was not included in the original application will be considered. The appeal must be made, in writing, within 10 days after the applicant is notified of the scoring results. Appeals shall be submitted to the Administrator, RUS, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1590, Washington, DC 20250–1590. Thereafter, the Administrator will review the original scoring to determine whether to sustain, reverse, or modify the original scoring determination. Final determinations will be made after consideration of all appeals. The Administrator's determination will be final. A copy of the Administrator's decision will be furnished promptly to the applicant.

Subpart F—Distance Learning and Telemedicine Combination Loan and Grant Program

§ 1703.130 Use of combination loan and grant.

(a) A combination loan and grant may be used by eligible organizations as defined in § 1703.103 for distance learning and telemedicine projects to finance 100 percent of the cost of approved purposes contained in § 1703.131 provided that no financial assistance may exceed the maximum amount for the year in which the combination loan and grant is made.

(b) Applicants must meet the minimum eligibility requirement for determining the extent to which the project serves rural areas as determined in § 1703.126(b)(2) (the applicant must receive at least 20 points to be eligible to receive financial assistance under this subpart).

§ 1703.131 Approved purposes for a combination loan and grant.

The approved purposes for a combination loan and grant are:

(a) Acquiring, by lease or purchase, eligible equipment or facilities as defined in § 1703.102;

(b) Acquiring instructional programming;

(c) Providing technical assistance and instruction for using eligible equipment, including any related software; developing instructional programming; providing engineering or environmental studies relating to the establishment or expansion of the phase of the project that is being financed with a combination loan and grant (this purpose shall not exceed 10 percent of the total requested financial assistance);

(d) Paying for medical or educational equipment and facilities that are shown to be necessary to implement the project, including vehicles utilizing distance learning and telemedicine technology to deliver educational and health care services. The applicant must demonstrate that such items are necessary to meet the purposes under this subpart and financial assistance for such equipment and facilities is not available from other sources at a cost which would not adversely affect the economic viability of the project;

(e) Providing links between teachers and students or medical professionals who are located at the same facility, provided that such facility receives or provides distance learning or telemedicine services as part of a distance learning or telemedicine network which meets the purposes of this subpart;

(f) Providing for site development and alteration of buildings in order to meet the purposes of this subpart. Financial assistance for this purpose must be necessary and incidental to the total amount of financial assistance requested;

(g) Purchasing of land, buildings, or building construction determined by RUS to be necessary and incidental to the project. The applicant must demonstrate that financial assistance funding from other sources is not available at a cost that does not adversely impact the economic viability of the project as determined by the Administrator. Financial assistance for this purpose must be necessary and incidental to the total amount of financial assistance requested; and

(h) Acquiring telecommunications transmission facilities provided that no telecommunications carrier will install such facilities under the Act or through other financial procedures within a reasonable time period and at a cost to the applicant that does not impact the economic viability of the project, as determined by the Administrator.

§ 1703.132 Nonapproved purposes for a combination loan and grant.

(a) Without limitation, a combination loan and grant made under this subpart shall not be expended:

(1) To pay salaries, wages, or employee benefits to medical or educational personnel;

(2) To pay for the salaries or administrative expenses of the applicant or the project;

(3) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider, unless the applicant is the local exchange carrier or other telecommunications service provider;

(4) To duplicate facilities providing distance learning or telemedicine services in place or to reimburse the applicant or others for costs incurred prior to RUS' receipt of the completed application;

(5) For projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*);

(6) For any purpose that the Administrator has not specifically approved;

(7) Except for leases (see § 1703.131), to pay the cost of recurring or operating expenses for the project; or,

(8) For any other purposes not specifically outlined in § 1703.131.

(b) Except as otherwise provided in § 1703.112, funds shall not be used to finance a project, in part, when the success of the project is dependent upon the receipt of additional financial assistance under this subpart or is dependent upon the receipt of other funding that is not assured.

§ 1703.133 Maximum and minimum amounts.

Applications for a combination loan and grant under this subpart will be subject to limitations on the proposed amount of loans and grants. The Administrator will establish the maximum amount of loans and grants and the portion of grant funds as a percentage of total assistance for each project to be made available to an individual recipient for each fiscal year under this subpart, by publishing notice of the maximum amount in the **Federal Register** before the beginning of the fiscal year to carry out this subpart. The minimum amount of a combination loan and grant is $50,000.

§ 1703.134 Completed application.

The following items are required to be submitted to RUS in support of an application for a combination loan and grant:

(a) *An application for federal assistance:* A completed Standard Form 424.

(b) *An executive summary of the project:* The applicant must provide RUS with a general project overview that addresses each of the following 9 categories:

(1) A description of why the project is needed;

(2) An explanation of how the applicant will address the need cited in paragraph (b)(1) of this section, why the applicant requires financial assistance, the types of educational or medical services to be offered by the project, and the benefits to the rural residents;

(3) A description of the applicant, documenting eligibility in accordance with § 1703.103;

(4) An explanation of the total project cost including a breakdown of the combination loan and grant required and the source of funding, if applicable, for the remainder of the project;

(5) A statement specifying whether the project provides predominantly distance learning or telemedicine services as defined in § 1703.102. If the project provides both distance learning and telemedicine services, the applicant must identify the predominant use of the system;

(6) A general overview of the telecommunications system to be developed, including the types of equipment, technologies, and facilities used;

(7) A description of the participating hubs and end user sites and the number of rural residents that will be served by the project at each end user site;

(8) A certification by the applicant that facilities constructed with a combination loan and grant do not duplicate adequately established telemedicine or distance learning services.

(9) A listing of the location of each end user site (city, town, village, borough, or rural area plus the State).

(c) *A scope of work.* The scope of work must include, at a minimum:

(1) The specific activities to be performed under the project;

(2) Who will carry out the activities;

(3) The time-frames for accomplishing the project objectives and activities; and

(4) A budget for capital expenditures reflecting the line item costs for both the combination loan and grant and any other sources of funds for the project.

(d) *Financial information.* The applicant must show its financial ability to complete the project; show project feasibility; and provide evidence that it can execute a note for a loan with a maturity period greater than one year. For educational institutions participating in a project application (including all members of a consortium), the financial data must reflect revenue and expense reports and balance sheet reports, reflecting net worth, for the most recent annual reporting period preceding the date of the application. For medical institutions participating in a project application (including all members of a consortium), the financial data must include income statement and balance sheet reports, reflecting net worth, for the most recent completed fiscal year preceding the date of the application. When the applicant is a partnership, company, corporation, or other entity, current balance sheets, reflecting net worth, are needed from each of the entities that has at least a 20 percent interest in such partnership, company, corporation or other entity. When the applicant is a consortium, a current balance sheet, reflecting net worth, is needed from each member of the consortium and from each of the entities that has at least a 20 percent interest in such member of the consortium.

(1) Applicants must include sufficient pro-forma financial data that adequately reflects the financial capability of project participants and the project as a whole to continue a sustainable project for a minimum of 10 years and repay the loan portion of the combination loan and grant. This documentation should include sources of sufficient income or revenues to pay operating expenses including telecommunications access and toll charges, system maintenance, salaries, training, and any other general operating expenses, provide for replacement of depreciable items, and show repayment of interest and principal for the loan portion of the combination loan and grant.

(2) A list of property which will be used as collateral to secure repayment of the loan. The applicant shall purchase and own collateral that secures the loan free from liens or security interests and take all actions necessary to perfect a security interest in the collateral that secures the loan. RUS considers as adequate security for a loan, a guarantee by a RUS telecommunications or electric borrower or by another qualified party. Additional forms of security, including letters of credit, real estate, or any other items will be considered. RUS will determine the adequacy of the security offered.

(3) As applicable, a depreciation schedule covering all assets of the project. Those assets for which a combination loan and grant are being requested should be clearly indicated.

(4) For each hub and end user site, the applicant must identify and provide reasonable evidence of each source of revenue. If the projection relies on cost sharing arrangements among hub and end user sites, the applicant must provide evidence of agreements made among project participants.

(5) For applicants eligible under § 1703.103(a)(3), an explanation of the economic analysis justifying the rate structure to ensure that the benefit, including cost saving, of the financial assistance is passed through to the other persons receiving telemedicine or distance learning services.

(e) *A statement of experience.* The applicant must provide a written narrative (not exceeding three single spaced pages) describing its demonstrated capability and experience, if any, in operating an educational or health care endeavor similar to the project. Experience in a similar project is desirable but not required.

(f) *A telecommunications system plan.* A telecommunications system plan, consisting of the following (the items in paragraphs (f)(4) and (f)(5) of this section are required only when the applicant is requesting a combination loan and grant for telecommunications transmission facilities):

(1) The capabilities of the telecommunications terminal equipment, including a description of the specific equipment which will be used to deliver the proposed service. The applicant must document discussions with various technical sources which could include consultants, engineers, product vendors, or internal technical experts, provide detailed cost estimates for operating and maintaining the end user equipment and provide evidence that alternative equipment and technologies were evaluated.

(2) A listing of the proposed purchases or leases of telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the telecommunications system designed to further the purposes of this subpart, that the applicant intends to build or fund using a combination loan and grant.

(3) A description of the consultations with the appropriate telecommunications carriers (including other interexchange carriers, cable television operators, enhanced service providers, providers of satellite services, and telecommunications equipment manufacturers and distributors) and the anticipated role of such providers in the proposed telecommunications system.

(4) Results of discussions with local exchange carriers serving the project area addressing the concerns contained in § 1703.131(h).

(5) The capabilities of the telecommunications transmission

facilities, including bandwidth, networking topology, switching, multiplexing, standards, and protocols for intra-networking and open systems architecture (the ability to effectively communicate with other networks). In addition, the applicant must explain the manner in which the transmission facilities will deliver the proposed services. For example, for medical diagnostics, the applicant might indicate whether or not a guest or other diagnosticians can join the network from locations off the network. For educational services, indicate whether or not all hub and end-user sites are able to simultaneously hear in real-time and see each other or the instructional material in real-time. The applicant must include detailed cost estimates for operating and maintaining the network, and include evidence that alternative delivery methods and systems were evaluated.

(g) *Compliance with other Federal statutes.* The applicant must provide evidence of compliance with other federal statutes and regulations including, but not limited to the following:

(1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375, and as supplemented by regulations contained in 41 CFR part 60;

(2) Anti-Kickback Act (18 U.S.C. 874);

(3) Davis Bacon Act (40 U.S.C. 276a–a–7);

(4) Contract Work and Safety Standards Act (40 U.S.C. 327–333);

(5) Clean Air Act (42 U.S.C. 7401, *et seq.*);

(6) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);

(7) E.Os 12549 and 12689, Debarment and Suspension;

(8) Resource Conservation and Recovery Act (42 U.S.C. 6962);

(9) Drug-Free Workplace Act of 1988 (41 U.S.C. 701);

(10) Assistance and Real Property Acquisition Policies Act of 1970; and

(11) Office of Management and Budget Circulars A–110 and A–102.

(h) *Environmental impact and historic preservation.* (1) The applicant must provide details of the project's impact on the environment and historic preservation. Loans and grants made under this part are subject to 7 CFR part 1794 which contains RUS' policies and procedures for implementing a variety of Federal statutes, regulations, and Executive orders generally pertaining to the protection of the quality of the human environment that are listed in 7 CFR 1794.1. The application shall contain a separate section entitled ''Environmental Impact of the Project.''

(2) The applicant may use the ''Environmental Questionnaire,'' available from RUS, to assist in complying with the requirements of this section.

(i) *Evidence of legal authority and existence.* The applicant must provide evidence of its legal existence and authority to enter into a grant and incur debt with RUS.

(j) *Federal debt certification.* The applicant must provide evidence that it is not delinquent on any obligation owed to the government.

(k) *Supplemental information.* The applicant should provide any additional information it considers relevant to the project and likely to be helpful in determining the extent to which the project would further the purposes of this subpart.

(l) *Additional information required by RUS.* The applicant must provide any additional RUS may consider relevant to the application and necessary to adequately evaluate the application. RUS may also request modifications or changes, including changes in the amount of funds requested, in any proposal described in an application submitted under this subpart.

§ 1703.135 Application selection provisions.

(a) A combination loan and grant will be approved based on availability of funds, the financial feasibility of the project in accordance with § 1703.134(d), the services to be provided which demonstrate that the project meets the general requirements of this subpart, the design of the project; costs; location; and other characteristics of the application.

(b) RUS will determine, from the information submitted with each application for a combination loan and grant, whether the application achieves sufficient priority, based on the criteria set forth in the 1996 Act, to receive a combination loan and grant from funds available for the fiscal year. If such priority is achieved, RUS will process the combination loan and grant application on a first-in, first-out basis, provided that the total amount of applications on-hand for combination loans and grants does not exceed 90 percent of the total loan and grant funding available for the fiscal year. At such time as the total amount of applications eligible for combination loans and grants, if such applications were approved, exceeds 90 percent of amount of combination loan and grant funding available, RUS will process the remaining applications using the evaluation criteria set forth in § 1703.126.

(c) RUS will not approve a combination loan and grant if RUS determines that:

(1) The applicant's proposal does not indicate financial feasibility, or will not be adequately secured in accordance with the requirements contained in § 1703.134(d);

(2) The applicant's proposal indicates technical flaws, which, in the opinion of RUS, would prevent successful implementation, or operation of the project; or

(3) Any other aspect of the applicant's proposal fails to adequately address any requirements of this subpart or contains inadequacies which would, in the opinion of RUS, undermine the ability of the project to meet the general purpose of this subpart or comply with policies of the DLT program contained in § 1703.101.

(d) RUS will provide the applicant with a statement of any determinations made with regard to paragraphs (c)(1) through (c)(3) of this section. The applicant will be provided 15 days from the date of RUS' letter to respond, provide clarification, or make any adjustments or corrections to the project. If, in the opinion of the Administrator, the applicant fails to adequately respond to any determinations or other findings made by the Administrator, the project will not be funded, and the applicant will be notified of this determination. If the applicant does not agree with this finding, an appeal may be filed in accordance with § 1703.137.

§ 1703.136 Submission of applications.

(a) RUS will accept applications for a combination loan and grant submitted by RUS telecommunications General Field representatives (GFRs), by Rural Development State Directors, or by applicants themselves. Applications for a combination loan and grant under this subpart may be filed at any time and will be evaluated as received.

(b) Applications submitted to the State Director, Rural Development, in the State serving the headquarters of the project will be evaluated as they are submitted. All applicants must submit an original and two copies of a completed application. The applicant must also submit a copy of the application to the State government point of contact, if one has been designated for the State, at the same time it submits an application to the State Director. The State Director will:

(1) Review each application for completeness in accordance with § 1703.134, and notify the applicant, within 15 working days of receiving the application, of the results of this review,

acknowledging a complete application, or citing any information that is incomplete. To be considered for a combination loan and grant, the applicant must submit any additional information requested to complete the application within 15 working days of the date of the State Director's written response. If the applicant fails to submit such information, the application will be returned to the applicant.

(2) Within 30 days of the determination of a completed application in accordance with paragraph (b)(1) of this section, review the application to determine suitability for financial assistance in accordance with § 1703.135, and other requirements of this subpart. Based on its review, the State Director will work with the applicant to resolve any questions or obtain any additional information. The applicant will be notified, in writing, of any additional information required to allow a financial assistance recommendation and will be provided a reasonable period of time to furnish the additional information.

(3) Based on the review in accordance with § 1703.135 and other requirements of this subpart, make a preliminary determination of suitability for financial assistance. A combination loan and grant recommendation will be prepared by the State Director with concurrence of the RUS telecommunications GFR that addresses the provisions of sections § 1703.134 and § 1703.135 and other applicable requirements of this subpart.

(4) If the application is determined suitable for further consideration by RUS, forward an original and one copy of the application with a financial assistance recommendation, signed jointly, to the Assistant Administrator, Telecommunications Program, Rural Utilities Service, Washington, DC. The applicant will be notified by letter of this action. Upon receipt of the application from the State Director, RUS will conduct a review of the application and the financial assistance recommendation. A final determination will be made within 15 days. If the Administrator determines that a combination loan and grant can be approved, the State Director will be notified and the State Director will notify the applicant. A combination loan and grant will be processed, approved, and serviced in accordance with §§ 1703.105 through 1703.112 of subpart D.

(5) If the State Director determines that the application is not suitable for further consideration by RUS, notify the applicant with the reasons for this determination. The applicant may appeal this determination pursuant to section § 1703.137 of this subpart.

(c) Applications submitted by RUS telecommunications GFRs or directly by applicants will be evaluated as they are submitted. All applicants must submit an original and two copies of a completed application. The applicant must also submit a copy of the application to the State government point of contact, if one has been designated for the State, at the same time it submits an application to RUS. RUS will:

(1) Review each application for completeness in accordance with § 1703.134, and notify the applicant, within 15 working days of receiving the application, of the results of this review, acknowledging a complete application, or citing any information that is incomplete. To be considered for a combination loan and grant assistance, the applicant must submit any additional information requested to complete the application within 15 working days of the date of the RUS written response. If the applicant fails to submit such information, the application will be returned to the applicant.

(2) Within 30 days of the determination of a completed application in accordance with paragraph (c)(1) of this section, review the application to determine suitability for financial assistance in accordance with § 1703.135, and other requirements of this subpart. Based on its review, RUS will work with the applicant to resolve any questions or obtain any additional information. The applicant will be notified, in writing, of any additional information required to allow a financial assistance recommendation and will be provided a reasonable period of time to furnish the additional information.

(3) If the application is determined suitable for further consideration by RUS, conduct a review of the application and financial assistance recommendation. A final determination will be made within 15 days. If the Administrator determines that a combination loan and grant can be approved, the applicant will be notified. A combination loan and grant will be processed, approved, and serviced in accordance with §§ 1703.105 through 1703.112 of subpart D.

(4) If RUS determines that the application is not suitable for further consideration, notify the applicant with the reasons for this determination. The applicant will be able to appeal in accordance with § 1703.137 of this subpart.

§ 1703.137 Appeals.

Any appeal must be made, in writing, within 10 days after the applicant is notified of the determination to deny the application. Appeals shall be submitted to the Administrator, RUS, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1590, Washington, DC 20250–1590. Thereafter, the Administrator will review the appeal to determine whether to sustain, reverse, or modify the original determination. Final determinations will be made after consideration of all appeals. The Administrator's determination will be final. A copy of the Administrator's decision will be furnished promptly to the applicant.

§§ 1703.138—1703.139 [Reserved]

Subpart G—Distance Learning and Telemedicine Loan Program

§ 1703.140 Use of loan funds.

Loans may be used to finance 100 percent of the costs of a project. Entities seeking a loan must be able to provide security and execute a note with a maturity period greater than one year. The following entities are eligible for loans under this subpart:

(a) Organizations as defined in § 1703.103. If a RUS telecommunications borrower is seeking a loan, the borrower does not need to submit all of the financial security information required by § 1703.144(d). The borrower's latest financial report (Form 479) filed with RUS and any additional information relevant to the project, as determined by RUS, will suffice;

(b) Any non-profit or for-profit entity, public or private entity, urban or rural institution, or rural educational broadcaster, which proposes to provide and receive distance learning and telemedicine services to carry out the purposes of this subpart; or

(c) Any entity that contracts with an eligible organization in paragraphs (a) or (b) of this section for constructing distance learning or telemedicine facilities for the purposes contained in § 1703.141, except for those purposes in § 1703.141(h).

(d) Applicants must meet the minimum eligibility requirement for determining the extent to which the project serves rural areas as contained in § 1703.126(b)(2) (the applicant must receive at least 20 points to be eligible to receive financial assistance under this subpart).

§ 1703.141 Approved purposes for loans.

The following are approved purposes for loans:

(a) Acquiring, by lease or purchase, eligible equipment or facilities as defined in § 1703.102;

(b) Acquiring instructional programming;

(c) Providing technical assistance and instruction for using eligible equipment, including any related software; developing instructional programming; providing engineering or environmental studies relating to the establishment or expansion of the phase of the project that is being financed with the loan (financial assistance for this purpose shall not exceed 10 percent of the requested financial assistance);

(d) Paying for medical or educational equipment and facilities which are shown to be necessary to implement the project, including vehicles utilizing distance learning and telemedicine technology to deliver educational and health care services. The applicant must demonstrate that such items are necessary to meet the purposes under this subpart and financial assistance for such equipment and facilities is not available from other sources at a cost which would not adversely affect the economic viability of the project;

(e) Providing links between teachers and students or medical professionals who are located at the same facility, provided that such facility receives or provides distance learning or telemedicine services as part of a distance learning or telemedicine network which meets the purposes of this subpart;

(f) Providing for site development and alteration of buildings in order to meet the purposes of this subpart. Loans for this purpose must be necessary and incidental to the total amount of financial assistance requested;

(g) Purchasing of land, buildings, or building construction, where such costs are demonstrated necessary to construct distance learning and telemedicine facilities. The applicant must demonstrate that funding from other sources is not available at a cost which does not adversely impact the economic viability of the project as determined by the Administrator. Financial assistance for this purpose must be necessary and incidental to the total amount of financial assistance requested;

(h) Acquiring of telecommunications transmission facilities provided that no telecommunications carrier will install such facilities under the Act or through other financial procedures within a reasonable time period and at a cost to the applicant that does not impact the economic viability of the project, as determined by the Administrator;

(i) Any project costs, not included in paragraphs (a) through (h) of this section, incurred during the first two years of operation after the financial assistance has been approved. The applicant must show that financing such costs are necessary for the establishment or continued operation of the project and that financing is not available for such costs elsewhere, including from the applicant's financial resources. The Administrator will determine whether such costs will be financed based on information submitted by the applicant. Loans shall not be made exclusively to finance such costs, and financing for such costs will not exceed 20 percent of the loan provided to a project under this section; and

(j) All of the costs needed to provide distance learning broadcasting to rural areas. Loans may be used to cover the costs of facilities and end-user equipment dedicated to providing educational broadcasting to rural areas for distance learning purposes. If the facilities are not 100 percent dedicated to broadcasting, a portion of the financing may be used to fund such facilities based on a percentage of use factor that approximates the distance learning broadcasting portion of use.

§ 1703.142 Nonapproved purposes for loan.

(a) Loans made under this subpart will not be provided for any of the following costs incurred after two years from approval:

(1) To pay salaries, wages, or employee benefits to medical or educational personnel;

(2) To pay for the salaries or administrative expenses of the applicant or the project after two years; or

(3) To pay the cost of recurring or operating expenses for the project (see § 1703.141).

(b) Loans made under this subpart will not be provided for any of the following costs:

(1) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider, unless the applicant is the local exchange carrier or other telecommunications service provider;

(2) To duplicate facilities providing distance learning or telemedicine services in place or to reimburse the applicant or others for costs incurred prior to RUS' receipt of the completed application;

(3) For projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*); or

(4) For any purpose that the Administrator has not specifically approved.

(c) Except as otherwise provided in § 1703.112, funds shall not be used to finance a project, in part, when the success of the project is dependent upon the receipt of additional financial assistance under this subpart G or is dependent upon the receipt of other funding that is not assured.

§ 1703.143 Maximum and minimum amounts.

Applications for loans under this subpart will be subject to limitations on the proposed amount of loans. The Administrator will establish the maximum amount of a loan available to an applicant under this subpart, by publishing notice of the maximum amount in the **Federal Register** before the opening of the application window. The minimum amount of a loan is $50,000.

§ 1703.144 Completed application.

The following items are required to be submitted in support of an application for a loan:

(a) *An application for federal assistance:* A completed standard form 424.

(b) *An executive summary of the project.* The applicant must provide RUS with a general project overview that addresses each of the following 9 categories:

(1) A description of why the project is needed;

(2) An explanation of how the applicant will address the need (see paragraph (b)(1) of this section), why the applicant requires financial assistance, the types of educational or medical services to be offered by the project, and the benefits to the rural residents;

(3) A description of the applicant, documenting eligibility in accordance with § 1703.103;

(4) An explanation of the total project cost including a breakdown of the loan required and the source of funding, if applicable, for the remainder of the project;

(5) A statement specifying whether the project provides predominantly distance learning or telemedicine services as defined in § 1703.102. If the project provides both distance learning and telemedicine services, the applicant must identify the predominant use of the system;

(6) A general overview of the telecommunications system to be developed, including the types of equipment, technologies, and facilities used;

(7) A description of the participating hubs and end user sites and the number of rural residents which will be served by the project at each end user site;

(8) A certification by the applicant that facilities funded by a loan do not duplicate adequate established telemedicine or distance learning services.

(9) A listing of the location of each end user site (city, town, village, borough, or rural area plus the State).

(c) *A scope of work.* The scope of work must include, at a minimum:

(1) The specific activities to be performed under the project;

(2) Who will carry out the activities;

(3) The time-frames for accomplishing the project objectives and activities; and

(4) A budget for capital expenditures reflecting the line item costs for both the combination loan and grant and any other sources of funds for the project.

(d) *Financial information.* The applicant must show its financial ability to complete the project; show project feasibility; and provide evidence that it can execute a note for a loan for a maturity period greater than one year. For educational institutions participating in a project application (including all members of a consortium), the financial data must reflect revenue and expense reports and balance sheet reports, reflecting net worth, for the most recent annual reporting period preceding the date of the application. For medical institutions participating in a project application (including all members of a consortium), the financial data must include income statement and balance sheet reports, reflecting net worth, for the most recent completed fiscal year preceding the date of the application. When the applicant is a partnership, company, corporation, or other entity, current balance sheets, reflecting net worth, are needed from each of the entities that has at least a 20 percent interest in such partnership, company, corporation or other entity. When the applicant is a consortium, a current balance sheet, reflecting net worth, is needed from each member of the consortium and from each of the entities that has at least a 20 percent interest in such member of the consortium.

(1) Applicants must include sufficient pro-forma financial data which adequately reflects the financial capability of project participants and the project as a whole to continue a sustainable project for a minimum of 10 years and repay the requested loan. This documentation should include sources of sufficient income or revenues to pay operating expenses including telecommunications access and toll charges, system maintenance, salaries, training, and any other general operating expenses, provide for replacement of depreciable items, and show repayment of interest and principal for the loan.

(2) A list of property which will be used as collateral to secure repayment of the proposed loan. The applicant shall purchase and own collateral that secures the loan free from liens or security interests and take all actions necessary to perfect a first lien in the collateral that secures the loan. RUS will consider as adequate security for a loan guarantee by a telecommunications or electric borrower or by another qualified party. Additional forms of security, including letters of credit, real estate, or any other items will be considered. RUS will determine the adequacy of the security offered.

(3) As applicable, a depreciation schedule covering all assets of the project. Those assets for which a combination loan and grant are being requested should be clearly indicated.

(4) For each hub and end user site, the applicant must identify and provide reasonable evidence of each source of revenue. If the projection relies on cost sharing arrangements among hub and end user sites, the applicant must provide evidence of agreements made among project participants.

(5) For applicants eligible under § 1703.103(a)(3), an explanation of the economic analysis justifying the rate structure to ensure that the benefit, including cost saving, of the financial assistance is passed through to the other persons receiving telemedicine or distance learning services.

(e) *A statement of experience.* The applicant must provide a written narrative (not exceeding three single spaced pages) describing its demonstrated capability and experience, if any, in operating an educational or health care endeavor and any project similar to the project. Experience in a similar project is desirable but not required.

(f) *A telecommunications system plan.* A telecommunications system plan, consisting of the following (the items in paragraphs (f)(4) and (f)(5) of this section are required only when the applicant is requesting a loan for telecommunications transmission facilities):

(1) The capabilities of the telecommunications terminal equipment, including a description of the specific equipment which will be used to deliver the proposed service. The applicant must document discussions with various technical sources which could include consultants, engineers, product vendors, or internal technical experts, provide detailed cost estimates for operating and maintaining the end user equipment and provide evidence that alternative equipment and technologies were evaluated.

(2) A listing of the proposed purchases or leases of telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the telecommunications system designed to further the purposes of this subpart, that the applicant intends to build or fund using a combination loan and grant.

(3) A description of the consultations with the appropriate telecommunications carriers (including other interexchange carriers, cable television operators, enhanced service providers, providers of satellite services, and telecommunications equipment manufacturers and distributors) and the anticipated role of such providers in the proposed telecommunications system.

(4) Results of discussions with local exchange carriers serving the project area addressing the concerns contained in § 1703.131(h).

(5) The capabilities of the telecommunications transmission facilities, including bandwidth, networking topology, switching, multiplexing, standards, and protocols for intra-networking and open systems architecture (the ability to effectively communicate with other networks). In addition, the applicant must explain the manner in which the transmission facilities will deliver the proposed services. For example, for medical diagnostics, the applicant might indicate whether or not a guest or other diagnosticians can join the network from locations off the network. For educational services, indicate whether or not all hub and end-user sites are able to simultaneously hear in real-time and see each other or the instructional material in real-time. The applicant must include detailed cost estimates for operating and maintaining the network, and include evidence that alternative delivery methods and systems were evaluated.

(g) *Compliance with other Federal statutes.* The applicant must provide evidence of compliance with other Federal statutes and regulations including, but not limited to the following:

(1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375,

and as supplemented by regulations contained in 41 CFR part 60;

(2) Anti-Kickback Act (18 U.S.C. 874);

(3) Davis Bacon Act (40 U.S.C. 276a–a–7);

(4) Contract Work and Safety Standards Act (40 U.S.C. 327–333);

(5) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);

(6) E.O.s 12549 and 12689, Debarment and Suspension;

(7) Resource Conservation and Recovery Act (42 U.S.C. 6962);

(8) Assistance and Real Property Acquisition Policies Act of 1970;

(9) National Historic Preservation Act of 1966; and

(10) Historic Sites Act of 1935.

(h) *Environmental impact and historic preservation.* (1) The applicant must provide details of the project's impact on the environment and historic preservation. Loans made under this part are subject to 7 CFR part 1794 which contains RUS' policies and procedures for implementing a variety of Federal statutes, regulations, and executive orders generally pertaining to the protection of the quality of the human environment that are listed in 7 CFR 1794.1. The application shall contain a separate section entitled ''Environmental Impact of the Project.''

(2) The applicant may use the ''Environmental Questionnaire,'' available from RUS, to assist in complying with the requirements of this section.

(i) *Evidence of legal authority and existence.* The applicant must provide evidence of its legal existence and authority to enter into debt with RUS and perform the activities proposed under the loan application.

(j) *Federal debt certification.* The applicants must provide a certification that it is not delinquent on any obligation owed to the government (7 CFR parts 3016 and 3019).

(k) *Supplemental information.* The applicant should provide any additional information it considers relevant to the project and likely to be helpful in determining the extent to which the project would further the purposes of this subpart.

(l) *Additional information required by RUS.* The applicant must provide any additional information RUS determines is necessary to adequately evaluate the application. Modifications or changes, including changes in the loan amount requested, may be requested in any project described in an application submitted under this subpart.

§ 1703.145 Application selection provisions.

(a) Loans will be approved based on availability of funds, the financial feasibility of the project in accordance with § 1703.144(d), the services to be provided which demonstrate that the project meets the general requirements of this subpart, the design of the project; costs; location; and other characteristics of the application.

(b) RUS will determine, from the information submitted with each application for a loan, whether the application achieves sufficient priority, based on the criteria set forth in the 1996 Act, to receive a loan from funds available for the fiscal year. If such priority is achieved, RUS will process the loan application on a first-in, first-out basis, provided that the total amount of applications on-hand for loans does not exceed 90 percent of the total loan and grant funding available for the fiscal year. At such time as the total amount of applications eligible for loans, if such applications were approved, exceeds 90 percent of amount of loan funding available, RUS will process the remaining applications using the evaluation criteria set forth in § 1703.126.

(c) A loan will not be approved if it is determined that:

(1) The applicant's proposal does not indicate financial feasibility, or is not adequately secured in accordance with the requirements of § 1703.144(d);

(2) The applicant's proposal indicates technical flaws, which, in the opinion of RUS, would prevent successful implementation, or operation of the project; or

(3) Any other aspect of the applicant's proposal fails to adequately address any requirements of this subpart or contains inadequacies which would, in the opinion of RUS, undermine the ability of the project to meet the general purpose of this subpart or comply with policies of the DLT program contained in § 1703.101.

(d) RUS will provide the applicant with a statement of any determinations made with regard to paragraphs (c)(1) through (c)(3) of this section. The applicant will be provided 15 days from the date of the RUS letter to respond, provide clarification, or make any adjustments or corrections to the project. If, in the opinion of the Administrator, the applicant fails to adequately respond to any determinations or other findings made by the Administrator, the loan will not be approved, and the applicant will be notified of this determination. If the applicant does not agree with this finding an appeal may be filed in accordance with § 1703.147.

§ 1703.146 Submission of applications.

(a) RUS will accept applications for loans submitted by RUS telecommunications General Field Representatives (GFRs), by Rural Development State Directors, or by applicants themselves. Applications for loans under this subpart may be filed at any time and will be evaluated as received on a non-competitive basis.

(b) Applications submitted to the State Director, Rural Development, in the State serving the headquarters of the project will be evaluated as they are submitted. All applicants must submit an original and two copies of a completed application. The applicant must also submit a copy of the application to the State government point of contact, if one has been designated for the State, at the same time it submits an application to the State Director. The State Director will:

(1) Review each application for completeness in accordance with § 1703.144, and notify the applicant, within 15 working days of receiving the application, of the results of this review, acknowledging a complete application, or citing any information that is incomplete. To be considered for a loan, the applicant must submit any additional information requested to complete the application within 15 working days of the date of the State Director's written response. If the applicant fails to submit such information, the application will be returned to the applicant.

(2) Within 30 days of the determination of a completed application in accordance with paragraph (b)(1) of this section, review the application to determine suitability for financial assistance in accordance with § 1703.145, and other requirements of this subpart. Based on its review, the State Director will work with the applicant to resolve any questions or obtain any additional information. The applicant will be notified, in writing, of any additional information required to allow a financial assistance recommendation and will be provided a reasonable period of time to furnish the additional information.

(3) Based on the review in accordance with § 1703.145 and other requirements of this subpart, make a preliminary determination of suitability for financial assistance. A loan recommendation will be prepared by the State Director with concurrence of the RUS telecommunications GFR that addresses the provisions of §§ 1703.144 and 1703.145 and other applicable requirements of this subpart.

(4) If the application is determined suitable for further consideration by

RUS, forward an original and one copy of the application with a loan recommendation, signed jointly, to the Assistant Administrator, Telecommunications Program, Rural Utilities Service, Washington DC. The applicant will be notified by letter of this action. Upon receipt of the application from the State Director, RUS will conduct a cursory review of the application and the recommendation. A final determination will be made within 15 days. If the Administrator determines that a loan can be approved, the State Director will be notified and the State Director will notify the applicant. Applications for loans will be processed, and approved loans serviced, in accordance with §§ 1703.105 through 1703.112.

(5) If the State Director determines that the application is not suitable for further consideration by RUS, notify the applicant with the reasons for this determination. The applicant will be offered appeal rights in accordance with § 1703.147.

(c) Applications submitted by RUS telecommunications GFRs or directly by applicants will be evaluated as they are submitted. All applicants must submit an original and two copies of a completed application. The applicant must also submit a copy of the application to the State government point of contact, if one has been designated for the State, at the same time it submits an application to the RUS. RUS will:

(1) Review each application for completeness in accordance with § 1703.144, and notify the applicant, within 15 working days of receiving the application, of the results of this review, acknowledging a complete application, or citing any information that is incomplete. To be considered for a loan, the applicant must submit any additional information requested to complete the application within 15 working days of the date of the RUS written response. If the applicant fails to submit such information, the application will be returned to the applicant.

(2) Within 30 days of the determination of a completed application in accordance with paragraph (c)(1) of this section, review the application to determine suitability for financial assistance in accordance with this subpart. Based on its review, RUS will work with the applicant to resolve any questions or obtain any additional information. The applicant will be notified, in writing, of any additional information required to allow a financial assistance recommendation and will be provided a reasonable period of time to furnish the additional information.

(3) If the application is determined suitable for further consideration by RUS, conduct a review of the application and financial assistance recommendation. A final determination will be made within 15 days. If the Administrator determines that a loan can be approved, the applicant will be notified. Applications will be processed, and approved loans serviced, in accordance with §§ 1703.105 through 1703.112 of subpart D.

(4) If RUS determines that the application is not suitable for further consideration, notify the applicant with the reasons for this determination. The applicant will be offered appeal rights in accordance with § 1703.147 of this subpart.

§ 1703.147 Appeals.

Any appeal must be made, in writing, within 10 days after the applicant is notified of the determination to deny the application. Appeals shall be submitted to the Administrator, RUS, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1590, Washington, DC 20250–1590. Thereafter, the Administrator will review the appeal to determine whether to sustain, reverse, or modify the original determination. Final determinations will be made after consideration of all appeals. The Administrator's determination will be final. A copy of the Administrator's decision will be furnished promptly to the applicant.

Dated: March 17, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–6995 Filed 3–24–99; 8:45 am]

BILLING CODE 3410–15–P

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Parts 404 and 405

Comprehensive Revision of Export-Import Bank of the United States Freedom of Information Act, Privacy Act and other Information Disclosure Regulations and Implementation of Electronic Freedom of Information Act Amendments of 1996

AGENCY: Export-Import Bank of the United States.

ACTION: Final rule.

SUMMARY: This document sets forth comprehensive revisions of the Export-Import Bank's information disclosure regulations. The regulations are intended to supersede the Export-Import Bank's current Freedom of Information Act (FOIA) and Privacy Act regulations, found at 12 CFR parts 404 and 405, respectively. The Export-Import Bank (Ex-Im Bank) has implemented the following revisions in order to provide more ''user-friendly'' regulations that are consistent with current law, including the Electronic Freedom of Information Act Amendments of 1996. The regulations also include updated fee schedules.

DATES: Effective April 26, 1999.

FOR FURTHER INFORMATION CONTACT: Howard A. Schweitzer, Counsel for Administration, (202) 565–3229.

SUPPLEMENTARY INFORMATION: This is a comprehensive revision of 12 CFR part 404 (Ex-Im Bank's current FOIA regulations) and 12 CFR part 405 (Ex-Im Bank's current Privacy Act regulations). Part 404 contains Ex-Im Bank's regulations for the FOIA, found in subpart A, and the Privacy Act, found in subpart B. Part 404 does not contain any regulations concerning ''appearance and testimony by Ex-Im Bank officers and employees,'' currently found at 12 CFR 404.8. Ex-Im Bank has removed and is reserving part 405 for publication of new regulations entitled ''production and disclosure in federal or state proceedings.''

The FOIA and related disclosure regulations, in addition to setting forth Ex-Im Bank's basic FOIA policy and procedure, include provisions, found in § 404.7, to implement Executive Order 12600, ''Predisclosure Notification Procedures for Confidential Commercial Information.'' The regulations also set forth a revised ''schedule of fees,'' found in § 404.8. The changes include increases in the hourly fees for clerical and professional time to $16.00 and $32.00, respectively, and a decrease in duplication charges, from $.25 to $.10 per photocopy. New provisions implementing the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231) can be found in § 404.3 (public reference facilities), § 404.5 (time for processing), and § 404.8(d) (material withheld). The regulations also establish, in § 404.11 (administrative appeal), the Ex-Im Bank Assistant General Counsel for Administration as the appellate authority for administrative appeals under the FOIA. This final rule does not include certain provisions that were published at 63 FR 48452, August 4, 1998, in an amendment to the proposed rule. Due to comments received from relevant sources, Ex-Im Bank has decided to withdraw the substantive

provisions of the proposed amendments.

The Privacy Act regulations set forth Ex-Im Bank's basic Privacy Act policy and procedures. The regulations also include the following provisions concerning matters not previously addressed: § 404.19 (Request for accounting of record disclosures); § 404.20 (Notice of court-ordered and emergency disclosures); § 404.21 (Submission of social security and passport numbers); and § 404.22 (Government contracts). The regulations do not include a section published in the proposed rule concerning employee standards of conduct. Ex-Im Bank determined that existing statutes and regulations adequately provide for the protection of information covered by the Privacy Act.

Regulatory Flexibility Act

The Ex-Im Bank President and Chairman, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has certified that this regulation will not have a significant economic impact on a substantial number of small entities. Under the Freedom of Information Act, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Under the Privacy Act, agencies may recover only duplication costs. Thus, fees assessed by Ex-Im Bank under these regulations will be nominal. Also, Ex-Im Bank receives, on average, less than two hundred FOIA and Privacy Act requests per year, and only one in four of those requests is made by a small entity

Certification

In accordance with the Regulatory Flexibility Act, I hereby certify that the Freedom of Information Act and Privacy Act regulations of the Export-Import Bank of the United States will not have a significant economic impact on a substantial number of small entities.

James A. Harmon,

President & Chairman.

Dated: November 20, 1997.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with the Executive Order. The Office of Management and Budget has determined that this rule is not a ''significant regulatory action,'' as defined by the Executive Order.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a ''major rule,'' as defined by the Small Business Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

12 CFR Part 404

Administrative practice and procedure, Confidential business information, Freedom of information, Privacy.

12 CFR Part 405

Administrative practice and procedure, Privacy.

For the reasons stated in the preamble, Ex-Im Bank amends 12 CFR chapter IV as follows:

1. 12 CFR part 404 is revised to read as follows:

PART 404—INFORMATION DISCLOSURE

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act.

Sec.
404.1 General provisions.
404.2 Definitions.
404.3 Public reference facilities.
404.4 Request requirements.
404.5 Time for processing.
404.6 Release of records under the Freedom of Information Act.
404.7 Confidential business information.
404.8 Initial determination.
404.9 Schedule of fees.
404.10 Fee waivers or reductions.
404.11 Administrative appeal.

Subpart B—Protection of Privacy and Access to Records Under the Privacy Act of 1974

Sec.
404.12 General provisions.
404.13 Definitions.
404.14 Requirements of request for access.
404.15 Initial determination.
404.16 Schedule of fees.
404.17 Appeal of denials of access.
404.18 Requests for correction of records.
404.19 Request for accounting of record disclosures.
404.20 Notice of court-ordered and emergency disclosures.
404.21 Submission of social security and passport numbers.
404.22 Government contracts.
404.23 Other rights and services.

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—[Reserved]

Authority: 5 U.S.C. 552 and 552a.

Section 404.7 also issued under E.O. 12600, 52 F.R. 23781, 3 CFR, 1987 Comp., p. 235.

Section 404.21 also issued under 5 U.S.C. 552a note.

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act.

§ 404.1 General provisions.

(a) *Purpose.* This subpart establishes policy, procedures, requirements, and responsibilities for administration of the Freedom of Information Act (FOIA), 5 U.S.C. 552, at the Export-Import Bank of the United States (Ex-Im Bank).

(b) *Policy.* It is Ex-Im Bank's policy to honor all requests for the disclosure of its records, provided that disclosure would not adversely affect a legitimate public or private interest and would not impose an unreasonable burden on Ex-Im Bank. However, this subpart also recognizes that the soundness of many Ex-Im Bank programs depends upon the receipt of reliable commercial, technical, financial, and business information relating to applicants for Ex-Im Bank assistance and that receipt of such information depends on Ex-Im Bank's ability to hold such information in confidence. Consequently, except as provided by applicable law and this regulation, information provided to Ex-Im Bank in confidence will not be disclosed without the submitter's consent.

(c) *Scope.* All record requests made to Ex-Im Bank shall be processed under this subpart, except that information customarily furnished to the public in the regular course of the performance of official duties may continue to be furnished to the public without complying with this subpart. Requests made by individuals under the Privacy Act of 1974 which are processed under subpart B of this part also shall be processed under this subpart A.

(d) *Ex-Im Bank Internet site.* Ex-Im Bank maintains an Internet site at http://www.exim.gov. The site contains information on Ex-Im Bank functions, activities, programs, and transactions.

Web site visitors have access to Board of Directors and Loan Committee meeting minutes, country information, and Ex-Im Bank press releases, among other information. Ex-Im Bank encourages all prospective FOIA requesters to visit the site prior to submission of a FOIA request.

(e) *Delegation.* Any action or determination in this subpart which is the responsibility of a specific Ex-Im Bank employee, may be delegated to a duly designated alternate.

(f) *Ex-Im Bank address.* The Export-Import Bank of the United States is located at 811 Vermont Avenue, NW, Washington, DC 20571.

§ 404.2 Definitions.

For purposes of this subpart, the following definitions shall apply:

All other requesters—Requesters other than commercial use requesters, educational and non-commercial scientific requesters, or representatives of the news media.

Appeal—A written request to the Ex-Im Bank Assistant General Counsel for Administration for reversal of an adverse initial determination.

Business information—Potentially confidential commercial or financial information that is provided to Ex-Im Bank.

Business submitter—Any person who provides business information to Ex-Im Bank.

Commercial use request—A request for a use or purpose that furthers the commercial, trade or profit interest of the requester.

Direct costs—Expenditures incurred in the search, review, and duplication of records in response to a FOIA request.

Educational institution—A preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of professional or vocational education.

Final determination—The written decision by the Assistant General Counsel for Administration on an appeal.

Initial determination—The initial written determination by Ex-Im Bank regarding disclosure of requested records.

Non-commercial scientific institution—An institution that is operated for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry and that is not operated solely for purposes of furthering a business, trade or profit interest.

Person—An individual, partnership, corporation, association or organization other than a federal government agency.

Record—All papers, memoranda or other documentary material, or copies thereof, regardless of physical form or characteristics, created or received by Ex-Im Bank and preserved as evidence of the activities of Ex-Im Bank. ''Record'' does not include publications which are available to the public through the **Federal Register**, sale or free distribution.

Redaction—The process of removing non-disclosable material from a record so that the remainder may be released.

Representative of the news media—A person actively gathering information on behalf of an entity organized and operated to publish or broadcast news to the public. Freelance journalists shall qualify as representatives of the news media when they can demonstrate that a request is reasonably likely to lead to publication.

Request—Any record request made to Ex-Im Bank under the FOIA.

Requester—Any person making a request.

Review—The process of examining a record to determine whether any portion is required to be withheld. It includes redaction, duplication, and any other preparation for release. Review does not include time spent resolving general legal and policy issues regarding the application of exemptions.

Search—The process of identifying and collecting records pursuant to a request.

Trade secrets—All forms and types of financial, business, scientific, technical, economic or engineering information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes.

Unusual circumstances—The need to search for and collect requested records from facilities that are separate from Ex-Im Bank headquarters; the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or the need for consultation with another agency a person that has a substantial interest in the determination of the request.

Working days—All calendar days excluding Saturdays, Sundays, and Federal Government holidays.

§ 404.3 Public reference facilities.

Ex-Im Bank maintains a public reading room which contains the Ex-Im Bank records that the FOIA requires to be made available for public inspection and copying. The records available under this section include copies of records released pursuant to the FOIA that Ex-Im Bank determines have, or are likely to, become the subject of subsequent requests for substantially the same records. Requesters shall be responsible for the cost of duplicating such material in accordance with the provisions of § 404.9(e). Persons desiring to use the reading room should contact the Ex-Im Bank Freedom of Information and Privacy Office, either in writing at the address at § 404.1(f) or by telephone at (202) 565–3946 or (800) 565–3946, to arrange a time to inspect the available records.

§ 404.4 Request requirements.

(a) *Form.* Requests must be made in writing and must be signed by, or on behalf of, the requester. Requests should be addressed to the Freedom of Information and Privacy Office at the address in § 404.1(f) and should contain both the return address and telephone number of the requester.

(b) *Description of records requested.* Each request must describe the records sought in sufficient detail so as to enable a professional employee of Ex-Im Bank familiar with the subject matter of the request to locate the record with a reasonable amount of effort. A request shall not be deemed to have been received until such time as the request adequately identifies the records sought. To the extent practicable, a description should include relevant dates, format, subject matter, and the name of any person to whom the record is known to relate. A general request for records with no accompanying date restriction, either express or implied, shall be deemed to be a request for records created within the preceding twelve months.

(c) *Fee statement.* The request must contain a statement expressing willingness to pay fees for the requested records or a request for a fee waiver (see § 404.10) before the request shall be deemed to have been received. A fee statement may specify the maximum amount a requester is willing to pay for processing the request.

(1) Whenever a requester submits a FOIA request that does not contain a fee statement or a request for a fee waiver, Ex-Im Bank shall advise the requester of the requirements of this paragraph. If the requester fails to respond within ten working days of such notification, then the Freedom of Information and Privacy Office shall notify the requester, in writing, that Ex-Im Bank will not process the request.

(2) A general statement by the requester expressing willingness to pay all applicable fees under § 404.9 shall be deemed an agreement to pay up to $50.00. If Ex-Im Bank estimates that the

fees for a request will exceed $50.00, then Ex-Im Bank shall offer the requester the opportunity to agree, in writing, either to pay a greater fee or to modify the request as a means of limiting the cost.

(d) *Written notice of amendment.* The requester should provide any amendment to the original request in writing to Ex-Im Bank.

(e) *Requester assistance.* Ex-Im Bank shall make reasonable efforts to assist a requester in complying with the requirements of this section.

§ 404.5 Time for processing.

(a) *General.* Ex-Im Bank shall respond to requests within twenty working days of the date of receipt of the request unless unusual circumstances exist. Ex-Im Bank shall provide written notice to the requester whenever such unusual circumstances necessitate an extension. If the extension is expected to exceed ten working days, then Ex-Im Bank shall offer the requester the opportunity to:

(1) Alter the request so that it may be processed within the time limit; or

(2) Propose an alternative, feasible time frame for processing the request.

(b) *Date of receipt.* A request shall be deemed to have been received on the date that the request is received in the Freedom of Information and Privacy Office, provided that the requester has met all the requirements of § 404.4. Ex-Im Bank shall notify the requester of the date on which a request was officially received.

(c) *Order of processing.* Ex-Im Bank ordinarily shall process requests according to their order of receipt.

(d) *Expedited processing.* A request for expedited processing must be included in the original request for records and may be granted at the discretion of Ex-Im Bank based upon the requester's demonstration of:

(1) An imminent threat to the life or physical safety of an individual; or

(2) In the case of a requester who is a representative of the news media, an urgency to inform the public concerning actual or alleged Federal Government activity. Ex-Im Bank shall provide notice of its determination on expedited processing to the requester. A requester may file an administrative appeal, as set forth at § 404.11, based on a denial of a request for expedited processing. Ex-Im Bank shall grant expeditious consideration to any such appeal.

§ 404.6 Release of records under the Freedom of Information Act.

(a) *Creation of records.* A reasonable request for material not in existence may be honored at Ex-Im Bank's discretion when tabulation or compilation will not significantly burden Ex-Im Bank, its programs or its activities.

(b) *Discretionary release.* Consistent with federal government policy, material technically qualifying for exemption from disclosure under 5 U.S.C. 552(b)(5) may be made available when disclosure would not adversely affect legitimate public or private interests, violate law or impose an unreasonable burden on Ex-Im Bank. This policy does not, however, create any right enforceable in a court of law.

(c) *Segregable records.* Whenever it is determined that a portion of a record is exempt from disclosure, any reasonably segregable portion of the record shall be provided to the requester after redaction of the exempt material. If segregation would render the document meaningless, Ex-Im Bank shall withhold the entire record.

(d) *Date for determining responsive records.* Only those records within Ex-Im Bank's possession and control as of the date of receipt of a request shall be deemed to be responsive to a request.

§ 404.7 Confidential business information.

(a) *Scope.* This section applies to all business information, as defined in § 404.2. Such information shall only be disclosed pursuant to a FOIA request in accordance with this section.

(b) *Submitter designation.* All business submitters should designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portion of any submission that they consider to be exempt from disclosure under 5 U.S.C. 552(b)(4).

(c) *Pre-disclosure notice to the business submitter.* Whenever Ex-Im Bank receives a FOIA request seeking disclosure of business information, Ex-Im Bank shall provide prompt written notice to the submitter of such information. This notice shall include a description or a copy of the records containing the business information. Such notice shall not be required, however, if:

(1) Ex-Im Bank determines that the records shall not be disclosed;

(2) The records have been published or otherwise made available to the public; or

(3) disclosure of the records is required by law.

(d) *Opportunity to object to disclosure.* The business submitter shall have ten working days from and including the date of the notification letter to provide Ex-Im Bank with a detailed statement of any objection to disclosure of the records. A submitter located outside the United States shall have twenty working days to object to disclosure. Ex-Im Bank may extend the time for objection upon timely request from the submitter and for good cause shown. A statement of objection must specify all grounds under the FOIA for withholding the information.

(e) *Notice to the requester.* The Freedom of Information and Privacy Office shall notify the requester in writing whenever a business submitter is afforded the opportunity to object to disclosure of records pursuant to paragraph (c) of this section.

(f) *Disclosure of confidential business information.* Ex-Im Bank shall consider any objections raised by the business submitter prior to making its disclosure decision.

(g) *Notice of intent to disclose.* Whenever Ex-Im Bank determines to disclose business information over the objection of a business submitter, Ex-Im Bank shall notify the business submitter, in writing, of such determination, the reasons for the decision, and the expected disclosure date. This notification—which shall be provided at least ten days prior to the planned disclosure date and which shall include a copy or description of the records at issue—is intended to afford the submitter the opportunity to seek judicial review.

(h) *Notice to requester of disclosure date.* If Ex-Im Bank determines to disclose records over a business submitter's objection, then Ex-Im Bank shall notify the requester of the expected disclosure date.

(i) *Appeal.* Whenever Ex-Im Bank determines to disclose, pursuant to an administrative appeal, business information that initially was withheld from disclosure under 5 U.S.C. 552(b)(4), Ex-Im Bank shall notify the business submitter. Such notice shall be in writing and shall be provided ten working days prior to the proposed disclosure date. It shall include a copy or description of the records at issue and a statement of Ex-Im Bank's reasons for disclosure.

(j) *Notice of FOIA lawsuit.* Ex-Im Bank shall promptly notify the submitter whenever a requester brings suit against Ex-Im Bank seeking to compel the release of business information covered by this section. Ex-Im Bank shall promptly notify the requester when a submitter brings suit against Ex-Im seeking to restrict the release of business information that is covered by this section.

(k) *Exception.* Notwithstanding the foregoing provisions of this part, Ex-Im Bank may, upon request or on its own initiative, publicly disclose the parties to transactions for which Ex-Im Bank

approves support, the amount of such support, the identity of any participants involved, a general description of the related U.S. exports, and the country to which such exports are destined.

§ 404.8 Initial determination.

(a) *Authority to grant or deny requests.* The Freedom of Information and Privacy Office shall be responsible for search, review, and the initial determination.

(b) *Referrals to other government agencies.* A requested record in Ex-Im Bank's possession that was created or classified by another Federal agency shall be referred to such agency for direct response to the requester. The Freedom of Information and Privacy Office shall notify the requester of any such referral, the number of documents so referred, and the name and address of each agency to which the request has been referred.

(c) *Notification of Ex-Im Bank action.* The Freedom of Information and Privacy Office shall notify the requester in writing of its decision to grant or deny the request.

(1) If the decision is made to grant a request, then Ex-Im Bank shall promptly disclose the requested records and shall inform the requester of any fee payable under § 404.9.

(2) A denial is a determination to withhold any requested record in whole or in part, a determination that a requested record does not exist or cannot be located or a determination that what has been requested is not a record subject to the FOIA. Whenever Ex-Im Bank withholds information, such notice shall include:

(i) The name, title, and signature of the person responsible for the determination;

(ii) The statutory basis for non-disclosure; and

(iii) A statement that any denial may be appealed under § 404.11 and a brief description of the requirements of that section.

(d) *Material withheld.* Ex-Im Bank shall make reasonable efforts to inform the requester of the volume of material withheld pursuant to a full or partial denial and the extent of any redaction. Ex-Im Bank shall not, however, indicate the extent of any denial when doing so could harm an interest protected by an applicable exemption.

§ 404.9 Schedule of fees.

(a) *General.* Ex-Im Bank shall charge fees to recover the full allowable direct costs it incurs in processing requests. Ex-Im Bank shall attempt to conduct searches in the most efficient manner to minimize costs for both Ex-Im Bank and the requester.

(b) *Categories of requesters.* Fees shall be assessed according to the status of the requester. The specific schedule of fees for each requester category (each as defined in § 404.2) is prescribed as follows:

(1) *Commercial use requesters.* Ex-Im Bank shall charge the full costs for search, review, and duplication.

(2) *Educational and non-commercial scientific institution requesters.* Ex-Im Bank shall charge only for the cost of duplication in excess of 100 pages. No fee will be charged for search or review.

(3) *Representatives of the news media.* Ex-Im Bank shall charge only for the cost of duplication in excess of 100 pages. No fee will be charged for search or review.

(4) *All other requesters.* Ex-Im Bank shall charge for the cost of search, review, and duplication, except that 100 pages of duplication and two hours of professional search time shall be furnished without charge.

(c) *Search and review fees.* Ex-Im Bank shall charge the following fees for search and review:

(1) *Clerical.* Hourly rate—$16.00.

(2) *Professional.* Hourly rate—$32.00.

(3) *Computer Searches.* Hourly rate—based upon the salary of the employee performing the work and the cost of operating any equipment.

(d) *Administrative appeals.* Ex-Im Bank shall not charge for administrative review of an exemption applied in an initial determination. Ex-Im Bank shall charge, however, for search and review pursuant to an administrative appeal if the appeal is based on a claim other than the application of an exemption in the initial determination.

(e) *Duplication.* Ex-Im Bank shall charge $.10 per page for paper copy duplication. Ex-Im Bank shall charge the actual or estimated cost of copies prepared by computer, such as tape or printouts, or for other methods of duplication. When duplication charges are expected to exceed $50.00, Ex-Im Bank shall seek the requester's consent to be responsible for the estimated charges unless a requester has already expressed a willingness to pay duplication fees in excess of $50.00. Ex-Im Bank shall also offer the requester the opportunity to alter the request in order to reduce duplication costs.

(f) *Fees for searches that produce no records.* Fees shall be payable as provided in this section even though searches and review do not generate any disclosable records.

(g) *Aggregating requests.* A requester, or a group of requesters acting in concert, shall not file multiple requests, seeking portions of a record or similar or related records, in order to avoid payment of fees. Ex-Im Bank shall aggregate any such requests and charge as if the requests were a single request.

(h) *Special services charges.* Complying with requests for special services such as those listed in this paragraph is entirely at the discretion of Ex-Im Bank. Ex-Im Bank shall recover the full costs of providing such services to the extent that it elects to provide them.

(1) *Certifications.* Ex-Im Bank shall charge $25.00 to certify the authenticity of any Ex-Im Bank record or any copy of such record.

(2) *Special shipping.* Ex-Im Bank may ship by special means (e.g., express mail) if the requester so desires, provided that the requester has paid or has expressly undertaken to pay all costs of such special services. Ex-Im Bank shall not charge for ordinary packaging and mailing.

(i) *Minimum fee.* Ex-Im Bank shall waive a final fee of $5.00 or less.

(j) *Advance payment.* Whenever Ex-Im Bank estimates that the fees are likely to exceed $250.00, Ex-Im Bank shall notify the requester of the likely cost and shall require an advance payment of an amount up to the full estimated charges.

(k) *Failure to pay fee.* Ex-Im Bank shall not process a request by a requester who has failed to pay a fee for a previous request unless and until such a requester had paid the full amount owed and also has paid, in advance, the total estimated charges for the new request. The administrative time limits for the new request—set forth in § 404.5—shall begin to run only after Ex-Im Bank has received the payments described in this section.

§ 404.10 Fee waivers or reductions.

(a) *General.* Upon request, Ex-Im Bank shall consider a discretionary fee waiver or reduction of the fees chargeable under § 404.9.

(b) *Form of request for fee waiver.* Ex-Im Bank shall deny a request for a waiver or reduction of fees that does not clearly address each of the following:

(1) The proposed use of the records and whether the requester will derive income or other benefit from such use;

(2) An explanation of the reasons why the public will benefit from such use; and

(3) If specialized use of the records is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(d) *Burden of proof.* In all cases, the requester has the burden of presenting sufficient evidence or information to

justify the fee waiver or reduction. The requester may use the procedures set forth in § 404.11 to appeal a denial of a fee waiver request.

(e) *Employee requests.* Fees of less than $50.00 shall be waived in connection with any request by an employee, former employee, or applicant for employment, related to a grievance or complaint of discrimination against Ex-Im Bank.

§ 404.11 Administrative appeal.

(a) *General.* Whenever a request for records, a fee waiver or expedited processing has been denied, the requester may appeal the denial within thirty days of the date of Ex-Im Bank's issuance of notice of such action. Any denial under this subpart must be appealed according to this section before a requester is eligible to seek judicial review.

(b) *Form.* Appeals must be made in writing and must be signed by the appellant. Appeals should be addressed to the Assistant General Counsel for Administration at the address at § 404.1(f). Both the envelope and the appeal letter should be clearly marked in capital letters: ''FREEDOM OF INFORMATION ACT APPEAL.'' Failure to properly mark or address the appeal may slow its processing. The letter should include:

(1) A copy of the denied request or a description of the records requested;

(2) The name and title of the Ex-Im Bank employee who denied the request;

(3) The date on which the request was denied;

(4) The Ex-Im Bank identification number assigned to the request; and

(5) The return address and telephone number of the appellant.

(c) *Processing schedule.* Appeals shall not be deemed to have been received until the Assistant General Counsel for Administration receives the appeal. Ex-Im Bank shall notify the requester of the date on which an appeal was officially received. The disposition of an appeal shall be made in writing within twenty working days after the date of receipt of an appeal. The Assistant General Counsel for Administration may extend the time for response an additional ten working days if unusual circumstances exist, provided that the Assistant General Counsel for Administration notifies the requester in writing.

(d) *Ex-Im Bank decision.* A final determination which affirms an adverse initial determination shall set forth the reasons for affirming the denial and shall advise the requester of the right to seek judicial review. If the initial determination is reversed on appeal, the request shall be remanded to the Freedom of Information and Privacy Office to be processed promptly in accordance with the decision on appeal, subject to § 404.7(i).

Subpart B—Access to Records Under the Privacy Act of 1974

§ 404.12 General provisions.

(a) *Purpose.* This subpart establishes policies, procedures, requirements, and responsibilities for administration of the Privacy Act of 1974, 5 U.S.C. 552a, at the Export-Import Bank of the United States (Ex-Im Bank).

(b) *Relationship to the Freedom of Information Act.* The Privacy Act applies to records contained in a systems of records, as defined in § 404.13. If an individual submits a request for access to records and cites the Privacy Act, but the records sought are not contained in a Privacy Act system of records, then the request shall be processed only under subpart A of this part, Procedures for Disclosure of Records Under the Freedom of Information Act. All requests properly processed under this subpart B shall also be processed under subpart A of this part.

(c) *Appellate authority.* The Ex-Im Bank Assistant General Counsel for Administration is the appellate authority for all Privacy Act requests.

(d) *Delegation.* Any action or determination in this subpart which is the responsibility of a specific Ex-Im Bank employee may be delegated to a duly designated alternate.

(e) *Ex-Im Bank address.* The Export-Import Bank of the United States is located at 811 Vermont Avenue, NW, Washington, DC 20571.

§ 404.13 Definitions.

For purposes of this subpart, the following definitions shall apply:

Appeal—A written request to the Ex-Im Bank Assistant General Counsel for Administration for reversal of an adverse initial determination.

Final determination—The written decision by the Assistant General Counsel for Administration on an appeal.

Individual—A citizen of the United States or an alien lawfully admitted for permanent residence.

Initial determination—The initial written determination in response to a Privacy Act request.

Record—Any item, collection or grouping of information about an individual that is maintained within a system of records and that contains the individual's name or an identifying number, symbol or other identifying particular assigned to the individual.

Redaction—The process of removing non-disclosable material from a record so that the remainder may be released.

Request for access—A request to view a record.

Request for accounting—A request for a list of all disclosures of a record.

Request for correction—A request to modify a record.

Requester—An individual who makes a request under the Privacy Act.

Review—The process of examining a record to determine whether any portion is required to be withheld.

Search—The process of identifying and collecting records pursuant to a request.

System of records—A group of any records under the control of an agency from which information is retrieved by the name of the individual or some identifying number, symbol or other identifying particular assigned to the individual.

Working days—All calendar days excluding Saturdays, Sundays, and Federal Government holidays.

§ 404.14 Requirements of request for access.

(a) *Form.* Requests for access must be made in writing and must be signed by the requester. Requests should be addressed to the Freedom of Information and Privacy Office at the address in § 404.12(e) and should contain both the return address and telephone number of the requester.

(b) *Description of records sought.* A request for access must describe the records sought in sufficient detail so as to enable Ex-Im Bank personnel to locate the system of records containing the records with a reasonable amount of effort. To the extent practicable, such description should include the nature of the record sought, the date of the record or the period in which the record was compiled, and the name or identifying number of the system of records in which the requester believes the record is kept. A requester may include his or her social security number in the request in order to facilitate the identification and location of the requested records.

(c) *Fee statement.* The request must contain a statement expressing willingness to pay fees for processing the request or a request for a fee waiver (see § 404.16(d)).

(1) Whenever a requester submits a request for access that does not contain a fee statement or a request for a fee waiver, Ex-Im Bank shall advise the requester of the requirements of this section. If the requester fails to respond within ten working days of such notification, then the Freedom of

Information and Privacy Office shall notify the requester, in writing, that Ex-Im Bank will not process the request.

(2) A general statement by the requester expressing willingness to pay all applicable fees shall be deemed an agreement to pay up to $25.00. If Ex-Im Bank estimates that the fees for a request will exceed $25.00, then Ex-Im Bank shall notify the requester. Ex-Im Bank shall offer the requester the opportunity to agree, in writing, either to pay a greater fee or to modify the request as a means of limiting the cost.

(3) Whenever the estimated fee chargeable under this section exceeds $25.00, Ex-Im Bank reserves the right to require a requester to make an advance payment prior to processing the request.

(4) Ex-Im Bank shall not process a request by a requester who has failed to pay a fee for a previous request unless and until such requester had paid the full amount owed and also has paid, in advance, the total estimated charges for the new request.

(d) *Verification of identity.* An individual who submits a request for access must verify his or her identity. The request must include the requesters full name, current address, and date and place of birth. In addition, such requester must provide a notarized statement attesting to his or her identity.

(e) *Verification of guardianship.* When a parent or guardian of a minor or the guardian of a person judicially determined to be incompetent submits a request for access to records that relate to the minor or incompetent, such parent or guardian must establish:

(1) His or her own identity and the identity of the subject of the record in accordance with paragraph (d) of this section; and

(2) Parentage or guardianship of the subject of the record, either by providing a copy of the subject's birth certificate showing parentage or by providing a court order establishing guardianship.

(f) *Written notice of amendment.* The requester must provide any amendment to the original request in writing to Ex-Im Bank.

(g) *Requester assistance.* Ex-Im Bank shall make reasonable efforts to assist a requester in complying with the requirements of this section.

(h) *Date of receipt.* Requests for access shall be deemed to have been received on the date that the request is received by the Freedom of Information and Privacy Office, provided that all the requirements of this section have been met. Ex-Im Bank shall notify the requester of the date on which it officially received a request.

§ 404.15 Initial determination.

(a) *Time for processing.* The Freedom of Information and Privacy Office shall respond to valid requests for access within twenty working days of the date of receipt of the request letter. The time for response may be extended an additional ten working days for good cause, provided that the Freedom of Information and Privacy Office notifies the requester in writing.

(b) *Notice regarding request for access.* The Freedom of Information and Privacy Office shall notify the requester in writing of its decision to grant or deny a request for access.

(1) If the request is granted, then the notice shall either include the requested records, in releasable form, or shall describe the manner in which access to the record will be granted. The notice also shall inform the requester of any processing fee.

(2) A denial is a determination to withhold any requested record in whole or in part or a determination that the requested record does not exist or cannot be located. If the request is denied, then the denial notice shall state:

(i) The name, signature, and title or position of the person responsible for the denial;

(ii) The reasons for the denial; and

(iii) The procedure for appeal of the denial under § 404.17 and a brief description of the requirements of that section.

(c) *Form of record disclosure.* Ex-Im Bank shall grant access to the requested records either by providing the requester with a copy of the record or, at the requester's option, by making the record available for inspection at a reasonable time and place. If Ex-Im Bank makes the record available for inspection, such inspection shall not unreasonably disrupt Ex-Im Bank operations. In addition, the requester must provide a form of official photographic identification—such as a passport, driver's license or identification badge—and any other form of identification bearing his or her name and address prior to inspection of the requested records. Records may be inspected by the requester in the presence of another individual, provided that the requester signs a form stating that Ex-Im Bank is authorized to disclose the record in the presence of both individuals.

§ 404.16 Schedule of fees.

(a) *Search and review.* Ex-Im Bank shall not charge for search and review.

(b) *Duplication.* Ex-Im Bank shall charge $.10 per page for paper copy duplication. Ex-Im Bank shall charge the actual or estimated cost of copies prepared by computer, such as tape or printouts, or for other methods of reproduction or duplication.

(c) *Minimum fee.* Ex-Im Bank shall waive final fees of $5.00 or less.

(d) *Fee waivers.* Ex-Im Bank may waive fees whenever it is determined to be in the public interest. Fees of less than $50.00 shall be waived in connection with any request by an employee, former employee or applicant for employment, related to a grievance or complaint of discrimination against Ex-Im Bank.

(e) *Special services charges.* Complying with requests for special services such as those listed in this paragraph is entirely at the discretion of Ex-Im Bank. Ex-Im Bank shall recover the full costs of providing such services to the extent that it elects to provide them.

(1) *Certifications.* Ex-Im Bank shall charge $25.00 to certify the authenticity of any Ex-Im Bank record or any copy of such record.

(2) *Special shipping.* Ex-Im Bank may ship by special means (e.g., express mail) if the requester so desires, provided that the requester has paid or has expressly undertaken to pay all costs of such special services. Ex-Im Bank shall not charge for ordinary packaging and mailing.

§ 404.17 Appeal of denials of access.

(a) *Appeals to the Assistant General Counsel for Administration.* Whenever Ex-Im Bank denies a request for access or for waiver or reduction of fees, the requester may appeal the denial to the Assistant General Counsel for Administration within 30 working days of the date of Ex-Im Bank's issuance of notice of such action. Appeals must be made in writing and must be signed by the appellant. Appeals should be addressed to the Assistant General Counsel for Administration at the address in § 404.12(e). Both the envelope and the appeal letter should be clearly marked in capital letters: ''PRIVACY ACT APPEAL.'' Failure to properly mark or address the appeal may slow its processing. An appeal shall not be deemed to have been received by Ex-Im Bank until the Assistant General Counsel for Administration receives the appeal letter. The letter should include:

(1) A copy of the denied request or a description of the records requested;

(2) The name and title of the Ex-Im Bank employee who denied the request;

(3) The date on which the request was denied; and

(4) The Ex-Im Bank identification number assigned to the request.

(b) *Final determination.* The disposition of an access appeal shall be made in writing within twenty working days after the date of receipt of the appeal. The Assistant General Counsel for Administration may extend the time for response an additional ten working days for good cause, provided that the requester is notified in writing. A decision affirming the denial of a request for access shall include a brief statement of the reasons for affirming the denial and shall advise the requester of the right to seek judicial review. If the initial determination is reversed, then the request shall be remanded to the Freedom of Information and Privacy Office to be processed in accordance with the decision on appeal.

§ 404.18 Requests for correction of records.

(a) *Form.* Requests for correction must be made in writing and must be signed by the requester. Requests should be addressed to the Freedom of Information and Privacy Office at the address in § 404.12(e) and should contain both the return address and telephone number of the requester. The request must identify the particular record in question, state the correction sought, and set forth the justification for the correction. The requester also must verify his or her identity in accordance with the procedures set forth at § 404.14(d) and (e). Both the envelope and the request for correction itself should be clearly marked in capital letters: ''PRIVACY ACT CORRECTION REQUEST.''

(b) *Initial determination.* The Freedom of Information and Privacy Office shall respond to valid correction requests within ten working days of receipt of the request letter. If Ex-Im Bank grants the request for correction, then the Freedom of Information and Privacy Office shall advise the requester of his or her right to obtain a copy, in releasable form, of the corrected record. A denial notice shall state the reasons for the denial and shall advise the requester of the right to appeal. Ex-Im Bank shall not charge for processing requests for correction.

(c) *Appeal of denial of request for correction.* Whenever Ex-Im Bank denies a request for correction, the requester may appeal the denial to the Assistant General Counsel for Administration within thirty working days of Ex-Im Bank's issuance of notice of such action. Appeals must be made in writing and must be signed by the appellant. Appeals should be addressed to the Assistant General Counsel for Administration at the address set forth in § 404.12(e). Both the envelope and the appeal letter should be clearly marked in capital letters: ''PRIVACY ACT CORRECTION APPEAL.'' Failure to properly mark or address the appeal may slow its processing. An appeal shall not be deemed to have been received by Ex-Im Bank until the Assistant General Counsel for Administration receives the appeal letter. The letter must include:

(1) A copy of the denied request or a description of the correction sought;

(2) The name and title of the Ex-Im Bank employee who denied the request;

(3) The date on which the request was denied;

(4) The Ex-Im Bank identification number assigned to the request; and

(5) Any information said to justify the correction.

(d) *Final determination on correction appeal.* (1) The disposition of an appeal shall be made in writing within twenty working days after the date of receipt of an appeal. The Assistant General Counsel for Administration may extend the time for response an additional ten working days for good cause, provided that the requester is notified in writing.

(2) A decision affirming the denial of a request for access shall advise the appellant of the:

(i) Reasons for affirming the denial;

(ii) Right to seek judicial review; and

(iii) Right to file a statement of disagreement, as provided in paragraph (e) of this section.

(3) If the initial determination is reversed, then the request shall be remanded to the Freedom of Information and Privacy Office to be processed in accordance with the decision on appeal.

(e) *Statement of disagreement.* Upon denial of a correction appeal, the appellant shall have the right to file a statement of disagreement with Ex-Im Bank, setting forth his or her reasons for disagreeing with the Agency's action. The statement should be addressed to the Freedom of Information and Privacy Office at the address in § 404.12(e) and must be received within thirty working days of Ex-Im Bank's issuance of the denial notice. A statement of disagreement must not exceed one typed page per fact disputed. Statements exceeding this limit shall be returned to the requester for editing. Upon receipt of a statement of disagreement under this section, the Freedom of Information and Privacy Office shall have the statement included in the system of records in which the disputed record is maintained and shall have the disputed record marked so as to indicate that a Statement of Disagreement has been filed. Ex-Im Bank may also append to the disputed record a written statement regarding Ex-Im Bank's reasons for denying the request to correct the record.

(f) *Notices of correction or disagreement.* In any disclosure of a record for which Ex-Im Bank has received a statement of disagreement, Ex-Im Bank shall clearly note any portion of the record which is disputed and shall provide a copy of the statement of disagreement. Ex-Im Bank also may provide its own statement regarding the disputed record. In addition, whenever Ex-Im Bank corrects a record or receives a statement of disagreement, Ex-Im Bank shall, as is reasonable under the circumstances, advise any person or agency to which it previously disclosed such record of the correction or statement, provided that an accounting of such disclosure exists.

§ 404.19 Request for accounting of record disclosures.

(a) *Required information.* With respect to each system of records under Ex-Im Bank control, Ex-Im Bank shall maintain an accurate accounting of the date, nature, and purpose of each external disclosure of a record and the name and address of all persons, organizations, and agencies to which disclosure has been made. Ex-Im Bank shall retain this accounting for at least five years or the life of the record, whichever is longer.

(b) *Form.* An individual may obtain an accounting of all disclosures of a record, provided that such individual establishes his or her identity as the subject of such record in accordance with the procedures set forth at § 404.14(d) and (e). A request for an accounting must be made in writing and must be signed by the requester. The request should be addressed to the Freedom of Information and Privacy Office at the address in § 404.12(e) and should contain both the return address and telephone number of the requester. Both the envelope and the request itself should be clearly be marked in capital letters: ''PRIVACY ACT ACCOUNTING REQUEST.'' Failure to properly mark or address the request may slow its processing. The request shall not be deemed to have been received by Ex-Im Bank until the Freedom of Information and Privacy Office receives the request. The letter must clearly identify the particular record for which the accounting is requested.

(c) *Initial determination.* The Freedom of Information and Privacy Office shall notify the requester whether the request will be granted or denied within ten working days of receipt of a valid request for an accounting. Ex-Im Bank

shall not charge for processing such a request.

(d) *Exceptions.* Ex-Im Bank shall not be required to provide an accounting to an individual when the accounting relates to a disclosure made:

(1) To an employee within the agency;

(2) Under the FOIA; or

(3) To a law enforcement agency for an authorized law enforcement activity in response to a written request from such agency which specified the law enforcement activity for which the disclosure was sought.

§ 404.20 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the Assistant General Counsel for Administration shall make reasonable efforts to provide notice to the subject individual. Notice shall be given within a reasonable time after Ex-Im Bank's receipt of the order, except that in a case in which the order is not a matter of public record, notice shall be given only after the order becomes public. Such notice shall be mailed to the individual's last known address and shall contain a copy of the order and a description of the information disclosed.

(b) *Emergency disclosures.* If a record has been disclosed by Ex-Im Bank under compelling circumstances affecting the health or safety of any person, then, within ten working days, the Assistant General Counsel for Administration shall notify the subject individual of the disclosure at his or her last known address. The notice of such disclosure shall be in writing and shall state the:

(1) Nature of the information disclosed;

(2) Person, organization or agency to which it was disclosed;

(3) Date of disclosure; and

(4) Compelling circumstances justifying the disclosure.

§ 404.21 Submission of social security and passport numbers.

(a) *Policy.* Ex-Im Bank recognizes the importance of assessing, to the extent reasonably possible, the risks associated with transactions supported by Ex-Im Bank. It is often difficult to assess risks related to individuals and non-publicly trade entities. Therefore, when an individual or a non-publicly traded entity applies for participation in an Ex-Im Bank program or is proposed as a guarantor for an Ex-Im Bank transaction, Ex-Im Bank may request social security and/or U.S. passport numbers from such individual or from the principals of such entity. Ex-Im Bank shall not require submission of this information, and unwillingness or inability to provide a social security or passport number shall not affect Ex-Im Bank's decision on an application for Ex-Im Bank assistance.

(b) *Use.* Ex-Im Bank shall use social security and passport numbers to assess the creditworthiness of Ex-Im Bank program participants and as a mechanism for enforcing agreements with Ex-Im Bank. Such information shall not be disclosed, except as warranted by law and regulation.

(c) *Notice.* Whenever Ex-Im Bank requests a social security or passport number, Ex-Im Bank shall place an appropriate Privacy Act notification on the form used to collect the information.

§ 404.22 Government contracts.

(a) *Approval by Assistant General Counsel for Administration.* Ex-Im Bank shall not contract for the operation of a system of records or for an activity that requires access to a system of records without the express, written approval of the Assistant General Counsel for Administration.

(b) *Contract clauses.* Any contract authorized under paragraph (a) of this section shall contain the standard contract clauses required by the Federal Acquisition Regulation (48 CFR 24.104) to ensure compliance with the requirements imposed by the Privacy Act. The division within Ex-Im Bank that is responsible for technical supervision of the contract shall be responsible for ensuring that the contractor complies with the Privacy Act contract requirements.

(c) *Contractor status.* Any contractor that operates an Ex-Im Bank system of records or engages in an activity that requires access to an Ex-Im Bank system of records shall be considered an Ex-Im Bank employee for purposes of this subpart. Ex-Im Bank shall supply any such contractor with a copy of the regulations in this subpart upon entering into a contract with Ex-Im Bank.

§ 404.23 Other rights and services.

Nothing in this subpart shall be construed to entitle any person to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—[Reserved]

PART 405—[REMOVED AND RESERVED]

2. 12 CFR part 405 is removed and reserved.

Dated: March 16, 1999.

Kenneth W. Hansen,

General Counsel.

[FR Doc. 99–7283 Filed 3–24–99; 8:45 am]

BILLING CODE 6690–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 35

[Docket No. FR–4444–F–02]

Lead-Based Paint Poisoning Prevention in Certain Residential Structures—Information Collection Approval Numbers; Technical Amendment

AGENCY: Office of the Secretary-Office of Lead Hazard Control, HUD.

ACTION: Final rule; technical amendment.

SUMMARY: The rule amends various sections of HUD's regulations relating to lead-based hazards to include the Office of Management and Budget (OMB) approval numbers for the information collections contained in those provisions.

EFFECTIVE DATE: March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Gail Ward, Reports Liaison Officer, Office of Lead Hazard Control, Department of Housing and Urban Development, Room B–133, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–1785, ext. 111. (This is not a toll-free number.) For persons with hearing or speech impairments, this number may be accessed by TTY through the Federal Information Relay Service, (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD's regulations on Lead-Based Paint Poisoning Prevention in Certain Residential Structures are set forth in 24 CFR part 35. Information collection requirements are in §§ 35.88, 35.90, 35.92, and 35.94, which pertain to disclosure requirements for sellers and lessors, evaluation, certifications and acknowledgments of disclosure, and agent responsibilities. This final rule amends those sections to remove inaccurate notations about the effectiveness of the information

collections and to insert the OMB approval number assigned in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

Justification for Final Rule

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10 does provide, however, for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.'' (24 CFR 10.1)

In this case, the changes being made to the rule are technical in nature, conforming the rule to the OMB approval actions that have already taken place. Therefore, prior public procedure is unnecessary.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.900.

List of Subjects in 24 CFR Part 35

Grant programs—housing and community development, Lead poisoning, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, part 35 of title 24 of the Code of Federal Regulations is amended as follows:

PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

1. The authority citation for part 35 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 4821–4846 and 4852d.

§§ 35.88, 35.90, 35.92 and 35.94 [Amended]

2. Sections 35.88, 35.90, 35.92, and 35.94 are amended to add at the end of each section the following statement:

''(Approved by the Office of Management and Budget under control number 2070–0151).''

Dated: March 18, 1999.

David E. Jacobs,

Director of the Office of Lead Hazard Control.

[FR Doc. 99–7344 Filed 3–24–99; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 8812]

RIN 1545–A193

Continuation Coverage Requirements Applicable to Group Health Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8812, which was published in the **Federal Register** on Wednesday, February 3, 1999, (64 FR 5160) relating to continuation coverage requirements applicable to group health plans.

DATES: This correction is effective February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Yurlinda Mathis at (202) 622–4695 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 4980B of the Internal Revenue Code.

Need for Correction

As published, TD 8812 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8812), which were the subject of FR Doc. 99–1520, is corrected as follows:

1. On page 5166, column 2, in the preamble under the heading, ''*COBRA Continuation Coverage*'', first full paragraph, line 4 from the bottom of paragraph, the language ''offer for core coverage separately.'' is corrected to read ''offer core coverage separately.''.

2. On page 5170, column 1, in the preamble under the heading, ''*Paying for COBRA Continuation Coverage*'', last paragraph in the column, line 14, the language ''beginning. Therefore, the final'' is corrected to read ''beginning of the period. Therefore, the final''.

§ 54.4980B–1 [Corrected]

3. On page 5174, column 1, § 54.4980B–1, paragraph (b), line 7 from bottom of paragraph, the language ''rules in §§ 54.4980B–1 though'' is corrected to read ''rules in §§ 54.4980B–1 through''.

Michael Slaughter,

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

[FR Doc. 99–7340 Filed 3–24–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–013]

RIN 2115–AE46

Special Local Regulations for Marine Events; 1D48 Chesapeake Grant Prix Distance Race

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations for the start of the 1D48 Chesapeake Grand Prix Distance Race, a marine event to be held on the waters of the Chesapeake Bay between Annapolis, Maryland, and Chesapeake Light. These regulations are necessary to provide for the safety of life and property on U.S. navigable waters during the start of the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATE: This temporary final rule is effective from 12:30 p.m. EDT (Eastern Daylight Time) to 1:30 p.m. EDT on May 2, 1999.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland, 21226–1791, telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, no notice of proposed rulemaking was published for this regulation. Following normal rulemaking procedures would have been impracticable since there is not sufficient time remaining to publish a proposed rule in advance of the event or to provide for a delayed effective date. Immediate action is needed to protect vessel traffic from the potential hazards associated with this event.

Background and Purpose

One Design, LLC, of Annapolis, Maryland, will sponsor the 1D48 Chesapeake Grant Prix Distance Race on May 2, 1999. The event will consist of

8 state-of-the-art auxiliary-powered sloops conducting a highly publicized, competitive race, on the waters of the middle and lower Chesapeake Bay, from the Chesapeake Bay Bridge off Annapolis, Maryland, to Chesapeake Light at the entrance to the Chesapeake Bay, thence returning to Annapolis, Maryland. A fleet of spectator vessels is anticipated for the start of the event, as the race coincides with the annual Chesapeake Bay Bridge Walk. Because of the need for vessel control during the start of the race, vessel traffic will be temporarily restricted to provide for the safety of spectators, participants and transiting vessels.

Discussion of Regulations

The Coast Guard will establish temporary special local regulations on specified waters of the Chesapeake Bay in the vicinity of the Chesapeake Bay Bridge (Wm. P. Lane, Jr. Memorial Bridge) during the start of the race. The effect will be to restrict general navigation in the regulated area during the start of the race. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators, and transiting vessels.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the regulated area will be in effect only for a limited amount of time, extensive advisories have been and will be made to the affected maritime community so that they may adjust their schedules accordingly, and the event schedule will allow commercial interests to coordinate their activities to allow for minimum disruption to their enterprise.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the event not lasting long, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

These regulations contain no Collection-of-Information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h) of COMDTINST M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are excluded under that authority.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33 Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, 100.35–T05–013, is added to read as follows:

§ 100.35–T05–013; 1D48 Chesapeake Grand Prix Distance Race.

(a) *Definitions.* (1) *Regulated area.* The waters of the Chesapeake Bay enclosed by a line connecting the following points:

Latitude	*Longitude*
39°00′25.0″ N	76°22′57.0″ W, to
39°00′19.0″ N	76°22′20.0′ W, to
38°58′52.0″ N	76°22′47.5″ W, to
38°58′59.5″ N	76°23′27.5″ W, to
39°00′25.0″ N	76°22′57.0″ W

All coordinates refer to Datum NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(b) *Special local regulations.* (1) All persons and vessels not authorized as participants or official patrol vessels are spectators. The ''official patrol'' consists of any Coast Guard, public, State, county, or local law-enforcement vessels assigned or approved by Commander, Coast Guard Activities Baltimore.

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(3) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(4) Spectator vessels may enter and anchor in areas outside the regulated area without the permission of the Patrol Commander. They shall use caution not to enter the regulated area. No vessel shall anchor within a tunnel, cable, or pipeline area shown on a Government chart.

(5) The Coast Guard Patrol Commander will announce the specific times during which the regulations will be enforced, by Broadcast Notice to Mariners on channel 22 VHF–FM marine-band radio.

(c) *Effective date.* The regulated area is effective from 12:30 p.m. EDT (Eastern Daylight Time) to 1:30 p.m. EDT on May 2, 1999.

Dated: March 5, 1999.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 99–7322 Filed 3–24–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–012]

RIN 2115–AE46

Special Local Regulations for Marine Events; 1D48 Chesapeake Grand Prix Round-the-Buoys Races

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations for the 1D48 Chesapeake Grand Prix Round-the-Buoys Races, a marine event to be held on the waters of the Patapsco River near Baltimore, Maryland. These regulations are necessary to provide for the safety of life and property on U.S. navigable waters during the event. The effect will be restrict general navigation in the regulated area for the safety of spectators, participants, and other vessels transiting the area.

EFFECTIVE DATES: This temporary final rule is effective from 11 a.m. EDT (Eastern Daylight Time) to 3 p.m. EDT on April 28, April 29, and April 30, 1999.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore Maryland, 21226–1791, telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, no notice of proposed rulemaking was published for this regulation. Following normal rulemaking procedures would have not been impracticable since there is not sufficient time remaining to publish a proposed rule in advance of the event or to provide for a delayed effective date. Immediate action is needed to protect vessel traffic from the potential hazards associated with this event.

Background and Purpose

One Design, LLC, of Annapolis, Maryland, will sponsor the 1D48 Chesapeake Grand Prix Round-the Buoys Races on April 28, April 29 and April 30, 1999. The event is consist of 8 state-of-the-art auxiliary-powered sloops conducting highly publicized, competitive races, on the waters of the Patapsco River, near Baltimore, Maryland. A fleet of spectator vessels is anticipated for the event, as the races coincide with the annual Baltimore Waterfront Festival. Because of the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of spectator, participants and transiting vessels.

Discussion of Regulations

The Coast Guard will establish temporary special local regulations on specified waters of the Patapsco River. The effect will be to restrict general navigation in the regulated area during the races. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area while the regulations are in effect. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators, and transiting vessels. Since the Coast Guard Patrol Commander may stop the event to assist transit of vessels through the regulated area, normal marine traffic should not be severely disrupted.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the regulated area will be in effect only for a limited amount of time, extensive advisories have been and will be made to the affected maritime community so that they may adjust their schedules accordingly, and the event schedule will allow commercial interests to coordinate their activities to allow for minimum disruption to their enterprise.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small businesss concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the event not lasting long, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

These regulations contain no Collection-of-Information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h) of COMDTINST M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are excluded under that authority.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33 Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, 100.35–T05–012, is added to read as follows:

§ 100.35–T05–012; 1D48 Chesapeake Grand Prix Round-the-Buoys Races.

(a) *Definitions.* (1) *Regulated area.* The waters of the Patapsco River enclosed by:

Latitude	*Longitude*
39°15′09.0″ N.	76°32′38.5″ W, to
39°13′30.5″ N	76°31′06.5″ W, to
39°12′45.5″ N	76°32′03.0″ W, to
39°15′17.0″ N	76°34′40.0″ W, to
39°15′39.0″ N	76°34′16.0″ W, to
39°15′09.0″ N	76°32′38.5″ W

All coordinates refer to Datum NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(b) *Special local regulations.* (1) All persons and vessels not authorized as participants or official patrol vessels are spectators. The ''official patrol'' consists of any Coast Guard, public, State, county, or local law-enforcement vessels assigned or approved by Commander, Coast Guard Activities Baltimore.

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(3) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(4) Spectator vessels may enter and anchor in areas outside the regulated area without the permission of the Patrol Commander. They shall use caution not to enter the regulated area. No vessel shall anchor within a tunnel, cable, or pipeline area shown on a Government chart.

(5) The Coast Guard Patrol Commander will announce the specific time during which the regulations will be enforced, by Broadcast Notice to Mariners on channel 22 VHF–FM marine band radio.

(c) *Effective dates.* The regulated area is effective from 11 a.m. EDT (Eastern Daylight Time) to 3 p.m. EDT on April 28, April 29, and April 30, 1999.

Dated: March 5, 1999.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 99–7323 Filed 3–24–99; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 111

Delivery of Mail to a Commercial Mail Receiving Agency

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends section D042.2.5 through D042.2.7 of the Domestic Mail Manual (DMM) to update and clarify procedures for delivery of an addressee's mail to a commercial mail receiving agency (CMRA). The rule provides procedures for registration to act as a CMRA; an addressee to request mail delivery to a CMRA; and delivery of the mail to a CMRA. This rule adopts with changes a proposed rule published for public comment on August 27, 1997, in the **Federal Register** (62 FR 45366–45368).

EFFECTIVE DATE: April 26, 1999.

FOR FURTHER INFORMATION CONTACT: Roy E. Gamble, (202) 268–3197.

SUPPLEMENTARY INFORMATION: On August 27, 1997, the Postal Service published in the **Federal Register** a proposed rule to amend sections D042.2.5 through D042.2.7 of the Domestic Mail Manual (62 FR 45366–45368). The proposed rule was in response to a need to clarify and revise current rules. Recent audits and follow-up reviews indicated a need for easy-to-understand rules to satisfy the different needs and requirements of the sender and the addressee of mail sent to CMRA addresses.

The proposed rule clarifies and updates the requirements to be consistent with other current postal rules, policies, and requirements. In many instances, these requirements are similar to those for obtaining post office box service. The requirements are protective of the sender's requirement for a secure mailstream. They are sensitive to the addressee's desire to have a CMRA receive delivery of his or her mail and hold it for pickup or re-mail it to the addressee, prepaid with new postage.

Comments on the proposed rule were due on or before September 26, 1997. The Postal Service reopened the public comment period for an additional 30 days with written comments due on or before December 24, 1997, (62 FR 62540 November 24, 1997). The Postal Service received a total of 8,107 comments. Of the total, 727 comments were from CMRA owners, 7,365 were from CMRA customers, four were from CMRA franchisers and associations, and one comment was from a Member of Congress. These comments were largely identical in content and format, and generally opposed the proposed rule. The Postal Service received 10 comments that generally supported the proposed rule. Large firms and associations, including financial institutions and trade associations of mailers, consumers, and law enforcement officials submitted these comments. The Postal Service also received a number of comments after the deadline that were similar in nature and content to those received on-time that generally opposed the proposed rule.

At the outset, it may be useful to address in more detail the purposes of this rulemaking. A number of commenters who opposed the new rule questioned the intent of the undertaking to amend the rule. There are assertions from the CMRAs that compliance with the regulations will ''pu[t] CMRAs out of business.'' Customers of CMRAs assert that the rulemaking ''appears to discriminate against them because of [their] choice of an address.''

These claims are erroneous. The sole postal purpose of the rule is to increase the safety and security of the mail. The rule is designed to benefit both businesses and consumers by reducing the opportunities to use the mail for fraudulent purposes. The rule is intended to ensure that mailers are confident that addresses provided by prospective customers are actually used by these customers, and that the mail will reach the recipient, rather than be returned to the sender.

Comments from business, consumer, and law enforcement organizations recognize these purposes and indicate strong support for the rule. Indeed, in several cases, the commenters advocate even stronger provisions. The commenters describe a variety of problems addressed by the rule. For instance, several commenters refer to the term ''identity theft,'' referring to criminal schemes with potential significant financial consequences to an innocent victim. The criminal may apply for new credit cards in the individual's name or request that the credit card issuers change the address of the legitimate cardholder. In each case, the criminal requests that future mailings are sent to an address that he or she controls.

One of the purposes of the rule is to strengthen the identification process at the time of application to receive mail through a CMRA. Thus, there are additional safeguards to ensure that a CMRA verifies that the applicant is the individual to whom mail will be addressed. The Postal Service has adopted safeguards in other instances where the mails may be used for fraudulent purposes, including strengthening the identification process for those applying to use post office box service as well as additional safeguards in change-of-address procedures. Thus the Postal Service is not ''singling out'' CMRAs.

Compliance with the prescribed procedures may, as noted by some commenters, impose additional burden on some CMRAs. It is true that CMRAs and their customers are, in the

overwhelming majority of cases, innocent of any wrongdoing. Indeed, one commenter who supported the rule referred to CMRAs as ''unwitting conduits'' in these frauds. Unfortunately, there are numerous instances in the modern world (e.g., airport security checks, custom searches, and restrictions on mailing parcels in collection boxes) where innocent people suffer inconvenience or expense due to the actions of a few lawbreakers. While the harms addressed in this rulemaking may not entail the physical dangers addressed in some of these examples, the potential financial consequences suffered by innocent victims can be devastating.

The Postal Service is not imposing administrative and financial burdens solely on the CMRAs or their customers. As noted above, the Postal Service undertakes similar administrative efforts with respect to persons using post office box service. Moreover, local postal officials are being asked to increase efforts to work with CMRAs to ensure knowledge of, and compliance with, these regulations. Finally, Postal Inspectors investigate complaints that CMRAs, post office boxes, or other addresses are being used in conducting fraudulent schemes. As observed by some commenters, the Postal Service and CMRAs act together to ensure that mail is delivered from the sender to the CMRA and then to the CMRA's customer, the addressee. This rulemaking extends this partnership by ensuring that the Postal Service and CMRAs work together for the equally important objective of ensuring that their customers are not the victims of fraud.

Numerous commenters, particularly CMRAs, oppose the updated requirement that assigns responsibility to the CMRA for verification of the addressee's permanent residential or business address entered on PS Form 1583, Application for Delivery of Mail Through Agent. The CMRAs asserted that this requirement is a huge burden that operators are unequipped to bear. The CMRAs said that the ''Postal Service should not force CMRA operators to seek information that the Postal Service wants; operators are not police officers or private investigators.''

In contrast, commenters who supported the rulemaking strongly favored this proposal and argued that, if anything, it does not go far enough. These commenters asserted that the requirements would reduce the number of persons who use a CMRA address to shield the user's identity and will help in the apprehension of individuals who use CMRAs for such purposes. These commenters suggested that the provisions be strengthened by requiring CMRAs to maintain a photocopy of the applicant's photo identification; and, by eliminating proposed section D042.2.6(a)(4) that permits the applicant's second item of identification ''to be another credential showing the applicant's signature and a serial number or similar information that is traceable to the bearer.''

The Postal Service has determined to adopt the proposed rule with certain clarifications. To a large degree, the proposed rule is similar to that in effect today in that an applicant for CMRA service must submit identification when applying for service. The proposed rule, with additional clarifying language, makes explicit the procedures that are implicit today; e.g., that the CMRA must review the identification to ensure that the applicant is the person he or she claims. These identification procedures are similar to those followed by the Postal Service for persons applying for post office box service. The Postal Service does not believe that these procedures are burdensome. Moreover, even if this was not true, we believe the procedures are necessary to prevent the fraud and mail security problems described by the mailers, consumers, and law enforcement groups supporting the rule. The proposal simply requires that the CMRA match the information on the application with that on the valid identification presented. If a discrepancy exists between the two, the CMRA must require that the addressee substantiate that he or she resides or conducts business at the address shown. The CMRA must deny the application if the addressee is unable to substantiate the address. This is an essential element in preventing mail delivery to a CMRA without verifiable consent of the actual addressee and reflects current practices to confirm that the identification belongs to the person presenting it. The information and the procedure will help the CMRA hinder fraud schemes involving identity theft. As an additional benefit, the verification of the address ensures that the CMRA has an address to re-mail mail or trace customers who terminate the relationship without prior notification.

The Postal Service has determined to retain the option to use ''other credential'' as one of the forms of identification (D042.2.6(a)(4)). The Postal Service believes that this provision is clear. The other credential could, for example, include a document such as a current lease, mortgage, deed, voter registration card, or a university identification card. In most instances these forms of identification would contain a signature and an address, and in some cases a photograph. The additional options will provide the CMRA with sufficient valid identification to confirm that the person presenting it is the addressee. Moreover, elimination of this provision could be burdensome to CMRAs and their customers of whom many may not have two of the other required forms of identification.

The comment recommending that the rule be amended to require the CMRA to retain a photocopy of the addressee's photo identification asserts that this would assist law enforcement officials to apprehend criminals and that it would only be a minor additional burden on the CMRA to maintain a photocopy. While the Postal Service does not disagree with this argument, we have determined, nevertheless, not to adopt this recommendation at this time. The Postal Service strongly believes that full compliance with procedures outlined in the proposed rule and due diligence by the CMRA owners will be sufficient to deter wrongdoing. The proposed rule does, moreover, permit CMRA owners to retain photocopies when they believe it appropriate. However, as part of its ongoing efforts to deter mail fraud at all addresses, including CMRAs, the Postal Service will continue to review its procedures and will propose adjustments where needed.

There is an additional clarification in this portion of the final rule. In general, each person receiving mail through a CMRA must complete a PS Form 1583, i.e., if three persons share a single CMRA private mailbox delivery address, each must submit a completed PS Form 1583. One CMRA commenter suggested a revision to the rule to allow spouses to execute and sign one PS Form 1583 and for parents or guardians to receive delivery of a minor's mail by listing the minor's name and age on their forms. The Postal Service adopted this suggestion.

Some CMRAs oppose the new provision, proposed D042.2.6(b), that requires addressees to disclose on PS Form 1583 when a private mailbox is being used for doing or soliciting business to the public. They expressed concern for their customers' privacy and about the lack of similar provisions for post office box service customers.

An identical requirement, noted in section 265(d) of title 39 of the Code of Federal Regulations, currently applies to users of post office box service. Under 39 C.F.R. 265.6(d)(3), parties may request information concerning the recorded name, address, and telephone number of the holder of a post office box

being used for doing or soliciting business with the public, or any person applying on behalf of a holder (see Administrative Support Manual 352.44(c)). Thus, the Postal Service, in adopting this proposal, is adopting the same provision that has been in place with respect to post office box service.

The CMRA commenters opposed the proposal to submit quarterly alphabetical listings to the postmaster of all new customers, current customers, and those customers who terminated within the past 12 months, including the date of termination (proposed D042.2.6(d) and D042.2.7(c)). The commenters asserted that these requirements are burdensome and unnecessary and that the current annual submission is sufficient. They also argued that submission of their copy of PS Form 1583 to the post office with the termination date should serve as immediate notification of the termination date and contended that this action should cease further delivery of the former customers' mail to the CMRA.

While generally supporting the submission of a quarterly list, one commenter recommended that the list also include the re-mail address of former customers.

After consideration of the comments, the Postal Service has determined to adopt the requirement that lists be submitted quarterly. The annual submission of the updated list of CMRA customers is inadequate. The average customer turnover rate at CMRAs is significant and recurrent. An accurate quarterly list of CMRA customers is necessary for the Postal Service to ensure mail security and compliance with CMRA requirements. The list will allow us to ensure that all addressees receiving mail at a CMRA have a completed PS Form 1583 on file at the Postal Service. We do not believe that the provision of a quarterly list will be unduly burdensome to CMRAs. In this respect, the Postal Service has eliminated the requirement to immediately notify the Postal Service of customers who have terminated their relationships with the CMRA. Instead, the CMRA will notify the Postal Service on a quarterly basis as part of the listing. The current procedure of notifying the Postal Service of the termination date of a customer relationship does not cease delivery of the customer's mail to the CMRA. The PS Form 1583 agreement obligates the Postal Service to deliver the intended addressee's mail to the CMRA. The Postal Service currently uses, and will continue to use, the termination date to determine the end of the retention period for the PS Form 1583.

The Postal Service has determined not to adopt the proposal that the CMRA provide the Postal Service, as part of the quarterly list, all addresses to which the agency re-mails mail. Requiring the CMRAs to include these addresses on the quarterly lists would impose an unnecessary burden on the CMRAs. The Postal Service has revised section D042.2.7(b) to require the CMRAs to provide these addresses on request, consistent with current policy.

The Postal Service is adopting a modification proposed by a CMRA. Noting the possible conflicts with other end-of-the month responsibilities, the commenter suggested that the lists be due on the 15th day of the applicable months. The Postal Service has revised section D042.2.6(d) to reflect this change.

The CMRAs and their customers opposed the regulation requiring the use of the delivery address designation ''PMB'' (private mailbox) that specifies the location to which a mailpiece is delivered. They perceive the use of the ''PMB'' designation as ''unnecessary and a stigma that unfairly portrays the CMRA customer as somehow unsavory.'' Additionally, some CMRA customers will incur costs to print new stationery and to notify all current correspondents of the address change.

Commenters supporting the proposed rule, including business, consumer, and law enforcement associations, strongly endorsed the address designation. They believed that the designation would greatly assist business and law enforcement authorities in the prevention and detection of fraudulent activity with a minimum adverse effect on businesses or individuals; and suggested that adoption would be in the best interest of mailers and the general public. One commenter went on to assert that some of the proposed amendments did not go far enough and suggested even tougher requirements. The commenter expressed concern that many people would not recognize that ''PMB'' stands for private mailbox, and suggested using ''private mailbox'' or ''rental mailbox.''

After consideration of the comments, the Postal Service has determined to adopt the proposed rule. The comments supporting the proposal testify to the need for mailers to know the identity of the location to which a mailpiece is delivered. These comments also minimize the possibility of discriminatory treatment of CMRA customers. They indicate that businesses can adopt safeguards to protect themselves and their customers while continuing to provide credit card and other services to the addressee that receives mail at a CMRA.

The Postal Service believes that ''PMB (private mailbox)'' is the most appropriate description for the CMRA customer address designation. Use of the complete secondary designation name in the address might cause operational problems. The Postal Service uses automated equipment to sort and to distribute mail. The automated equipment identifies the word ''box'' in the address and associates it with a post office box number in the zone. In many instances, the automated equipment will code and sort this type of address to the post office box bearing that number. This causes an undue mail delay. The Postal Service designed the ''PMB'' acronym for ''private mailbox'' to prevent such mail delays while establishing the true address identity of mail delivered to CMRAs. The Postal Service also believes that the acronym ''PMB'' should not cause long-term confusion among customers.

As a further note, this proposal is consistent with the current policy of general addressing standards as required by Domestic Mail Manual A010.1.1 and A010.1.2, Address Content and Placement. PMB (private mailbox) simply specifies the location to which a mailpiece is delivered like APT (apartment), STE (suite), and PO BOX (post office box) address designations. Current use of APT, STE, and other address designations by CMRA customers is misleading and does not identify the true location of the mailpiece delivery. This misrepresentation of a mailing address is not in the best interest of and may cause irreparable harm to the sender. The sender has a primary right to know the true identity of the location to where his or her mail is delivered. Properly addressed mail serves the best interests of all.

While the Postal Service has determined to adopt the proposal, it is nevertheless sensitive to the needs of CMRAs and their customers. CMRA customers should begin making changes now but will receive up to 6 months after the Final Rule effective date to be in full compliance. The Postal Service recognizes that CMRA customers may need to print new stationery. This 6-month period is sufficient to advise correspondents and to make any other changes to comply with the address requirement. Accordingly, we urge the CMRAs and their customers to begin the notification process and conversion to the required address as quickly as possible. The Postal Service will require

strict adherence to the address requirement. At the end of this 6-month period, the Postal Service will return mail without a proper address to the sender endorsed ''Undeliverable as Addressed.''

Some CMRAs oppose the proposed regulation assigning authority to the postmaster to suspend delivery to a CMRA that fails to comply with Domestic Mail Manual regulations or other applicable postal requirements. The commenters believe there is no requirement or opportunity to allow the CMRA to come into compliance.

This provision is not new, but merely codifies current policy into the DMM. Current CMRA regulations assign authority to the postmaster to suspend mail delivery to a CMRA for noncompliance with DMM regulations (see 612.14, Compliance with Proper Procedures, of the Postal Operations Manual). The CMRA must receive written notification identifying the violation(s) and reasonable time to come into compliance. If the CMRA fails to comply with the written notification, the postmaster must receive approval from the next higher level and notify the Postal Inspector-In-Charge before suspending delivery service to a CMRA. Upon approval, the postmaster must provide the CMRA with written notification of the effective date and the reason(s) for suspension of delivery. If the CMRA fails to comply by the effective date, mail will be returned to the sender endorsed ''Delivery Suspended to Commercial Mail Receiving Agency.'' The next higher level authority may disagree with the time allotted for compliance or with the severity of the violation(s) and not approve the action. This postal procedure is designed to prevent unnecessary delays in mail delivery and provide the postmaster with the means to maintain compliance. The Postal Service believes the regulation is fair and reasonable to the CMRA and its customers.

Provisions concerning the handling of mail after delivery to CMRAs attracted comments from CMRAs, their customers, a mailers association, and a consumer organization. The CMRAs, their customers, and a mailers association opposed the provision limiting the ability of former customers to file change-of-address orders with the Postal Service and the requirement to pay new postage when re-mailing pieces to former customers. The CMRAs also opposed the provision limiting their ability to refuse mail for their customers. The consumer organization questioned whether CMRAs should be permitted to re-mail pieces to current or former customers, even when that is the desire of the parties. This commenter asserted that there is ''no compelling reason why a legitimate addressee would need to arrange for forwarding on a permanent basis.'' The commenter urged adoption of a rule that would restrict re-mailing to a period of several weeks while a current customer is out of town or for 3 months after termination of the agency relationship. The commenter asserted that these provisions are necessary to prevent fraud.

Some of the comments appear to be based on misconceptions. A number of comments asserted that all other customers receive mail-forwarding service. To the extent that these commenters seek the right to file change-of-address orders with the Postal Service, this assertion is incorrect. Anyone who receives mail at a single point or bulk delivery location, such as residents of universities, hospitals, and other institutions, and some apartment or mobile home parks, as well as at their places of employment, may not file change-of-address orders. In each of these cases, the institution must place the individual's new address on the piece in order to redirect the mail. The difference between the CMRAs and these other locations is that the CMRA must re-mail the piece and affix new postage to send it to the individual. The reasons for this distinction are further discussed below.

Many commenters appear to believe that the policies codified in these DMM provisions are new. The majority of these policies are not new. To the extent that there are changes, at least portions of them ease the current requirements on the CMRAs and their customers. For instance, the restrictions against CMRA customers filing change-of-address orders and requiring payment of new postage to re-mail items are consistent with long-standing policy. Indeed, these provisions have long been set forth in postal regulations and reprinted on PS Form 1583. More important, these provisions implement standards in 2025 of the Domestic Mail Classification Schedule (DMCS). They cannot be changed by the Postal Service without a request and proceeding before the Postal Rate Commission.

These policies are clearly consistent with the mandate that the Postal Service operates efficiently. As is the case with other entities receiving bulk delivery of mail, it is impractical for the Postal Service to accept change-of-address orders from former CMRA customers. To do so would require the Postal Service to manually inspect large quantities of mail to extract individual pieces addressed to customers filing change-of-address orders. This would entail significant time and expense for the Postal Service and delay the timely delivery of mail.

As noted above, other entities receiving bulk delivery of mail may redirect mail to former residents and other parties by writing the new address on the piece. No additional postage is required. Under the existing DMCS and DMM rules, CMRAs must affix new postage to re-mail mailpieces to former customers. This treatment is warranted. Unlike other bulk delivery points, CMRAs advertise and charge customers for mail service, which is a primary, rather than an incidental, part of their business. It is reasonable to expect CMRAs to perform this service completely by requiring CMRAs to ensure that mail continues to reach former customers. Many CMRAs already perform this same re-mailing service for customers not located in the same geographic area as the CMRA or who otherwise do not wish to travel to the CMRA to pick up mail.

The costs of re-mailing also should not be burdensome to the CMRAs. They are free to pass these costs on to their customers. The Postal Service understands that many, if not all, CMRAs already charge customers to re-mail their correspondence. The CMRA and the customers can make arrangements to reduce these costs by aggregating the pieces and paying postage on a single package rather than re-mailing each piece. The Postal Service believes it is appropriate that these costs be borne by the CMRA customer rather than be passed on to all postal customers, which would occur if the re-mailing costs were imposed on the Postal Service.

The Postal Service has determined not to adopt the suggestion by one commenter restricting CMRAs from re-mailing to current or former customers. The Postal Service understands that CMRAs routinely provide such services to customers. The suggestion would appear to prevent such persons from using CMRAs, and accordingly would have a significant adverse impact on these individuals as well as on the business of the CMRA.

The comments concerning the refusal of mail were generally received from CMRAs. These questions have arisen in the past and have been the subject of a number of rulings, some of which are potentially conflicting. This has included rulings that CMRAs may not refuse mail under any circumstances as well as rulings allowing CMRAs to refuse mail.

The issues concerning a CMRA's obligation to re-mail material to current or former customers (as opposed to redirecting it without affixing new postage) and their entitlement to refuse mail are linked in our view. A CMRA's obligation to re-mail matter may be circumvented by the expedient of returning mail without payment of new postage. Thus, a CMRA could avoid re-mailing pieces to a former customer if it could simply mark the piece ''refused'' and return it to the Postal Service. This adversely affects a number of parties: the sender whose mail does not reach the intended recipient, the addressee who does not receive it, and the Postal Service and its customers, which incurs the costs of returning the piece to the sender.

Accordingly, there are significant reasons to limit the refusal of mail by CMRAs. This conclusion is also consistent with the underlying relationship between the CMRA and its customer. By using PS Form 1583, the customer directs the Postal Service to deliver its mail to the CMRA, which is in the business of, and charges for, the receipt of such mail and holding it for pick up or re-mailing to the customer with payment of new postage. There is no provision to rescind this direction or for the CMRA to abandon its obligation to handle the individual's mail and to impose that responsibility on the Postal Service.

The Postal Service did, nevertheless, propose a limit on the obligation of CMRAs to re-mail mailpieces addressed to former customers and a limited authority to refuse mail. The Postal Service proposed to limit the period to 12 months for CMRAs to re-mail to former customers, after which the CMRAs could return only First-Class Mail to the Postal Service, with a specified endorsement. The proposed rule also clarified the conditions under which the CMRA can refuse mail and return it to the Postal Service with a specified endorsement.

In consideration of a comment, the Postal Service has determined to reduce the required period to re-mail to former customers to at least 6 months. This reasonably balances the interests and obligations of the senders of the mail, the CMRAs, former CMRA customers, and the Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual (DMM) which are incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

The Domestic Mail Manual is amended by revising modules A, D, and F as follows:

A Addressing

A000 Basic Addressing

A010 General Addressing Standards

1.0 ADDRESS CONTENT AND PLACEMENT

* * * * *

1.2 Address Elements

[Revise A010.1.2b as follows:]

* * * * *

b. Street and number. (Include the apartment number, or use the post office box number, or private mailbox (PMB) number, or general delivery, or rural route or highway contract route designation and box number, as applicable.)

* * * * *

3.0 COMPLETE ADDRESS

* * * * *

3.2 Elements

[Revise A010.3.2d as follows:]

* * * * *

d. Secondary address unit designator and number (such as an apartment, suite, or private mailbox number (APT 202, STE 100, PMB 300)).

* * * * *

5.0 RESTRICTIONS

* * * * *

[Add new 5.3 as follows:]

5.3 Mail Addressed to CMRAs

Mail sent to an addressee at a commercial mail receiving agency (CMRA) must be addressed to their private mailbox (PMB) number at the CMRA mailing address.

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D Deposit, Collection, and Delivery

* * * * *

D042 Conditions of Delivery

* * * * *

2.0 DELIVERY TO ADDRESSEE'S AGENT

* * * * *

2.5 CMRA

[Revise D042.2.5 as follows:]

The procedures for the establishment of a commercial mail receiving agency:

a. An addressee may request mail delivery to a commercial mail receiving agency (CMRA). The CMRA accepts delivery of the mail and holds it for pickup or re-mails it to the addressee, prepaid with new postage.

b. Each CMRA must register with the post office responsible for delivery to the CMRA. Any person who establishes, owns, or manages a CMRA must provide a Form 1583–A, Application to Act as Commercial Mail Receiving Agency, to the postmaster (or designee) responsible for the delivery address. The CMRA owner or manager must complete all entries and sign the Form 1583–A. The CMRA owner or manager must furnish two items of valid identification; one item must contain a photograph of the CMRA owner or manager. The following are examples of acceptable identification:

(1) Valid driver's license.

(2) Armed forces, government, or recognized corporate identification card.

(3) Passport or alien registration card.

(4) Other credential showing the applicant's signature and a serial number or similar information that is traceable to the bearer.

The postmaster (or designee) may retain a photocopy of the identification for verification purposes. Furnishing false information on the application or refusing to give required information will be reason for denying the application. When any information required on Form 1583–A changes or becomes obsolete, the CMRA owner or manager must file a revised application with the postmaster.

c. The postmaster (or designee) must verify the documentation to confirm that the CMRA owner or manager resides at the permanent home address shown on Form 1583–A; witness the signature of the CMRA owner or manager; and sign Form 1583–A. The postmaster must provide the CMRA with a copy of the DMM regulations relevant to the operation of a CMRA. The CMRA owner or manager must sign the Form 1583–A acknowledging receipt of the regulations. The postmaster must file the original of the completed Form 1583–A at the post office and provide the CMRA with a duplicate copy.

d. The approval of Form 1583–A does not authorize the CMRA to accept accountable mail (for example: Registered, Insured, or COD) from their customers for mailing. The only acceptable mailing point for this type of Accountable mail is the post office.

2.6 Delivery to CMRA

[Revise D042.2.6 as follows:]

Procedures for delivery to a CMRA:

a. Mail delivery to a CMRA requires that the CMRA owners or manager and each addressee complete and sign PS Form 1583, Application for Delivery of Mail Through Agent. Spouses may complete and sign one Form 1583. The requirement to furnish two items of valid identification will apply to each spouse. If any information that is required on Form 1583 is different for either spouse, include it in the appropriate box. A parent or guardian may receive delivery of a minor's mail by listing the name(s) and age(s) (block 13) of the minor(s) on Form 1583. The CMRA owner or manager, authorized employee, or a notary public must witness the signature of the addressee. The addressee must complete all entries on Form 1583. The CMRA owner or manager must verify the documentation to confirm that the addressee resides or conducts business at the permanent address shown on Form 1583. The address is verified if there is no discrepancy between information on the application and the identification presented. If the information on the application does not match the identification, the applicant must substantiate to the CMRA that the applicant resides or conducts business at the address shown. If the applicant is unable to substantiate the address, the CMRA must deny the application. Furnishing false information on the application or refusing to give required information will be reason for withholding the addressee's mail from delivery to the agency and returning it to the sender. When any information required on Form 1583 changes or becomes obsolete, the addressee must file a revised application with the CMRA. The addressee must furnish two items of valid identification; one item must contain a photograph of the addressee. The following are examples of acceptable identification:

(1) Valid driver's license.

(2) Armed forces, government, or recognized corporate identification card.

(3) Passport or alien registration card.

(4) Other credential showing the applicant's signature and a serial number or similar information that is traceable to the bearer.

The CMRA owner or manager may retain a photocopy of the identification for verification purposes. The CMRA owner or manager must list the two types of identification (block 9) and write the complete CMRA delivery address used to deliver mail to the addressee (block 3) on Form 1583.

b. The addressee must disclose on Form 1583 when the private mailbox is being used for the purpose of doing or soliciting business to the public. The information required to complete this form may be available to the public if ''yes'' in block 5 on Form 1583 is checked.

c. The CMRA must provide the original of completed Forms 1583 to the postmaster. This includes revised Forms 1583 (write revised on form) submitted by an addressee based on information changes in the original Form 1583. The CMRA must maintain duplicate copies of completed Forms 1583 on file at the CMRA business location. The Forms 1583 must be available at all times for examination by postal representatives and postal inspectors. The postmaster must file the original Forms 1583 alphabetically by the addressee's last name for each CMRA at the station, branch, or post office. The postmaster files the original Forms 1583 without verifying the address of residence or firm shown on Forms 1583. Verification is required only when the postmaster receives a request by the Postal Inspector-In-Charge, or when there is reason to believe that the addressee's mail may be, or is being, used for unlawful purposes.

d. When the agency relationship between the CMRA and the addressee terminates, the CMRA must write the date of termination on its duplicate copy of PS Form 1583. The CMRA must notify the post office of termination dates through the quarterly updates (due January 15, April 15, July 15, and October 15) of the alphabetical list of customers cross-referenced to the CMRA addressee delivery designations. The alphabetical list must contain all new customers, current customers, and those customers who terminated within the past 6 months, including the date of termination. The CMRA must retain the endorsed duplicate copies of Forms 1583 for at least 6 months after the termination date. Forms 1583 filed at the CMRA business location must be available at all times for examination by postal representatives and postal inspectors.

e. A CMRA must represent its delivery address designations for the intended addressees as a private mailbox (PMB). The CMRA delivery address must specify the location to which the mailpiece is delivered. Mailpieces must bear a delivery address that contains at least the following elements, in this order:

(1) Intended addressee's name or other identification. Examples: Joe Doe or ABC CO.

(2) PMB and number. Example: PMB 234.

(3) Street number and name or post office box number or rural route designation and number. Examples: 10 Main St or PO BOX 34 or RR 1 BOX 12.

(4) City, state, and ZIP Code (5-digit or ZIP+4). Example: Herndon VA 22071–2716.

The CMRA must write the complete CMRA delivery address used to deliver mail to each individual addressee or firm on the Form 1583 (block 3). The Postal Service will return mail without a proper address to the sender endorsed ''Undeliverable as Addressed.''

f. A CMRA or the addressee must not modify or alter Form 1583 or Form 1583–A. Modified or altered forms are invalid and the addressee's mail must be returned to sender in accordance with Postal Service regulations.

g. The CMRA must be in full compliance with DMM D042.2.5 through D042.2.7 and other applicable postal requirements to receive delivery of mail from the post office.

h. The postmaster may, with the next higher level approval and notification to the Postal Inspector-In-Charge, suspend delivery to a CMRA that, after proper notification, fails to comply with D042.2.5 through D042.2.7 or other applicable postal requirements. The proper notification must be in writing outlining the specific violation(s) with a reasonable time to comply.

i. With the approval of suspension of delivery, the postmaster must provide the CMRA with written notification of the effective date and the reason(s). If the CMRA fails to comply by the effective date, return mail to the sender endorsed ''Delivery Suspended to Commercial Mail Receiving Agency.''

2.7 Addressee and CMRA Agreement

[Reviser D042.2.7 as follows:]

In delivery of the mail to the CMRA, the addressee and the CMRA agree that:

a. When the agency relationship between the CMRA and the addressee terminates, neither the addressee nor the CMRA will file a change-of-address order with the post office.

b. The CMRA must re-mail mail intended for the addressee for at least 6 months after the termination date of the agency relationship between the CMRA and addressee. When re-mailed by the CMRA, mail requires payment of new postage. At the end of the 6-month period, the CMRA may return only First-Class Mail received for the former addressee (customer) to the post office. The CMRA must return this mail to the post office the next business day after receipt with this proper endorsement: ''Undeliverable, Commercial Mail Receiving Agency, No Authorization to Receive Mail for This Addressee.'' Return this mail without payment of new postage to the post office. The

CMRA must not deposit return mail in a collection box. The CMRA must give the return mail to the letter carrier or return it to the post office responsible for delivery to the CMRA. Upon request, the agent must provide to the Postal Service all addresses to which the agency re-mails mail.

c. The CMRA must provide to the postmaster a quarterly list (due January 15, April 15, July 15, and October 15) of its customers in alphabetical order cross-referenced to the CMRA addressee delivery designations. The alphabetical list must contain all new customers, current customers, and those customers who terminated within the past 6 months, including the date of termination.

d. A CMRA may not refuse delivery of mail if the mail is for an addressee that is a customer or former customer (within the past 6 months). The agreement between the addressee and the CMRA obligates the CMRA to receive all mail, except restricted delivery, for the addressee. The addressee may authorize the CMRA in writing on Form 1583 (block 6) to receive restricted delivery mail for the addressee.

e. If the CMRA has no Form 1583 on file for the intended addressee, the CMRA must return that mail to the post office responsible for delivery. The CMRA must return this mail to the post office the next business day after receipt with this proper endorsement: ''Undeliverable, Commercial Mail Receiving Agency, No Authorization to Receive Mail for This Addressee.'' Return this mail without payment of new postage to the post office. The CMRA must return misdelivered mail the next business day after receipt.

f. The CMRA must not deposit return mail in a collection box. The CMRA must give the return mail to the letter carrier or return it to the post office responsible for delivery to the CMRA.

* * * * *

F000 BASIC SERVICES

* * * * *

[Revise Exhibit F010.4.1 to add an endorsement.]

* * * * *

Delivery Suspended to Commercial Mail Receiving Agency

Failure to Comply with D042.2.5–D042.2.7

* * * * *

F020 FORWARDING

* * * * *

2.0 FORWARDABLE MAIL

* * * * *

[Add new F020.2.7 as follows:]

2.7 Mail CMRA Customers

Mail addressed to an addressee at CMRA is not forwarded through the USPS. The CMRA customer may make special arrangements for the CMRA operator to re-mail the mail with payment of new postage. A CMRA must accept and re-mail mail to former customers for at least 6 months after termination of the agency relationship. After the 6-month period, the CMRA may refuse mail addressed to a former customer.

* * * * *

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 99–7352 Filed 3–24–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 201–0138a; FRL–6309–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management 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 (SIP). This action is an administrative change which revises the emergency episode provisions in South Coast Air Quality Management District (SCAQMD) Rule 701.

The intended effect of approving this rule is to incorporate changes to the rule for clarity and consistency in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of this revision 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 May 24, 1999 without further notice, unless EPA receives adverse comments by April 26, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule is available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

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

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION:

Applicability

The rule being approved into the California SIP is SCAQMD Rule 701, Air Pollution Emergency Contingency Actions. This rule was submitted by the California Air Resources Board to EPA on September 8, 1997.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in l977 (1977 Act or pre-amended Act), that included the South Coast Air Quality Management District. 43 FR 8964, 40 CFR 81.305. The requirements for the Prevention of Air Pollution Emergency Episodes for sulfur dioxide, carbon monoxide, nitrogen dioxide, ozone and particulate matter are located in 40 CFR Part 51, Subpart H. These requirements include provisions for classification of regions for episodes plans, significant harm levels, contingency plans and re-evaluation of episode plans. SCAQMD

Rule 701 is now being revised to update the existing rule language and modify the boundary between two Source Receptor Areas. The revisions do not impose any additional requirements on affected sources and do not effect emissions.

This document addresses EPA's direct-final action for SCAQMD Rule 701, Air Pollution Emergency Contingency Actions. This rule was adopted by SCAQMD on June 13, 1997 and submitted by the California Air Resources Board on September 8, 1997. This rule was found to be complete on October 20, 1997, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V [1] and is being finalized for approval into the SIP.

The following is EPA's evaluation and final action for this rule.

EPA Evaluation and Action

In determining the approvability of an emergency episode rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations as found in section 110 and part D of the CAA and 40 CFR part 51 Subpart H. The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents.[2]

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Rule 701, Air Pollution Emergency Contingency Action, is being revised by updating the existing rule language and by modifying the boundary between two Source Receptor Areas. These modifications are generally administrative in nature, and in no case does this action represent a relaxation of an EPA approved requirement. Therefore, SCAQMD's Rule 701, Air Pollution Emergency Contingency Actions, is 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 rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective May 24, 1999 without further notice unless the Agency receives adverse comments by April 26, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 24, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

[1] 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).

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book)(notice of availability was published in the **Federal Register** on May 25, 1988).

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of 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).

F. 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 annual 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 annual 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.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. 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 May 24, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 5, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

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– *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(249)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(249) * * *

(i) * * *

(A) * * *

(*2*) Rule 701, amended on June 13, 1997.

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[FR Doc. 99–7176 Filed 3–24–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AL–AT–98–01; FRL–6315–4]

New Stationary Sources; Supplemental Delegation of Authority to the State of Alabama and the State of Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The States of Alabama and Georgia have requested that EPA delegate authority for implementation and enforcement of existing New Source Performance Standards (NSPS) which have been previously adopted by the State agencies, but have remained undelegated by EPA, and to approve the mechanism for delegation (adopt-by-reference) of future NSPS. The purpose of the States' request for approval of their delegation mechanism is to streamline the existing administrative procedures by eliminating unnecessary steps involved in taking delegation of federal NSPS regulations. With the new NSPS delegation mechanism in place, once a new or revised NSPS is promulgated by EPA, formal delegation of authority from EPA to the Alabama Department of Environmental Management and the Georgia Department of Natural Resources will become effective on the date that the NSPS is adopted by the respective State agency without change. No further State requests for delegation will be necessary. Likewise, no further **Federal Register** notices will be published. If an NSPS regulation is adopted with changes, EPA reserves the right to review and comment on the adopted NSPS. The State will notify EPA, and in return, EPA will review any State revisions and reserve the option to implement the NSPS regulation directly,

in which case a **Federal Register** notice will advise accordingly. The EPA's review of the States of Alabama's and the State of Georgia's pertinent laws, rules, and regulations at the time of original delegation indicate that adequate and effective procedures were in place for the implementation and enforcement of these Federal standards. NSPS requirements have been successfully implemented since that time for more than 20 years for applicable sources. This notice was written to inform the public of delegations made to the State of Alabama and the State of Georgia for which a **Federal Register** notice was not previously written and to inform the public of their new mechanism for delegation of future NSPS.

EFFECTIVE DATE: The effective date is March 25, 1999.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 4, Air & Radiation Technology Branch, 61 Forsyth Street, S.W., Atlanta, Georgia 30303.

Alabama Department of Environmental Management-Air Division, 1751 Cong. W. L. Dickinson Drive, Montgomery, Alabama 36130.

Georgia Department of Natural Resources, Environmental Protection Division, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the delegated standards should not be submitted to the Region 4 office, but should instead be submitted to the appropriate following address: Alabama Department of Environmental Management-Air Division, 1751 Cong. W. L. Dickinson Drive, Montgomery, Alabama 36130, or Georgia Department of Natural Resources, Environmental Protection Division, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354

FOR FURTHER INFORMATION CONTACT: Ms. Katy Forney, Air & Radiation Technology Branch, Environmental Protection Agency, Region 4, 61 Forsyth St. SW, Atlanta, Georgia 30303, 404–562–9130.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 110 and 111(c)(1) of the Clean Air Act as amended November 15, 1990, authorize EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, New Source Performance Standards (NSPS).

On August 5, 1976, the EPA initially delegated the authority for implementation and enforcement of the NSPS program to the State of Alabama and on May 3, 1976, the NSPS program was initially delegated to the State of Georgia. These agencies have subsequently requested a delegation of authority for implementation and enforcement of the previously adopted, undelegated part 60 NSPS categories listed below as well as future NSPS categories codified in 40 CFR part 60.

State of Alabama

1. 40 CFR part 60, subpart VV, adopted August 17, 1997.

State of Georgia

Currently, no NSPS regulations are waiting delegation.

All current NSPS categories are delegated with the exception of the following sections within those subparts that may not be delegated. Future NSPS regulations will contain a list of sections that will not be delegated for that subpart.

1. Subpart A—Sec. 60.8(b) (1) thru (5), Sec. 60.11(e) (7) and (8), Sec. 60.13 (g), (i) and (j)(2)
2. Subpart B—Sec. 60.22, Sec. 60.27, and Sec. 60.29
3. Subpart Da—Sec. 60.45a
4. Subpart Db—Sec. 60.44b(f), Sec. 60.44b(g), Sec. 60.49b(a)(4)
5. Subpart Dc—Sec. 60.48c(a)(4)
6. Subpart Ec—Sec. 60.56(c)(i)
7. Subpart J—Sec. 60.105(a)(13)(iii), Sec. 60.106(i)(12)
8. Subpart Ka—Sec. 60.114a
9. Subpart Kb—Sec. 60.111b(f)(4), Sec. 60.114b, Sec. 60.116b(e)(3) (iii) and (iv), Sec. 60.116b(f)(2)(iii)
10. Subpart O—Sec. 60.153(e)
11. Subpart EE—Sec. 60.316(d)
12. Subpart GG—Sec. 60.334(b)(2), Sec. 60.335(f)(1)
13. Subpart RR—Sec. 60.446(c)
14. Subpart SS—Sec. 60.456(d)
15. Subpart TT—Sec. 60.466(d)
16. Subpart UU—Sec. 60.474(g)
17. Subpart VV—Sec. 60.482–1(c)(2) and Sec. 60.484
18. Subpart WW—Sec. 60.496(c)
19. Subpart XX—Sec. 60.502(e)(6)
20. Subpart AAA—Sec. 60.533, Sec. 60.534, Sec. 60.535, Sec. 60.536(i)(2), Sec. 60.537, Sec. 60.538(e), Sec. 60.539
21. Subpart BBB—Sec. 60.543(c)(2)(ii)(B)
22. Subpart DDD—Sec. 60.562–2(c)
23. Subpart III—Sec. 60.613(e)
24. Subpart NNN—Sec. 60.663(e)
25. Subpart RRR—Sec. 60.703(e)
26. Subpart SSS—Sec. 60.711(a)(16), Sec. 60.713(b)(1)(i), Sec. 60.713(b)(1)(ii), Sec. 60.713(b)(5)(i), Sec. 60.713(d), Sec. 60.715(a), Sec. 60.716
27. Subpart TTT—Sec. 60.723(b)(1), Sec. 60.723(b)(2)(i)(C), Sec. 60.723(b)(2)(iv), Sec. 60.724(e), Sec. 60.725(b)
28. Subpart VVV—Sec. 60.743(a)(3)(v)(A) and (B), Sec. 60.743(e), Sec. 60.745(a), Sec. 60.746

After a thorough review of the request, the Regional Administrator has determined that such a delegation request was appropriate for all source categories. All sources subject to the requirements of 40 CFR part 60 will now be under the jurisdiction of the State of Alabama or the State of Georgia, as appropriate.

Since review of the pertinent laws, rules, and regulations for the State of Alabama and the State of Georgia has shown them to be adequate for implementation and enforcement of existing, previously adopted, undelegated NSPS and future NSPS, EPA hereby notifies the public that it has delegated the authority for existing, previously adopted and undelegated NSPS as well as the mechanism for delegation of future NSPS source categories upon publication of this **Federal Register** notice.

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

Authority: This notice is issued under the authority of sections 101, 110, 111, 112 and 301 of the Clean Air Act, as Amended (42 U.S.C. 7401, 7410, 7411, 7412 and 7601).

Dated: March 8, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–7333 Filed 3–24–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25 and 61

[IB Docket No. 98–60; FCC 99–17]

Policies and Rules for Alternative Incentive-Based Regulation of Comsat Corporation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts a policy of incentive-based price regulation for Comsat Corporation in its provision of services in ''non-competitive'' INTELSAT markets. The Commission also adopts a streamlined process to determine in the future when Comsat INTELSAT markets should be redefined as non-dominant in response to the introduction of competition. In April 1998, the Commission reclassified Comsat as a non-dominant carrier for most of its services, on most of its routes, and eliminated all rate regulation regarding its provision of INTELSAT services in markets deemed ''competitive''. That decision eliminated rate regulation in markets accounting for approximately 92 percent of Comsat's INTELSAT revenues. Roughly eight-percent of Comsat's INTELSAT revenues—those derived from ''non-competitive'' INTELSAT services markets—remained subject to rate of return regulation. This document addresses the eight-percent.

EFFECTIVE DATE: February 9, 1999.

FOR FURTHER INFORMATION CONTACT: Michael McCoin, International Bureau, Satellite Policy Branch, (202) 418–0774, or email at mmccoin@fcc.gov; Sande Taxali, International Bureau, Satellite Policy Branch, (202) 418–0786, or email at staxali@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in IB Docket No. 98–60, FCC 99–17, adopted February 4, 1999, and released February 9, 1999. The complete text of this Commission *Report and Order* is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., or may be purchased from the Commission's duplicating contractor, International Transcription Service, (202) 857–3800, 2131 M Street, N.W., Washington, D.C. 20036. The complete text is also available under the file name fcc99017.txt or fcc99017.wp on the Commission's internet site at http://www.fcc.gov/Bureaus/International/Orders/1999.

Summary of the Report and Order

1. This *Report and Order* eliminates rate of return regulation and applies incentive-based price regulation to Comsat's provision of INTELSAT services in ''non-competitive'' markets. Customers immediately benefit by the lowering or capping of prices in Comsat's INTELSAT ''non-competitive'' switched-voice, private line, and occasional-use video services markets. This incentive-based regulation is administratively less burdensome to both Comsat and the Commission. Additionally, the *Report and Order* adopts a more expedient process by which newly ''competitive'' markets may be redefined as non-dominant.

2. Since 1985, the Commission has regulated Comsat as a dominant carrier in its provision of INTELSAT services in all markets. In April 1998, in the *Comsat Non-Dominant Order & NPRM*, 63 FR 25811, the Commission partially granted Comsat's request by reclassifying it as non-dominant in INTELSAT markets deemed ''competitive''. The Commission denied, however, Comsat's request for reclassification as a non-dominant carrier in its INTELSAT services markets deemed ''non-competitive''. The Commission stated, nevertheless, that it would consider the adoption of an alternative incentive-based regulation in the ensuing *Report and Order*, in lieu of continuing rate of return regulation. In 1998, Comsat's ''non-competitive'' INTELSAT service markets accounted for roughly eight-percent or $19 million of Comsat's INTELSAT revenue.

3. The *Comsat Non-Dominant Order & NPRM* tentatively concluded that any alternative incentive-based price regulation should (a) remain in effect for an indefinite period, (b) allow all users of Comsat's service to ''non-competitive'' markets to benefit from a ''competitive'' or ''transaction'' rate rather than the non-discounted tariff rate that would result from Comsat's uniform pricing commitment, and (c) allow all users of Comsat's service to ''non-competitive'' markets to benefit from reduced rates due to increases in efficiency and productivity. Comsat offers high volume users, like AT&T, Sprint, and MCI, significantly discounted tariff and contract rates for switched-voice service. These discounted rates may reflect both the economies of scale inherent in providing high volume service and increased pressure on Comsat to match the lower rates offered by its competitors in ''competitive'' markets. It is unclear whether users seeking service in ''non-competitive'' markets are in a position to take advantage of such discounted or transaction rates or whether they generally must pay the higher non-discounted tariff rates. Thus, Comsat's uniform pricing for switched-voice service, even if adopted as a commitment, would not necessarily lead to lower, more competitive rates for all users in ''non-competitive'' markets. *Comsat Non-Dominant Order & NPRM*, 13 FCC Rcd. 14083 at paragraph 165. In addition, the Commission said that an ''alternative incentive-based'' price procedure should be simple to implement and noncumbersome. A regulatory policy here should; promote proper efficiency incentives for Comsat; benefit consumers through lower rates in the dominant markets; and relieve the Commission from administratively burdensome rate of return regulation of Comsat in these markets. All parties commenting in the proceeding generally agreed with these principles expressed by the Commission, including the need for a simple and less administratively burdensome regulation.

4. The specific alternative incentive-based price regulation plan adopted for Comsat's ''non-competitive'' INTELSAT markets consists of the following: First, Comsat will institute an immediate four-percent annual rate reduction for switched-voice services in ''non-competitive'' markets. This actually decreases rates below those currently charged in ''competitive'' switched-voice markets. Existing switched-voice tariff rates remain in place as an option for those customers whose aggregate circuit volume would otherwise result in a lower rate. Second, current tariff rates for private line service in ''non-competitive'' markets are capped indefinitely. This follows a recent across-the-board rate reduction of eight-percent in Comsat's private line service market. Third, an immediate one-time rate reduction of four-percent in Comsat's ''non-competitive'' and ''competitive'' occasional-use video service markets is enacted. Moreover, the incentive-based regulation adopted further requires Comsat to refrain from raising rates for an indefinite period in all of its ''non-competitive'' INTELSAT markets. Finally, it mandates that Comsat apply any tariff reduction in its ''competitive'' INTELSAT markets to its ''non-competitive'' INTELSAT markets.

5. Overall, the alternative incentive-based regulation adopted in the *Report and Order* guarantees certain rate reductions and caps rates as long as Comsat is regulated as a dominant carrier in the respective markets at issue. In effect, customers receive the benefits of potential increases in productivity regardless of whether such productivity increases actually occur. This benefit to customers should provide Comsat with a real incentive to increase efficiency and productivity.

6. Additionally, this *Report and Order* establishes a streamlined process for declaring Comsat's INTELSAT markets non-dominant and no longer subject to price regulation as they become ''competitive''. The process, particularly, requires Comsat to file a

petition with the Commission requesting that a particular market or markets be reclassified as non-dominant. For the ''non-competitive'' switched-voice and private line service markets, Comsat must include evidence that the market is served by a United States carrier through submarine cable facilities. For occasional-use video markets, Comsat must include evidence that another satellite carrier is providing transmit and receive (uplink and downlink) occasional-use video service. The specific type of information required in this showing includes the (a) name of the cable or satellite provider, (b) the country or countries where the new cable circuit or occasional-use video services provision exists, and (c) the estimated capacity available from the competitor. In our recent decision approving the World Com/MCI merger, we noted that upgrades in recently constructed underseas fiber cables can substantially increase transport capacity on existing cables and can be implemented in less than a year. While we found that the World Com/MCI merger would increase concentration in each of three international transport market regions, we also found that it was unlikely to result in anticompetitive effects, given the low barriers to entry and substantial amounts of transport capacity not controlled by MCI or World Com. *See* Memorandum Opinion and Order, CC Docket No. 97–211, FCC 98–255, 13 FCC Rcd. 21520 (1998) at paragraphs 100–101. Comsat must support its filing with an affidavit. For switched-voice and private line services, a country listed as being served by cable on the Circuit Status Reports is considered *prima facie* evidence that the market is competitive since the capacity available on a submarine cable can be rapidly expanded to meet demand. The showing requirements of this process is consistent with the analysis in the *Comsat Non-Dominant Order & NPRM*, in which evidence of a cable circuit for switched-voice and private line service, and evidence of another carrier for occasional-use video service, provided the standard from which to assess Comsat's market power. Parties would have the opportunity to challenge a Comsat petition for reclassification by either refuting the evidence submitted by Comsat or showing that the particular market at issue has unique characteristics that would allow Comsat to exercise market power, despite the presence of a cable circuit for switched-voice and private line service or service being provided by another satellite carrier for occasional-use video service.

Final Regulatory Flexibility Analysis

7. As required by section 603 of the Regulatory Flexibility Act (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Comsat Non-Dominant Order & NPRM*. *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''). *See Comsat Corporation*, Order and Notice of Proposed Rulemaking, 13 FCC Rcd 14083 (1998) at Appendix C. The Commission then sought written public comment in that proceeding, including comments on the IRFA. No party filed comments in response to the IRFA. This *Report and Order* promulgates no new rules and our action here does not affect the previous analysis in the *Comsat Non-Dominant Order & NPRM*. The Commission certifies that there will be no significant effect on a substantial number of small entities.

A. Need for and Objectives of Rules

8. In this *Report and Order*, the Commission eliminates cumbersome rate of return regulation and replaces it with an alternative incentive-based price regulation. In addition, the Commission streamlines the process whereby Comsat's INTELSAT markets may be reclassified as non-dominant. Currently, revenue from its markets that are still classified as dominant account for approximately eight-percent of its INTELSAT revenues. The modification to these processes will result in administratively less burdensome and more efficient procedures for both the Commission and Comsat.

B. Summary of Significant Issues Raised by Public Comments in Response to the Regulatory Flexibility Analysis

9. No comments were submitted in direct response to the RFA.

C. Description and Estimates of the Number of Small Entities to Which the Rules Will Apply

10. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business'', ''small organization'', and ''small governmental jurisdiction''. See 5 U.S.C. 601(6). The RFA has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (''CWAAA''). See 5 U.S.C. 601 *et. seq.* Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. See 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3). 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'').

11. The Commission has not developed a definition of small entities specifically applicable to this situation. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, ''Not Elsewhere Classified.'' This definition provides that a small entity is one with no more than $11.0 million annual receipts. 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899. According to the Census Bureau data, there were a total of 848 communications services in operation in 1992 that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of $9.999 million or less and qualify as small entities. 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration). The census report does not provide more precise data. Comsat Corporation is the only business effected by the policy enacted in this *Report and Order*. Its annual receipts are in excess of $11.0 million and, therefore, it does not fall into the classification of a ''small business''. Accordingly, the number of small businesses impacted by the policy change here is zero.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

12. The Commission adopts no new reporting requirements in this *Report and Order*.

E. Steps Taken To Minimize Significant Economic Burden on Small Entities, and Significant Alternatives Considered

13. This *Report and Order* promulgates no new rules or policies that would effect small business concerns. The policies it does advance, however, should positively impact the effectiveness and efficiency of Comsat Corporation, the only business entity effected.

F. Report to Congress

14. The Commission shall send a copy of this *Report and Order,* including the status of the FRFA in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). Since this *Report and Order* promulgates no new rules and does not affect the IRFA in the *Comsat Non-Dominant Order and NPRM,* it is not necessary to publish an FRFA in the **Federal Register**.

Ordering Clauses

15. Accordingly, *it is ordered,* that Comsat Corporation's proposal in IB Docket 98–60, to establish an alternative incentive-based price regulation in lieu of rate of return regulation in ''non-competitive'' INTELSAT service markets for the provision of switched-voice, private line, and occasional-use video, is granted, to the extent indicated herein, and Comsat shall be subject to an alternative incentive-based price regulation in the markets for which it remains dominant, as described in this *Report and Order.*

16. *It is further ordered,* pursuant to authority contained in sections 4(i), 201(b), and 203–205 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 201(b), and 203–205, respectively, and sections 201(c)(5), 201(c)(11), and 401 of the Communications Satellite Act, as amended, 47 U.S.C. 721(c)(5), 721 (c)(11), and 741, respectively, we adopt the incentive-based price regulation to the extent indicated herein.

17. *It is further ordered,* that the International Bureau shall have delegated authority to approve petitions from Comsat to redefine any markets served by Comsat from a dominant to a non-dominant status.

18. Comsat Corporation is afforded 30 days from the date of release of this *Report and Order* to decline the alternative incentive-based price regulation as specified herein. Failure to respond within this period will constitute formal acceptance of the requirements in this *Report and Order.*

List of Subjects

47 CFR Part 25

Satellites communication.

47 CFR Part 61

Tariffs.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–7253 Filed 3–24–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No.97–45, RM–8961]

Radio Broadcasting Services; Tylertown, MS.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a Petition for Reconsideration and Motion for Stay filed by Guaranty Broadcasting Corporation directed to the *Report and Order* in this proceeding. *See* 63 FR 3833, published January 27, 1998. The *Report and Order* had allotted Channel 297A to Tylertown, Mississippi. With this action the proceeding is terminated.

EFFECTIVE DATE: March 25, 1999.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No.97–45, adopted March 10, 1999, and released March 19, 1999. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3805, 1231 M Street, NW, Washington, D.C. 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles W. Logan,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–7305 Filed 3–24–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 203 and 252

[DFARS Case 97–D020]

Defense Federal Acquisition Regulation Supplement; Employment Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to expand the list of positions in which contractors may not allow persons convicted of fraud or other defense-contract-related felonies to serve, and to provide that the period of such a prohibition on service may exceed 5 years.

EFFECTIVE DATE: March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pelkey, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 97–D020.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 203.570–2 and 252.203–7001 to expand the list of positions in which a person convicted of a felony arising out of a DoD contract may not serve, and to provide that the period of such a prohibition on service may exceed 5 years.

A proposed rule with request for comments was published in the **Federal Register** on October 2, 1997 (62 FR 51623). Two sources submitted comments on the proposed rule. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule applies only to the employment of persons convicted of a felony arising out of a DoD contract.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval

of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 203 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulation Council.

Therefore, 48 CFR Parts 203 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 203 and 252 continue to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 203.570 is revised to read as follows:

203.570 Prohibition on persons convicted of frauds or other defense-contract-related felonies.

203.570–2 Policy.

(a) A contractor or subcontractor shall not knowingly allow a person, convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD, to serve—

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) On its board of directors;

(3) As a consultant, agent, or representative; or

(4) In any capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(b) DoD has sole responsibility for determining the period of the prohibition described in paragraph (a) of this subsection. The prohibition period—

(1) Shall not be less than 5 years from the date of conviction unless the agency head or a designee grants a waiver in the interest of national security; and

(2) May be more than 5 years from the date of conviction if the agency head or a designee makes a written determination of the need for the longer period. The agency shall provide a copy of the determination to the Bureau of Justice Assistance, U.S. Department of Justice, 810 Seventh Street, NW, Washington, DC 20531.

4. Section 203.570–5 is revised to read as follows:

203.570–5 Contract clause.

Use the clause at 252.203–7001, Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies, in all solicitations and contracts exceeding the simplified acquisition threshold, except solicitations and contracts for commercial items.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.203–7001 is amended by revising the section heading, clause title and date, and paragraphs (b) and (c); in paragraphs (a)(1)(i) and (ii) by removing the comma and adding in its place a semicolon; in paragraph (d) introductory text by removing the word ''further''; in paragraph (f) introductory text by removing the word ''prohibitions'' and adding in its place the world ''prohibition''; in paragraph (f)(3) by removing the comma; and in paragraph (h) by adding, before the world ''Benefits'', the world ''Federal''. The revised text reads as follows:

252.203–7001 Prohibition on persons convicted of fraud or other defense-contract-related felonies.

* * * * *

PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (MARCH 1999)

* * * * *

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving—

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) On the board of directors of any DoD contractor or first-tier subcontractor;

(3) As a consultant, agent, or representative for any DoD contractor or first-tier subcontractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

* * * * *

[FR Doc. 99–7135 Filed 3–24–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 211 and 252

[DFARS Case 97–D014]

Defense Federal Acquisition Regulation Supplement; Single Process Initiative

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to facilitate the use of management and manufacturing processes that DoD has accepted under the Single Process Initiative (SPI). SPI provides for industry submission and DoD review of alternatives to military and Federal specifications and standards.

EFFECTIVE DATE: March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 97–D014.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends DFARS 211.273–2, 211.273–3, and 252.211–7005 to finalize the interim rule that was published in the **Federal Register** on August 20, 1997 (62 FR 44223), with a request for comments. Four sources submitted comments on the interim rule. All comments were considered in the development of the final rule.

The final rule differs from the interim rule in that it clarifies that an SPI management council includes contractor representation in addition to DoD representation; provides that, before offers are due, offerors may obtain verification that an SPI process is acceptable for a particular procurement; provides an Internet site where accepted SPI processes are listed; and clarifies documentation requirements for offerors proposing to the use SPI processes.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because industry participation in the DoD Single Process Initiative is voluntary. Approximately 310 contractors are involved in the initiative. It is estimated that 10 percent of those contractors are small businesses.

C. Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements associated with this rule under OMB Control Number 0704–0398, for use through January 31, 2001.

List of Subjects in 48 CFR Parts 211 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 211 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 211 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 (CFR Chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

2. Section 211.273–2 is amended by revising paragraph (b) to read as follows:

211.273–2 Policy.

* * * * *

(b) DoD acceptance of an SPI process follows the decision of a Management Council, which includes representatives of the contractor, the Defense Contract Management Command, the Defense Contract Audit Agency, and the military departments.

* * * * *

3. Section 211.273–3 is revised to read as follows:

211.273–3 Procedures.

(a) Solicitations for previously developed items shall encourage offerors to identify SPI processes for use in lieu of military or Federal specifications and standards cited in the solicitation. Use of the clause at 252.211–7005 satisfies this requirement.

(b) Contracting officers shall ensure that—

(1) Concurrence of the requiring activity is obtained for any proposed substitutions prior to contract award;

(2) Any necessary additional information regarding the SPI process identified in the proposal is obtained from the cognizant administrative contracting officer; and

(3) In competitive procurements, prospective offerors are provided the opportunity to obtain verification that an SPI process is an acceptable replacement for a military or Federal specification or standard for the particular procurement prior to the date specified for receipt of offers.

(c) Any determination that an SPI process is not acceptable for a specific procurement shall be made prior to contract award at the head of the contracting activity or program executive officer level. This authority may not be delegated.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.211–7005 is revised to read as follows:

252.211–7005 Substitutions for military or Federal specifications and standards

As prescribed in 211.273–4, use the following clause:

SUBSTITUTIONS FOR MILITARY OR FEDERAL SPECIFICATIONS AND STANDARDS (MAR 1999)

(a) *Definition.* ''SPI process,'' as used in this clause, means a management or manufacturing process that has been accepted previously by the Department of Defense under the Single Process Initiative (SPI) for use in lieu of a specific military or Federal specification or standard at specific facilities. Under SPI, these processes are reviewed and accepted by a Management Council, which includes representatives of the Contractor, the Defense Contract Management Command, the Defense Contract Audit Agency, and the military departments.

(b) Offerors are encouraged to propose SPI processes in lieu of military or Federal specifications and standards cited in the solicitation. A listing of SPI processes accepted at specific facilities is available via the Internet in PDF format at http://www.dcmc.hq.dla.mil/spi/dbreport/modified.pdf and in Excel format at http://www.dcmc.hg.dla.mil/spi/dbreport/modified.xls.

(c) An offeror proposing to use an SPI process in lieu of military or Federal specifications or standards cited in the solicitation shall—

(1) Identify the specific military or Federal specification or standard for which the SPI process has been accepted;

(2) Identify each facility at which the offeror proposes to use the specific SPI process in lieu of military or Federal specifications or standards cited in the solicitation;

(3) Identify the contract line items, subline items, components, or elements affected by the SPI process; and

(4) If the proposed SPI process has been accepted at the facility at which it is proposed for use, but is not yet listed at the Internet site specified in paragraph (b) of this clause, submit documentation of Department of Defense acceptance of the SPI process.

(d) Absent a determination that an SPI process is not acceptable for this procurement, the Contract shall use the following SPI processes in lieu of military or Federal specifications or standards:

(*Offeror insert information for each SPI process*)

SPI Process: _____

Facility: _____

Military or Federal Specification or Standard: _____

Affected Contract Line Item Number, Subline Item Number, Component, or Element: ____

_____

(e) If a prospective offeror wishes to obtain, prior to the time specified for receipt of offers, verification that an SPI process is an acceptable replacement for military or Federal specifications or standards required by the solicitation, the prospective offeror—

(1) May submit the information required by paragraph (d) of this clause to the Contracting Officer prior to submission of an offer; but

(2) Must submit the information to the Contracting Officer at least 10 working days prior to the date specified for receipt of offers.

(End of clause)

[FR Doc. 99–7136 Filed 3–24–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 217

[DFARS Case 98–D311]

Defense Federal Acquisition Regulation Supplement; Purchases Through Other Agencies

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 814 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999. Section 814 requires DoD to revise the regulations pertaining to interagency acquisitions under the Economy Act to cover orders under task or delivery order contracts.

EFFECTIVE DATE: March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D311.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule adds a new section at DFARS 217.500 to implement Section 814 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261). Section 814 requires DoD to revise the regulations pertaining to the Economy Act, issued pursuant to Section 844 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160), to cover orders under task or delivery order contracts.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577 and

publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98–D311.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 217

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 217 is amended as follows:

1. The authority citation for 48 CFR part 217 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 217—SPECIAL CONTRACTING METHODS

2. Section 217.500 is added to read as follows:

217.500 Scope of subpart.

(b) Unless more specific statutory authority exists, the procedures in FAR Subpart 17.5, this subpart, and DODI 4000.19 apply to all purchases, except micro-purchases, made for DoD by another agency. This includes orders under a task or delivery order contract entered into by the other agency. (Pub. L. 105–261, Section 814.)

[FR Doc. 99–7138 Filed 3–24–99; 8:45 am]

BILLING CODE 5000–04–M

Proposed Rules

Federal Register
Vol. 64, No. 57
Thursday, March 25, 1999

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1703

RIN 0572–AB31

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing an amendment to its regulations for its Distance Learning and Telemedicine (DLT) Loan and Grant Program. These proposed amendments will clarify the requirements for the different types of financial assistance offered; streamline policies and procedures for obtaining loans and expanding the purposes for which loan funds can be used; and award grants on a competitive basis.

In the final rules section of the **Federal Register**, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a non-controversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments or notice of intent to submit adverse comments, a document will be published in the **Federal Register** withdrawing the direct final rule and all public comments received will be addressed in a subsequent final rule based on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received by April 26, 1999.

ADDRESSES: Submit any written comments or notice of intent to submit adverse comments to Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1590, Room 4056, South Building, Washington, DC 20250–1590. RUS requires a signed original and three copies of all comments (7 CFR part 1700). All comments received will be made available for public inspection at room 4056, South Building, U.S. Department of Agriculture, Washington, DC, between 8:00 a.m. and 4:00 p.m. (7 CFR part 1.27(b)). Telephone number (202) 720–9554.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1590, Room 4056, South Building, Washington, DC 20250–1590. Telephone number (202) 720–9556.

SUPPLEMENTARY INFORMATION: See supplementary Information provided in the direct final rule located in the final rules section of the **Federal Register** for applicable supplementary information on this section.

Dated: March 16, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–6996 Filed 3–24–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE149; Notice No. 23–98–05–SC]

Special Conditions: Soloy Corporation Model Pathfinder 21 Airplane; Airframe

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Soloy Corporation Model Pathfinder 21 airplane. The Model Pathfinder 21 airplane is a Cessna Model 208B airplane as modified by Soloy Corporation to be considered as a multiengine, part 23, normal category airplane. The Model Pathfinder 21 airplane will have a novel or unusual design feature associated with installation of the Soloy Dual Pac propulsion system, which consists of two Pratt & Whitney Canada Model PT6D–114A turboprop engines driving a single, Hartzell, five-blade propeller. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards for multiengine airplanes.

DATES: Comments must be received on or before April 26, 1999.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE149,601 East 12th Street, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE149. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: David Keenan, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–112, 601 East 12th Street, Kansas City, Missouri, 816–426–5688, fax 816–426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments

submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE149.'' The postcard will be date stamped and returned to the commenter.

Background

On February 6, 1992, Soloy Corporation applied for a supplemental type certificate (STC) for the Model Pathfinder 21 airplane, which would notify the Cessna Model 208B airplane by installing the Soloy Dual Pac propulsion system. This propulsion system consists of two Pratt & Whitney Canada (PWC) Model PT6D–114A turboprop engines driving a single, Hartzell, five-blade propeller through a combining gearbox. Soloy Corporation is seeking approval for this airplane, equipped with a Soloy Dual Pac propulsion system, as a multiengine airplane Title 14 CFR part 23 is not adequate to address a multiengine airplane with a single propeller. Hence, the requirement for these proposed special conditions, which will be applied in addition to the applicable sections of part 23.

The Soloy Dual Pac population system is mounted in the nose of the Model Pathfinder 21 airplane. With this arrangement, an engine failure does not cause an asymmetric thrust condition that would exist with a conventional twin turboprop airplane. This asymmetric thrust compounds the flightcrew workload following an engine failure. The Model Pathfinder 21 airplane configuration has the potential to substantially reduce this workload.

Since the Model Pathfinder 21 airplane produces only centerline thrust, the only direct airplane control implications of an engine failure are the change in torque reaction and propeller slip stream effect. These transient characteristics require substantially less crew action to correct than an asymmetric thrust condition and do not require constant effort by the flightcrew to maintain control of the airplane for the remainder of the flight.

Safety Analysis

The FAA has conducted a safety analysis that recognizes both the advantages and disadvantages of the proposed Model Pathfinder 21 airplane. The scope of this safety analysis was limited to the areas affected by the unique propulsion system installation and assumes compliance with the design-related requirements of these proposed special conditions. The FAA examined the accident and incident history of small twin turboprop operations for the years of 1983 to 1994 in the United States and United Kingdom. The FAA evaluated each event and determined if the outcome, given the same pilot, weather, and airplane except with centerline thrust and one propeller, would have been more favorable, less favorable, or unchanged. Examination of the incident data revealed a number of failure modes that, if not addressed as part of the Model Pathfinder 21 airplane design, could result in a potential increase in the number of accidents for the Model Pathfinder 21 airplane compared to the current fleet. Examples of such failure modes include loss of propeller blade tip or failure of the propeller control system. Although these proposed special conditions contain provisions to prevent catastrophic failures of the remaining non-fail-safe components of the Model Pathfinder 21 airplane after compliance with the design related requirements, the analysis assumes that these components will fail in a similar manner to the failures contained in the incident data. Given these assumptions, the FAA determined that the projected accident rate of the Model Pathfinder 21 airplane would be equal to or lower than the current small twin turboprop airplane fleet. Considering that analysis, the FAA has determined that the advantages of centerline thrust compensate for the disadvantages of the non-fail-safe-design features. Once that determination was made, these proposed special conditions were formulated with the objective of substantially reducing or eliminating risks associated with the non-redundant systems and components of the Model Pathfinder 21 airplane design that have been identified and providing a level of safety equivalent to that of conventional multiengine airplanes.

The FAA data review conducted to prepare these proposed special conditions is applicable only to the Model Pathfinder 21 airplane. For the concept of a single-propeller, multiengine airplane to be extended to other projects, a separate analysis of the accident and incident data for similarly sized airplanes would be required. If the advantages of centerline thrust compensated for the disadvantages of the non-fail-safe components, based on the service history of similarly sized airplanes, development of separate special conditions would be required.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Soloy Corporation must show that the Model Pathfinder 21 airplane continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate (TC) Data Sheet A37CE or the applicable regulations in effect on the date of application for change. The regulations incorporated by reference are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in TC No. A37CE are as follows:

The type certification basis for Cessna Model 208B airplanes shown on TC Data Sheet A37CE for parts not changed or not affected by the changes proposed by Soloy Corporation is part 23 of the Federal Aviation Regulations dated February 1, 1965, as amended by Amendments 23–1 through 23–28; part 36 dated December 1, 1969, as amended by Amendments 36–1 through 36–18; Special Federal Aviation Regulations (SFAR) 27 dated February 1, 1974, as amended by Amendments 27–1 through 27–4. Soloy Corporation must show that the Model Pathfinder 21 airplane meets the applicable provisions of part 23, including multiengine designated sections, as amended by Amendment 23–42 (the Pathfinder 21 type certification basis is based on the date of STC application: February 6, 1992) for parts changed or affected by the change. Soloy Corporation has also elected to comply with § 23.561, Emergency Landing Conditions—General (Amendment 23–48); § 23.731, Wheels (Amendment 23–45); § 23.733, Tires (Amendment 23–45); § 23.783, Doors (Amendment 23–49); § 23.807, Emergency Exits (Amendment 23–49); § 23.811, Emergency Exit Marking (Amendment 23–46); § 23.901, Installation (Amendment 23–51); § 23.955, Fuel Flow (Amendment 23–51); § 23.1041, Cooling—General (Amendment 23–51); § 23.1091, Air Induction System (Amendment 23–51); § 23.1181, Designated Fire Zones; Regions Included (Amendment 23–51); § 23.1189, Shutoff Means (Amendment 23–43); § 23.1305, Powerplant Instruments (Amendment 23–52); and § 23.1351, Electrical Systems and Equipment—General (Amendment 23–49). The type certification basis for the Model Pathfinder 21 airplane also includes parts 34 and 36, each as amended at the time of certification. Soloy Corporation may also elect to comply with subsequent part 23 requirements to facilitate operators' compliance with corresponding part 135 requirements. The type certification basis for this airplane will include exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations

(part 23, as amended) do not contain adequate or appropriate safety standards for the Model Pathfinder 21 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by § 11.28 and § 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for an STC to modify any other model included on the same TC to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

The Soloy Dual Pac was certified as a propulsion system under part 33 and special conditions in Docket No. 93–ANE–14; No. 33–ANE–01 (62 FR 7335, February 19, 1997) under STC No. SE00482SE to the PWC Model PT6 engine TC E4EA. Those special conditions were created in recognition of the novel and unusual features of the proposal, specifically the combining gearbox.

Novel or Unusual Design Features

The Model Pathfinder 21 will incorporate a noval or unusual design feature by installing the Soloy Dual Pac propulsion system, which consists of two PWC Model PT6D–114A engines driving a single, Hartzell, five-blade propeller through a Soloy-designed combining gearbox. The combining gearbox incorporates redundant freewheeling drive, governing, and lubricating systems. A system of one-way clutches both prevents the propeller shaft from driving the engine input shafts and allows either engine to drive the propeller should the other engine fail.

Airplane Design Features

The Model Pathfinder 21 airplane is a modified Cessna Model 208B airplane converted to a multiengine, normal category, combination nine-passenger/freight airplane. The proposed modification includes the installation of the Soloy Dual Pac engine, installation of a different propeller, addition of a six-foot fuselage extension and integral belly-mounted cargo compartment, alterations to the langing gear, and an increase of the maximum gross weight to 12,500 pounds. The proposed changes to the Cessna Model 208B airplane are discussed below.

Powerplant

The original PWC Model PT6A–114 engine is replaced with the Soloy Dual Pac propulsion system, consisting of two Model PT6D–114A engines and a Soloy Corporation-designed propulsion drive system. The FAA has issued STC No. SE00482SE approving the Soloy Dual Pac propulsion system. A Hartzell propeller part number HC–B5MA–3H1/M11296NK–5, which is a steel-hubbed, five-blade, aluminum, constant-speed, single-acting, reversible-pitch propeller, is replacing the original three-blade Hartzell or McCauley propeller. The propulsion installation and associated systems, mounts, instrumentation, firewall, exhaust stacks, and cowling are all impacted by this modification.

Fuselage Extension

The most significant structural modification is a 72-inch extension in the fuselage aft of the wing trailing edge. The new fuselage section is designed and manufactured using the same conventional formed sheet metal bulkhead, stringer, and skin methods used by Cessna in the basic airplane. The section has a constant cross section and is positioned in the widest and tallest portion of the rear fuselage. Also, the control cables are extended due to the fuselage extension.

Airframe Structure

Structural reinforcements are added to the basic fuselage structure to accommodate the higher increased takeoff gross weight. Reinforcement of wing structure is also required to accommodate the higher wing loading. The empennage structure is unchanged from the basic airplane.

Cargo Pod

A cargo pod is added to the underside of the fuselage. New lower fuselage reinforcement angles serve as the attachment means for the cargo pod that runs the full width of the fuselage. The fuselage/engine compartment bulkhead is extended to form the forward end of the cargo pod.

Cabin

The cabin arrangement places the nine passengers directly behind the flightcrew. Cargo is secured in the aft portion of the cabin. The floor of the fuselage extension is equipped with the Brownline seat tracks and cargo attachment fittings that are used in the Cessna Model 208B airplane. Features to satisfy current crashworthiness regulations are being added to the cabin, including cargo retention barriers and relocation of the passenger door. The cargo door is unchanged.

Landing Gear

The original main landing gear is placed with larger land gear, wheels, and brakes. The nose gear support structure is replaced and the nose gear strut is pressurized for shock absorption.

Instrumentation

The flight deck is being modified to include an additional set of engine instruments, propulsion drive system instrumentation, and other flight deck indications required for multiengine airplanes.

Engine Controls

The flight deck modifications include an additional power lever and condition lever to accommodate the second engine.

Fuel System

The fuel system is being modified to provide independent fuel feed capability to each engine. In addition, pilot selectable crossfeed function is available. The two fuel wing tanks remain unchanged.

Electrical System

A dual redundant electrical system with independent batteries is being added as part of this modification. All components are located in the cargo pod immediately aft of the engine firewall, except for the generators that are installed on the engines.

Maximum Takeoff Weight

The maximum gross takeoff weight of the aircraft is increased from 8,750 pounds to 12,500 pounds.

Discussion

Elements of these proposed special conditions have been developed to replace part 23 standards for which the Model Pathfinder 21 airplane design, because of the single propeller system, cannot comply using the criteria usually applied to multiengine airplanes, namely § 23.903(c), Engines. Other elements of these proposed special conditions have also been developed to supplement part 23 standards that are considered inadequate to address the Model Pathfinder 21 airplane design, namely §§ 23.53, 23.67, 23.75, 23.903(b), 23.1191, 23.1305, 23.1545, 23.1585, and 23.1587.

The part 23 requirement that is most affected by the multiengine, single propeller Model Pathfinder 21 airplane arrangement is § 23.903(c). Section 23.903(c) states, ''The powerplants must be arranged and isolated from each other to allow operation, in at least one configuration, so that the failure or

malfunction of any engine, or the failure or malfunction (including destruction by fire in the engine compartment) of any system that can affect an engine (other than a fuel tank if only one fuel tank is installed), will not: (1) prevent the continued safe operation of the remaining engines; or (2) require immediate action by any crewmember for continued safe operation of the remaining engines.'' This is a fail-safe requirement since it takes advantage of the redundancy provided by having multiple engines that are isolated from each other, which is intended to ensure that no single failure affecting one engine will result in the loss of the airplane. In conventional twin turboprop airplanes, this isolation is, in part, provided by the inherent separation of having each engine mounted on opposite sides of the airplane driving its own propeller. Installation of the engines on either side of the airplane automatically provides a degree of separation of critical systems, such as the electrical and fuel systems, and minimizes the effect of high vibration, rotor burst failures, and engine case burn-through from the opposite engine. This separation aids in preventing any single failure from jeopardizing continued safe operation of the airplane. In contrast, the nearness of the engines to each other driving a combining gearbox with a single propeller in the Model Pathfinder 21 airplane arrangement is inherently less isolated from certain types of failure modes. As a result, many failure modes that do not pose a significant hazard on conventional multiengine airplanes could threaten continued safe operation of the Model Pathfinder 21 airplane unless specific additional precautions are taken to prevent hazardous secondary effects.

To ensure a level of safety equivalent to that provided by conventionally arranged twin turboprop airplanes, the FAA evaluated the relative advantages and disadvantages of each arrangement while striving to maintain, as much as possible, the fail-safe and isolation design requirement of § 23.903(c). Only for those areas of the design where the fail-safe and isolation design philosophy could not be maintained did the FAA consider other options, such as requiring components with a proven reliability, an enhanced maintenance program, and additional testing. The FAA's analysis and derivation of each of the special condition requirements is discussed in the Description of Proposed Requirements section below.

Soloy Corporation Soloy Dual Pac Engine Special Conditions (Docket No. 93–ANE–14; No. 33–ANE–01) were developed for the propulsion system to maintain the fail-safe and isolation design philosophy up to the propeller shaft. They include the design requirement that the propulsion system must be able to provide controllable power, which is at least fifty percent of rated power, for any probable engine failure. This includes failures in the propulsion drive system.

Even after complying with the part 33 special conditions, Soloy Corporation's design still contains several single failure modes of non-redundant components that could cause a total loss of thrust. These components include the single propeller hub and blade assembly, propeller shaft, and propeller control system. Common propeller system failure modes are eliminated or the hazard significantly reduced by the design and maintenance requirements contained in these proposed special conditions, which are intended to reduce the risk of these failures to an acceptable level. Rotorcraft techniques, including development of a critical parts plan, are used to mitigate the risks associated with the non-fail-safe components because Soloy Corporation's propulsion system concept is similar to twin engine, single rotor propulsion systems of twin engine rotorcraft in certain aspects.

The propulsion system installation design of the Model Pathfinder 21 airplane is potentially more critical when assessing the rotorburst and engine case burn-through design requirements set forth in § 23.903(b)(1). Section 23.903(b)(1) states, ''Turbine engine installations. For turbine engine installations—(1) Design precautions must be taken to minimize the hazards to the airplane in the event of an engine rotor failure or of a fire originating inside the engine which burns through the engine case.'' For conventional twin turboprop airplanes, compliance with this regulation has involved a degree of inherent protection by having the engines installed some distance apart from one another and on opposite sides of the airplane fuselage. This level of inherent protection is not provided as part of the Pathfinder 21 configuration.

In addressing propeller assembly structural failures, uncontained engine failures, and engine case burn-through, these proposed special conditions allow Soloy Corporation to select components with excellent service histories. While compliance to part 23 establishes adequate safety standards, in-service operations identify long term durability problems and problems associated with operations that the condensed evaluation of the critical conditions during a certification program cannot. Propeller assembly structural failures, uncontained engine failures, and engine case burn-through will most likely be catastrophic for the Model Pathfinder 21 airplane, but are only occasionally catastrophic for conventional twin turboprop airplanes. The probability of each of these events occurring on conventional small twin turboprop airplanes is on the order of one in ten million hours based on the service history as discussed in the Safety Analysis section. Therefore, for the purposes of these special conditions, it is reasonable and appropriate to require ten million hours free of specific failure modes as an acceptable level of proven reliability needed to establish a level of safety equivalent to that of conventional multiengine airplanes.

Description of Proposed Requirements

The FAA has reviewed the part 23 standards and identified that § 23.53, Takeoff Speeds, § 23,67(c) and (d), Climb: one engine inoperative, § 23.69, Enroute Climb/Descent, and § 23.75(g), Landing Distance, are inadequate to address the effects of propeller control system failure modes in a manner consistent with how these sections address specific engine failure conditions. Sections 23.1191(a) and 23.1191(b), Firewalls, do not adequately define the locations of firewalls needed to isolate the engines and propulsion drive system of the Soloy Dual Pac propulsion system. Additionally, the FAA has identified that § 23.1305(c), Powerplant Instruments, is inadequate because it does not recognized a propulsion system installation with a combining gearbox whose oil system is separate from either engine. Furthermore, the FAA has identified that § 23.1545(b)(5), Airspeed Indicator, § 23.1585(c), Operating Procedures and § 23.1587(a), Performance Information; do not recognize a propeller system installation independent from either engine. Elements of these proposed special conditions have been developed to ensure that these unique aspects of the Model Pathfinder 21 airplane are addressed in a manner equivalent to that established by part 23 standards.

Propulsion System

The propulsion drive system includes all parts necessary to transmit power from the engines to the propeller shaft. This includes couplings, universal joints, drive shafts, supporting bearings for shafts, brake assemblies, clutches, gearboxes, transmissions, any attached accessory pads or drives, and any cooling fans that are attached to, or mounted on, the propulsion drive system. The propulsion drive system for

this multiengine installation must be designed with a ''continue to run'' philosophy. This means that it must be able to power the propeller after failure of one engine or failure in one side of the drive system, including any gear, bearing, or element expected to fail. Common failures, such as oil pressure loss or gear tooth failure, in the propulsion drive system must not prevent the propulsion system from providing adequate thrust. These design requirements, and other propulsion drive system requirements, are included in the part 33 special conditions, and, therefore, are required as part of these proposed special conditions.

Special 23.903(b)(1) states, in part, ''Design precautions must be taken to minimize the hazards to the airplane in the event of a rotor failure.'' Part 33 containment requirements address blade failures but do not require containment or failed rotor disks; therefore, § 23.903(b)(1) requires that airplane manufacturers minimize the hazards in the event of a rotor failure. This is done by locating critical systems and components out of impact areas as much as possible. The separation inherent in conventional twin engine arrangements by locating the engines on opposite sides of the fuselage provides good protection from engine-to-engine damage. Although most multiengine installations have the potential for an uncontained failure of one engine damaging the other engine, service history has shown that the risk of striking the opposite engine is extremely low.

The Model Pathfinder 21 airplane propulsion system installation does not have the inherent engine-to-engine isolation of a conventional twin turboprop airplane. For the Model Pathfinder 21 airplane to obtain a level of safety equivalent to that of a conventional multiengine airplane, the effects of rotor failure must be addressed. Soloy Corporation must demonstrate that the engine type in relevant installations has at least ten million hours of service time without a high energy rotor failure (for example, disks, hubs, compressor wheels, and so forth). Additionally, for any lower energy fragments released during this extensive service life of the engine (for example, blades), a barrier must be placed between the engines to contain these low energy fragments. Even after installation of a barrier, engine-to-engine isolation following failure of either engine could be compromised through the common mount system or shared system interfaces such as firewalls, electrical busses, or cowlings. Soloy Corporation must, therefore, demonstrate any loads transmitted through the common mount system as a result of an engine failure do not prevent continued safe flight and landing with the operating engine.

Section 23.903(b)(1) also addresses damage caused by engine burn-through. Engine case burn-through results in a concentrated flame that has the capacity to burn through the firewall mandated by § 23.1191; therefor, § 23.903(b)(1) requires that design precautions must be taken to minimize the hazards to the airplane in the event of a fire originating in the engine that burns through the engine case. Similar to uncontained engine failures, the conventional multiengine airplane arrangement provides inherent protection from engine-to-engine damage associated with engine case burn-through by placing the engines on opposite sides of the fuselage. The Model Pathfinder 21 airplane propulsion system does not have this inherent isolation; therefore, the FAA is requiring that engine type in a relevant installation to have at least ten million hours of service time without an engine case burn-through, or that a firewall able to protect the operating engine from engine case burn-through be installed between the engines.

Soloy Corporation is not required to show compliance to § 21.35, per § 21.115 because the Model Pathfinder 21 airplane certification is being conducted under an STC project. Section 21.35(f)(1), Flight Tests, requires aircraft incorporating turbine engines of a type not previously used in a type certificated aircraft operate for at least 300 hours with a full complement of engines that conform to a type certificate as part of the certification flight test. The propulsion system installation is, however, different from any other airplane previously certified; therefore, the FAA is requiring as part of these proposed special conditions that Soloy Corporation show compliance with § 21.35(f)(1).

Propeller Installation

As demonstrated by the data discussed in the Safety Analysis section, propeller blade failures near the hub result in substantial airplane damage on a conventional twin turboprop airplane. One of the eight events was catastrophic. Blade debris has damaged critical components and structure of the airplane, and large unbalanced loads in the propeller have led to engine, mount, and wing structural failure. In contrast, service history has demonstrated that blade tip failures are not necessarily catastrophic on a conventional multiengine airplane because the flightcrew is able to secure the engine with the failed propeller and safely land the airplane. However, if the Model Pathfinder 21 airplane's single propeller failed near the tip, the failure would be likely to result in a catastrophic accident caused by the total loss of thrust capability and severe vibration. Other propeller system structural failures would be equally catastrophic; therefore, steps must be taken to reduce the potential for propeller system structural failures.

As discussed earlier, the FAA has determined additional testing is required for non-redundant components to ensure that equivalency to the fail-safe and isolation requirements of § 23.903(c) is met. The Model Pathfinder 21 airplane's single propeller system must be installed and maintained in such a manner as to substantially reduce or eliminate the occurrence of failures that would preclude continued safe flight and landing. To ensure the propeller installation and production and maintenance programs are sufficient to achieve the fail-safe equivalency requirement, these proposed special conditions include a 2,500 cycle validation test. This corresponds to the FAA's estimated annual usage for a turboprop airplane operating in scheduled service. An airplane cycle includes idle, takeoff, climb, cruise, descent, and reverse. The test must utilize production parts installed on the engine and should include a wide range of ambient and wind conditions, several full stops, and validation of scheduled and unscheduled maintenance practices.

Furthermore, these proposed special conditions require identification of the critical parts of the propeller assembly, which are components whose failure during ground or flight operation could cause a catastrophic effect on the airplane, including loss of the ability to produce controllable thrust. The FAA is proposing to require that a critical parts plan, modeled after plans required by Joint Aviation Requirements 27 and 29 for critical rotorcraft components, be established and implemented for the critical components of the propeller assembly. This plan draws the attention of the personnel involved in the design, manufacture, maintenance, and overhaul of a critical part to the special nature of the part. The plan should define the details of relevant special instructions to be included in the Instructions for Continued Airworthiness. The Instructions for Continued Airworthiness, required by § 23.1529, should contain life limits, mandatory overhaul intervals, and conservative damage limits for return to

service and repair, as appropriate, for the critical parts identified in accordance with these proposed special conditions.

On a conventional multiengine airplane, the flightcrew will secure an engine to minimize effects of propeller imbalance. Most of these airplanes also incorporate quick acting manual or automatic propeller feathering systems that further reduce the time the airplane is exposed to the effects of propeller imbalance. In addition to the propeller blade failures discussed earlier, the unbalanced condition could be caused by a propeller system failure such as loss of a de-icing boot, malfunction of a de-icing boot in icing conditions, an oil leak into a blade butt, asymmetric blade pitch, or a failure in counterweight attachment. The Model Pathfinder 21 airplane design does not provide any means to reduce the vibration produced by an unbalanced propeller; therefore, these proposed special conditions require that the engines, propulsion drive system, engine mounts, primary airframe structure, and critical systems must be designed to function safely in the high vibration environment generated by those less severe propeller failures. In addition, the degree of flight deck vibration must not jeopardize the crew's ability to continue to operate the airplane in a safe manner. Component failures that generate vibrations beyond the capability of the airplane must be addressed as a critical part in the same manner as required for propeller blade failures.

Propeller Control System

Propeller control system failures on a conventional twin engine airplane may result in a one-engine-inoperative configuration. To ensure an equivalent level of safety in the event of a propeller control system failure, these proposed special conditions require that the Model Pathfinder 21 airplane propulsion system be designed such that the airplane meets the one-engine-inoperative requirements of § 23.53 and § 23.67 after the most critical propeller control system failure.

There are several means to accomplish these proposed special condition elements. Soloy Corporation plans to address them by providing a mechanical high-pitch stop, which would be set to a ''get home'' pitch position, thereby preventing the propeller blades from rotating to a feather-pitch position when oil pressure is lost in the propeller control system. This would allow the propeller to continue to produce a minimum amount of thrust as a fixed-pitch propeller. These proposed special conditions provide design requirements that the FAA has determined are critical to a default fixed-pitch position feature. These include maintaining engine and propeller limits following an automatic or manual pitch change, the ability to manually select and deselect the default fixed-pitch position in flight in the event of a propeller control system failure that does not result in a loss of oil pressure, and the means to indicate to the flightcrew when the propeller is at the default fixed-pitch position.

Propulsion Instrumentation

On a conventional multiengine airplane, the pilot has positive indication of an inoperative engine created by the asymmetric thrust condition. The airplane will not yaw when an engine or a portion of the propulsion drive system fails because of the centerline thrust of the Model Pathfinder 21 airplane propulsion system installation. The flightcrew will have to rely on other means to determine which engine or propulsion drive system element has failed in order that the correct engine is secured; therefore, these proposed special conditions require that a positive indication of an inoperative engine or a failed portion of the propulsion drive system must be provided.

Section 23.1305 requires instruments for the fuel system, engine oil system, fire protection system, and propeller control system. This rule is intended for powerplants consisting of a single-engine, gearbox, and propeller. To protect the portions of the propulsion drive system that are independent of the engines, additional instrumentation, which includes oil pressure, oil quantity, oil temperature, propeller speed, gearbox torque, and chip detection, is required.

Fire Protection System

On a conventional twin engine airplane, the engines are sufficiently separated to eliminate the possibility of a fire spreading from one engine to another. Since the Soloy Dual Pac propulsion system is installed in the nose of the airplane, the engines are separated only by a firewall. The fire protection system of the Model Pathfinder 21 airplane must include features to isolate each fire zone from any other zone and the airplane in order to maintain isolation of the engines during a fire; therefore, these proposed special conditions mandate that the firewall required per § 23.1191 be extended to provide firewall isolation between either engine and the propulsion drive system. These proposed special conditions require that heat radiating from a fire originating in any fire zone must not affect components in adjacent compartments in such a way as to endanger the airplane.

Airplane Performance

Section 23.67, and paragraphs in § 23.53, § 23.69 and § 23.75, provide performance requirements for multiengine airplanes with one engine inoperative. These rules are not adequate for multiengine, single propeller airplanes. In these proposed special conditions, the airplane configuration requirements specified in § 23.53(b)(1), § 23.67(c)(1), § 23.69(b), and § 23.75(g) have been adapted to accommodate the propeller system of the Model Pathfinder 21 airplane to ensure a level of safety equivalent to that of conventional multiengine airplanes.

Airspeed Indicator

Section 23.1545(b)(5) provides one-engine-inoperative marking requirements for the airspeed indicator. This rule is not adequate to address critical propeller control system failures on the Model Pathfinder 21 airplane. As a result, these proposed special conditions require that the airspeed markings required by § 23.1545(b)(5) be based on the most critical flight condition between one engine inoperative or a failed propeller control system in order to ensure a level of safety equivalent to that of conventional multiengine airplanes.

Airplane Flight Manual

Sections 23.1585 and 23.1587 require pertinent information to be included in the Airplane Flight Manual (AFM). These rules are not adequate to address critical propeller control system failures on the Model Pathfinder 21 airplane. As a result, these proposed special conditions require that the critical procedures and information required by § 23.1585, paragraph (c), and § 23.1587, paragraphs (c)(2) and (c)(4), include consideration of these critical propeller control system failures in order to ensure a level of safety equivalent to that of conventional multiengine airplanes.

Applicability

As discussed above, these special conditions are applicable to the Model Pathfinder 21 airplane. Should Soloy Corporation apply at a later date for an STC to modify any other model included on TC No. A37CE to incorporate the same novel or unusual design feature, the special conditions

would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101 and 14 CFR 11.28 and 11.29(b).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Soloy Corporation Model Pathfinder 21 airplane modified by Soloy Corporation.

(a) *Propulsion System.*

(1) *Engine Requirements.* The propulsion system must comply with the Soloy Corporation Soloy Dual Pac Engine Special Conditions (Docket No. 93–ANE–14; No. 33–ANE–01), published in **Federal Register**, Volume 62, Number 33, dated February 19, 1997.

(2) *Engine Rotor Failure.* In addition to showing compliance with § 23.903(b)(1) (Amendment 23–40), compliance must be shown with the following:

(i) The engine type to be installed must be shown to have demonstrated a minimum of ten million hours of actual service experience in installations of equivalent or higher disk rotation loading without an uncontained high energy rotor failure; and, a shield capable of preventing all fragments of an energy level that have been released during uncontained engine failures experienced in service from impacting the adjacent engine must be installed; and,

(ii) It must be shown that the adjacent engine is not affected following any expected engine failure.

(3) *Engine Case Burn-Through.* In addition to showing compliance with § 23.903(b)(1) (Amendment 23–40), the engine type to be installed must be shown to have demonstrated a minimum of ten million hours of actual service experience in installations of equivalent or higher combustor pressures and temperatures without an engine case burn-through event; or a firewall capable of containing a fire originating in the engine that burns through the engine case must be installed between the engines.

(4) *Propulsion System Function and Reliability Testing.* The applicant must complete the testing required by § 21.35(f)(1) (Amendment 21–51).

(b) *Propeller Installation.*

(1) The applicant must complete a 2,500 airplane cycle evaluation of the propeller installation. This evaluation may be accomplished on the airplane in a combination of ground and flight cycles or on a ground test facility. If the testing is accomplished on a ground test facility, the test configuration must include sufficient interfacing system hardware to simulate the actual airplane installation, including the engines, propulsion drive system, and mount system.

(2) *Critical Parts.*

(i) The applicant must define the critical parts of the propeller assembly. Critical parts are those parts whose failure during ground or flight operation could cause a catastrophic effect to the airplane, including loss of the ability to produce controllable thrust. In addition, parts, of which failure or probably combinations of failures would result in a propeller unbalance greater than that defined under paragraph (b)(3), are classified as critical parts.

(ii) The applicant must develop and implement a plan to ensure that the critical parts identified in paragraph (b)(2)(i) are controlled during design, manufacture, and throughout their service life so that the risk of failure in service is minimized.

(3) *Propeller Unbalance.* The applicant must define the maximum allowable propeller unbalance that will not cause damage to the engines, propulsion drive system, engine mounts, primary airframe structure, or to critical equipment that would jeopardize the continued safe flight and landing of the airplane. Furthermore, the degree of flight deck vibration caused by this unbalance condition must not jeopardize the crew's ability to continue to operate the airplane in a safe manner.

(c) *Propeller Control System.*

(1) The propeller control system must be independent of the turbine engines such that a failure in either turbine engine or an engine control system will not result in loss of propeller control.

(2) The propeller control system must be designed so that the occurrence of any single failure or probable combination of failures in the system which would prevent the propulsion system from producing thrust at a level required to meet § 23.53(b)(1)(ii) (Amendment 23–34) and § 23.67(c) (Amendment 23–42) is extremely improbable.

(3) The propeller control system must be designed to implement a default fixed-propeller pitch position in the event of a propeller control system failure.

(i) An automatic or manual pitch change to the default fixed-pitch position must not exceed any limitation established as part of the engine and propeller type certificates;

(ii) A means, independent of the primary propeller control system, to manually select and deselect this position in flight must be provided and designed to prevent inadvertent operation; and

(iii) A means to indicate to the flightcrew when the propeller is at the default fixed-pitch position must be provided.

(d) *Propulsion Instrumentation.*

(1) *Engine Failure Indication.* A positive means must be provided to indicate when an engine is no longer able to provide torque to the propeller. This means may consist of instrumentation required by other sections of part 23 or these special conditions if it is determined that those instruments will readily alert the flightcrew when an engine is no longer able to provide torque to the propeller.

(2) *Propulsion Drive System Instrumentation.* In addition to the requirements of § 23.1305 (Amendment 23–52), the following instruments must be provided for any power gearbox or transmission:

(i) An oil pressure warning means and indicator for each pressure-lubricated gearbox;

(ii) A low oil quantity indicator for each gearbox, if lubricant is self-contained;

(iii) An oil temperature indicator;

(iv) A tachometer for the propeller;

(v) A torquemeter for the transmission driving a propeller shaft if the sum of the maximum torque that each engine is capable of producing exceeds the maximum torque for which the propulsion system has been certified under 14 CFR part 33; and

(vi) A chip detecting and indicating system for each gearbox.

(e) *Fire Protection System.*

(1) In addition to § 23.1191(a) and (b) (not amended),

(i) Each engine must be isolated from the other engine and the propulsion drive system by firewalls, shrouds, or equivalent means; and

(ii) Each firewall or shroud, including applicable portions of the engine cowling, must be constructed so that no

hazardous quantity of liquid, gas, or flame can pass from the isolated compartment to the other engine and the propulsion drive system and so that firewall temperatures under all normal or failure conditions would not result in auto-ignition of flammable fluids and vapors present in the other engine and the propulsion drive system.

(2) Components, lines, and fittings located in the engine and propulsion drive system compartments must be constructed of such materials and located at such distances from the firewall that they will not suffer damage sufficient to endanger the airplane if a fire is present in an adjacent engine compartment.

(f) *Airplane Performance.*

(1) In addition to § 23.53(b)(1) (Amendment 23–34), the airplane, upon reaching a height of 50 feet above the takeoff surface level, must have reached a speed of not less than 1.3 V_{S1}, or any lesser speed, not less than V_X plus 4 knots, that is shown to be safe under all conditions, including turbulence and the propeller control system failed in any configuration that is not extremely improbable.

(2) In lieu of § 23.67(c)(1) (Amendment 23–42), the steady climb gradient must be determined at each weight, altitude, and ambient temperature within the operational limits established by the applicant, with the airplane in the following configurations:

(i) Critical engine inoperative, remaining engine at not more than maximum continuous power or thrust, wing flaps in the most favorable position, and means for controlling the engine cooling air supply in the position used in the engine cooling tests required by § 23.1041 (Amendment 23–7) through § 23.1045 (Amendment 23–7);

(ii) Both engine operating normally and the propeller control system failed in any configuration that is not extremely improbable, the engines at more than maximum continuous power or thrust, wing flaps in the most favorable position, and means for controlling the engine cooling air supply in the position used in the engine cooling tests required by § 23.1041 (Amendment 23–7) through § 23.1045 (Amendment 23–7).

(3) *Enroute climb/descent.*

(i) Compliance to § 23.69(a) (Amendment 23–50) must be shown.

(ii) The steady gradient and rate of climb/descent must be determined at each weight, altitude, and ambient temperature within the operational limits established by the applicant with—

(A) The critical engine inoperative, the engines at not more than maximum continuous power, the wing flaps retracted, and a climb speed not less than 1.2 V_{S1}.

(B) Both engines operating normally and the propeller control system failed in any configuration that is not extremely improbable, the engines at not more than maximum continuous power, the wing flaps retracted, and a climb speed not less than 1.2 V_{S1}.

(4) In addition to § 23.75 (Amendment 23–42), the horizontal distance necessary to land and come to a complete stop from a point 50 feet above the landing surface must be determined as required in § 23.75 (Amendment 23–42) with both engines operating normally and the propeller control system failed in any configuration that is not extremely improbable.

(g) *Airspeed Indicator.* In lieu of the requirements of § 23.1545(b)(5) (Amendment 23–23), for one-engine inoperative or the propeller control system failed in any configuration that is not extremely improbable, whichever is most critical, the best rate of climb speed V_Y, must be identified with a blue sector extending from the V_Y speed at sea level to the V_Y speed at an altitude of 5,000 feet, if V_V is less than 100 feet per minute, or the highest 1,000-foot altitude (at or above 5,000 feet) at which the V_Y is 100 feet per minute or more. Each side of the sector must be labeled to show the altitude for the corresponding V_Y.

(h) *Airplane Flight Manual.*

(1) In addition to the requirements of § 23.1585(c) (Amendment 23–34), the following information must be included in the Airplane Flight Manual (AFM):

(i) Procedures for maintaining or recovering control of the airplane at speeds above and below V_{S1} with the propeller control system failed in any configuration that is not extremely improbable.

(ii) Procedures for making a landing with the propeller control system failed in any configuration that is not extremely improbable and procedures for making a go-around with the propeller control system failed in any configuration that is not extremely improbable, if this latter maneuver can be performed safely; otherwise, a warning against attempting the maneuver.

(iii) Procedures for obtaining the best performance with the propeller control system failed in any configuration that is not extremely improbable, including the effects of the airplane configuration.

(2) In lieu of the requirements of § 23.1587(c)(2) and (c)(4) (Amendment 23–39), the following information must be furnished in the Airplane Flight Manual:

(i) The best rate-of-climb speed or the minimum rate-of-descent speed with one engine inoperative or the propeller control system failed in any configuration that is not extremely improbable, whichever is more critical.

(ii) The steady rate or gradient of climb determined in paragraph (f)(2)(i) or paragraph (f)(2)(ii) of these special conditions, whichever is more critical, and the airspeed, power, and airplane configuration.

(3) The steady rate and gradient of climb determined in paragraph (f)(3) of these special conditions must be furnished in the Airplane Flight Manual.

(4) The landing distance determined under § 23.75 (Amendment 23–42) or in paragraph (f)(4) of these proposed special conditions whichever is more critical.

Issued in Kansas City, Missouri on March 9, 1999.

Marvin Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–7276 Filed 3–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM152; Notice No. 25–99–01–SC]

Special Conditions: Boeing Model 717–200 Airplane; Operation Without Normal Electrical Power

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Boeing Model 717–200 airplane. This airplane will have novel or unusual design features associated with its electronic flight and engine control systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before April 26, 1999.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal

Aviation Administration, Office of the Assistant Chief Counsel, Attention: Rules Docket (ANM–7), Docket No. NM152, 1601 Lind Avenue SW, Renton, Washington 98055–4056, or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: NM152. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gerry Lakin, FAA, Standardization Branch, ANM–113, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1187, facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM152.'' The postcard will be date stamped and returned to the commenter.

Background

On August 8, 1994, the Los Angeles Certification Office received an application from the McDonnell Douglas Corporation, now a wholly owned subsidiary of The Boeing Company, informing the FAA of their intention to seek an amendment to FAA Type Certificate No. A6WE to add the new Model MD–95–30, which was later renamed the Boeing Model 717–200.

The Boeing Model 717–200 is a derivative of the DC–9/MD–80/MD–90 series of airplanes, Type Certificate No. A6WE, and is scheduled to be certificated in July 1999. The Boeing Model 717–200 is a low-wing, pressurized airplane with twin, body-mounted, jet engines that is configured for approximately 100 passengers. The airplane has a maximum takeoff weight of 121,000 pounds, a maximum landing weight of 104,000 pounds, a maximum operating altitude of 37,000 feet, and a range of 1500 nautical miles at a cruise speed of Mach 0.76. The overall length of the Boeing Model 717–200 is 124 feet, the height is 29 feet, 1 inch, and the wing span is 93 feet, 4 inches. Features have been added to the Boeing Model 717–200 to provide cost-efficient performance and decreased crew workload. These features include an advanced flight compartment, BMW/Rolls-Royce BR715 engines, an advanced auxiliary power unit (APU), advanced environmental systems, and an updated interior.

The advanced flight compartment includes an electronic instrument system, with six liquid crystal displays, to show navigation, engine, and system data. For decreased crew workload, the Boeing Model 717–200 has a flight management system and an autoflight system, with Category IIIa autoland capability. A central fault display system allows maintenance personnel access to fault data to perform return-to-service tests.

The Boeing Model 717–200 is equipped with two electronically controlled BMW/Rolls-Royce BR715 high-bypasss ratio engines capable of supplying up to 21,000 pounds of thrust. For reverse thrust, the engine has fixed pivot door type thrust reversers.

The advanced APU is a simple design with a single-stage compressor and turbine. The APU uses modular components for increased reliability and decreased maintenance and is controlled by an electronic control unit.

The Boeing Model 717–200 has a simplified pneumatic system to supply bleed-air for the airplane systems. The dual cabin pressure control system has automatic control, with a manual backup.

The passenger compartment interior has overhead stowage compartments, forward and aft lavatories, and two forward service galleys. The interior also has a full-grip lighted handrail attached to the overhead stowage compartments, for safety and convenience. Class C cargo compartments are located in the lower forward and aft ends of the airplane.

Type Certification Basis

Under the provisions of § 21.101, The Boeing Company must show that the Boeing Model 717–200 meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A6WE or the applicable regulations in effect on the date of application for the change to the type certificate. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A6WE are as follows:

The type certification basis for the Boeing Model 717–200 airplane is 14 CFR part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–82, except for certain reversions to earlier amendments for parts of the airplane not affected by these special conditions.

In addition, the certification basis for the Boeing Model 717–200 includes the fuel vent and exhaust emission requirements of 14 CFR part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and the noise certification requirements of 14 CFR part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification. These special conditions will form an additional part of the type certification basis. The certification basis may also include other special conditions and exemptions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Boeing Model 717–200 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Boeing Model 717–200 will utilize electronic flight and engine control systems that establish the

criticality of the electrical power generation and distribution systems. Since the loss of all electrical power may be catastrophic to the airplane, a special condition is proposed to retain the level of safety envisioned by § 25.1351(d).

The Boeing Model 717–200 airplane requires a continuous source of electrical power in order for the electronic flight instrument system to remain operable. Section § 25.1351(d), ''Operation without normal electrical power,'' requires safe operation in visual flight rule (VFR) conditions for a period of not less than five minutes with inoperative normal power. This rule was structured around a traditional design utilizing analog/mechanical flight instrumentation, which allows the crew to sort out the electrical failure, start engine(s) if necessary, and re-establish some of the electrical power generation capability. However, with today's aircraft, complex electronic/avionics systems are now performing critical functions that may require uninterrupted electrical power for continued safe flight (in instrument meteorological conditions (IMC)) and landing.

In addition, § 121.161 states that an operator may fly a twin-engine airplane over a route that allows up to one hour flying time from a suitable airport. If Boeing seeks operational approval for extended over water operations, with a possible diversion time of one hour, the emergency power system must be capable of providing at least one hour of operation to critical and essential systems. If, however, Boeing intends to exclude extended over water operations, then only 30 minutes of emergency power will be required.

In order to maintain the same level of safety associated with traditional designs, the Boeing Model 717–200 design must provide at least 30 minutes of emergency power without the normal source of engine or APU generated electrical power. It should be noted that service experience has shown that the loss of all electrical power generated by the airplane's engine generators or APU is not extremely improbable. Thus, it must be demonstrated that the airplane can continue through safe flight and landing with only the use of its emergency electrical power systems. These emergency electrical power systems must be able to power loads that are essential for continued safe flight and landing. The emergency electrical power system must be designed to:

1. Continue to operate the airplane for immediate safety without the need for crew action following the loss of the normal engine (which includes APU power) generator electrical power system,

2. Supply electrical power required for continued safe flight and landing, and

3. Supply electrical power required to restart the engines.

For compliance purposes a test demonstration of the loss of normal engine generator power is to be established such that:

1. The failure condition is assumed to occur during night IMC at the most critical phase of the flight relative to the electrical power system design and distribution of equipment loads on the system.

2. The airplane engine restart capability must be provided and operations continued in IMC after the unrestorable loss of normal engine generator power.

3. The airplane is demonstrated to be capable of continuous safe flight and landing. The length of time must be computed based on the maximum diversion time capability for which the airplane is being certified. Consideration for speed reductions resulting from the associated failure must be made.

4. The availability of APU operation should not be considered in establishing emergency power system adequacy.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 717–200. Should The Boeing Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 717–200 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 717–200 airplanes.

1. *Operation Without Normal Electrical Power.* In lieu of compliance with § 25.1351(d), ''It must be demonstrated by test, or combination of test and analysis, that the airplane can continue safe flight and landing with inoperative normal engine and APU generator electrical power (electrical power sources excluding the battery and any other standby electrical sources). The airplane operation must be considered at the critical phase of flight and include the ability to restart the engines and maintain flight for the maximum diversion time capability being certified.''

Issued in Renton, Washington on March 17, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 99–7319 Filed 3–24–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWA–1]

RIN 2120–AA66

Proposed Revision to the Legal Description of the Riverside, March Air Force Base (AFB) Class C Airspace Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to revise the legal description of the Riverside, CA, March AFB Class C airspace area by replacing references to the former active duty AFB with the current civil/military joint-use designation of ''March Field,'' and to change the operating hours to be consistent with the current mission requirements of the U.S. Air Force (USAF) Reserve, the U.S. Customs Service, and other tenants operating at the airport. Specifically, the Class C airspace area, as proposed, would be designated effective during the specific days and hours of operation of the March Field Ground Controlled Approach (GCA) facility as established in advance by a Notice to Airmen (NOTAM). The effective dates and times would thereafter be continuously published in the Airport/Facility Directory. This proposed action would

not change the actual dimensions, configuration, or operating requirements of the Riverside, March AFB Class C airspace area.

DATES: Comments must be received on or before May 13, 1999.

ADDRESSES: Send comments on the proposal in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–200, Airspace Docket No. 99–AWA–1, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the FAA Western-Pacific Regional Office.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AWA–1.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661), using a modem and suitable communications software.

Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register**'s web page at http://www.access.gpo.gov/nara/index.html for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3075. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the Federal Aviation Administration, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

Background

On May 7, 1997, the USAF Reserve and the March Joint Powers Authority (JPA) entered into a formal agreement for military-civilian joint-use of the former March Air Force Base. The March Class C airspace area remains an essential safety measure in support of the ongoing mission requirements of key March Field tenants which include the USAF Reserve, the U.S. Customs Service Domestic Air Interdiction Center, the California Air National Guard, and the March Aero Club.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising the legal description of the Riverside, March AFB Class C airspace area located at Riverside, CA. The current legal description refers to an Air Force base that has been deactivated. Further, the FAA proposes to use the operating hours for the Class C airspace area which are consistent with the current mission requirements of the USAF Reserve, the US Customs Service, and other tenants operating at this airport. It is proposed that the Class C airspace area would be designated effective during the specific days and hours of operation of the March GCA facility as established in advance by NOTAM. The proposed action is a technical amendment to the legal description and would not change the actual dimensions, configuration, or operating requirements of the Riverside, March AFB Class C airspace area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed action: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The coordinates for this airspace docket are based on North American Datum 83. Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class C airspace designation listed in this document would be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace

Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

AWP CA C Riverside, March Field, CA [Revised]

Riverside, March Field, CA
(Lat. 33°52′50″N., long. 117°15′34″ W.)

That airspace extending upward from the surface to and including 5,500 feet MSL within a 5-mile radius of March Field; and that airspace extending upward from 3,900 feet MSL to and including 5,500 feet MSL within the 10-mile radius of March Field from the centerline of V–16/V–370 east of the airport clockwise to the 216° bearing from the airport and that airspace extending upward from 2,900 feet MSL to but not including 3,900 feet MSL within 2 miles east and 1.5 miles west of the 150° bearing from the airport extending from the 5-mile radius to the 10-mile radius of the airport. This Class C airspace area is effective during the specific days and hours of operation of the March GCA facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the airport/Facility Directory.

* * * * *

Issued in Washington, DC, on March 18, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–7355 Filed 3–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105170–97]

RIN 1545–AV14

Credit for Increasing Research Activities; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of a public hearing on proposed regulations relating to the computation of the credit under section 41(c) and the definition of qualified research under section 41(d).

DATES: The public hearing is being held on Thursday, April 29, 1999, at 10 a.m. The IRS must receive outlines of topics to be discussed at the hearing by April 15, 1999.

ADDRESSES: The public hearing is being held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: CC:DOM:CORP:R (REG–105170–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–105170–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submit outlines electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting them directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing Guy Traynor, (202) 622–7180 (not a toll free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations (REG–105170–97) that were published in the **Federal Register** on December 2, 1998 (63 FR 66503 [1998–50 IRB 10 (see § 601.601(d)(2)]).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written comments and wish to present oral comments at the hearing, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by April 15, 1999.

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia E. Grigsby,

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

[FR Doc. 99–7339 Filed 3–24–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–145–FOR; State Program Amendment No. 98–1]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposes reference changes in its rules for surface mining permit applications, geology description; underground mining permit applications, geology description; and permit applications, public participation. Indiana also proposes to add a new provision to its rule for surface mining permit applications, postmining land uses. Indiana intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Indiana program and amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., e.s.t., April 26, 1999. If requested, we will hold a public hearing on the amendment on April 19, 1999. We will accept requests to speak at the hearing until 4:00 p.m., e.s.t. on April 9, 1999.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Indiana program, the amendment, a listing of

any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone: (317) 226–6700

Indiana Department of Natural Resources, 402 West Washington Street, Room C256, Indianapolis, Indiana 46204, Telephone: (317) 232–1547

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, and 914.16.

II. Description of the Proposed Amendment

By letter dated March 8, 1999 (Administrative Record No. IND–1633), Indiana sent us an amendment to its program under SMCRA. Indiana sent the amendment its own initiative. Indiana proposes to amend the Indiana Administrative Code (IAC) at 310 IAC 12–3 as discussed below.

1. 310 IAC 12–3–31 Surface Mining Permit Applications; Geology Description

At 310 IAC 12–3–31(a)(3), Indiana proposes to replace a reference to ''IC 13–4.1'' with a reference to ''IC 14–34.'' At 310 IAC 12–3–31(c), Indiana proposes to replace a reference to ''this rule'' with a reference to ''this article.''

2. 310 IAC 12–3–48 Surface Mining Permit Applications; Reclamation and Operations Plan; Postmining Land Uses

Indiana proposes to revise this rule by adding a new provision at 310 IAC 12–3–48(a)(3) to require the detailed description of the proposed land use to explain ''[t]he consideration given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs.''

3. 310 IAC 12–3–69 Underground Mining Permit Applications; Geology Description

At 310 IAC 12–3–69(a)(3) and 12–3–69(c)(3), Indiana proposes to replace references to ''this rule'' with references to ''this article.'' At 310 IAC 12–3–69(d), Indiana proposes to replace a reference to ''subsection (b)'' with a reference to ''subsection (b)(2) and (b)(3).''

4. 310 IAC 12–3–106 Permit Applications; Public Participation

At 310 IAC 12–3-106(a)(8), Indiana proposes to replace a reference to ''section 94'' with a reference to ''section 94.1.''

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Indiana program.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under ''DATES'' or at locations other than the Indianapolis Field Office.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on April 9, 1999. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We also make a written summary of each meeting a part of the Administrative Record.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 17, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–7227 Filed 3–24–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110, 162, and 165

[CDG17–99–002]

RIN 2115–AF81

Anchorage Ground; Safety Zone; Speed Limit; Tongass Narrows and Ketchikan, AK

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes changes to the speed limit in Tongass Narrows. The present speed limit does not address the needs of floatplane traffic, may unnecessarily slow the transits of smaller vessels, and does not apply in the northern portions of Tongass Narrows where traffic congestion and wake from larger vessels has become a concern. The proposal would extend the speed limit area northward in Tongass Narrows to Channel Island, allow the take-off and landing of floatplanes, and allow smaller vessels to transit crowed areas to Tongass Narrows more quickly, thereby reliving congestion. The Coast Guard also proposes redesignation of the safety zone in Ketchikan Harbor as an anchorage ground. Vessels transiting the anchorage ground, other than those engaged in anchoring evolutions, would be required to proceed through the anchorage by the most direct route without delay or sudden course changes. The present designation of this areas as a safety zone does not reflect its actual use as an anchorage for large passenger vessels. The slow or erratic operation of small vessels in the present safety zone has made it very difficult for large vessels to safely maneuver to and from anchor. The requirement that transiting vessels proceed through the anchorage directly, without delay or sudden course changes, will make the final approach, anchoring, and departure of very large passenger vessels, safer for the vessels involved.

DATES: Comments must reach the Coast Guard by May 10, 1999.

The public hearing will be held on March 26, 1999, at 6 p.m. (AST).

ADDRESSES: You may mail comments to the Commander (mo), Seventeenth Coast Guard District, P.O. Box 25517, Juneau, Alaska 99802–5517, or deliver them to the Federal Building, 709 West 9th Street, sixth floor, room 661, Juneau Alaska between 8 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is 907–463–2242. the Seventeenth Coast Guard District, Maritime Operations Division, maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this and will be available for inspection or copying at room 66, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The public hearing will be held at the Ted Ferry Civic Center, 888 Venetia Avenue, Ketchikan, Alaska.

FOR FURTHER INFORMATION CONTACT: For information concerning this rulemaking, call Lieutenant P.W. Clark, Supervisor, U.S. Coast Guard Marine Safety Detachment, Ketchikan, AK, telephone 907–225–4496.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD17–99–002) and the specific section of this document to which each comments applies, and give the reason for each comment. Please submit two copies of all comment and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you want acknowledgement or receipt of your comments, you should enclose a stamped, self-addressed postcard or envelop.

The Coast Guard is establishing a forty five-day comment period for this proposed rule instead of the usual sixty-day comment period. The shortened comment period should be sufficient to allow the public to comment on the proposed rule. The shortened comment period is needed so that the modification to the existing rule may be in place by the beginning of the 1999 summer boating season. The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard has scheduled a public hearing for 6 p.m.(AST), March 26, 1999, at the Ted Ferry Civic Center, 888 Venetia Avenue, Ketchikan, Alaska. Persons may request an additional public hearing by writing to the Commander (To), Seventeenth Coast Guard District, at the address under **ADDRESSES**. the request should include the reasons why an additional hearing would be beneficial. It is determines that the opportunity for additional oral presentations will aid this rulemaking, the Coast Guard will hold an additional public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

During the last two years the Coast Guard and the Federal Aviation Administration have held a series of public meetings in Ketchikan, Alaska, to assess maritime traffic, congestion, safety, and wake concerns in Tongass Narrows. The individuals and groups represented at these meetings included recreational vessel operators, passenger vessel operator, commercial fishing vessel operators, waterfront facility managers, commercial freight vessel/barge operators, commercial tank barge operators, commercial Kayak operators, floatplane operators, charter vessel operator, and local residents.

Seven knot speed limit. The majority of the comments received at these meetings indicated that the existing 7-knot speed limit was no longer appropriate for the current navigational situation on Tongass Narrows. A search of the National Archives and comments received indicate that the original purpose of this speed restriction was to control bank erosion and damage to rafted fishing vessels from large wakes. In the forty plus years that this speed limit has been in effect, the number and type of vessels transiting, mooring, and anchoring in Tongass Narrows has changed considerably—with congestion becoming a much greater problem. For example, on an average summer day last year, traffic on Tongass Narrows consisted of more than 500 floatplane takeoffs and landings (in August 1998 the average was 526 takeoffs and landings per day), 173 charter boat transits, 22 small passenger vessels transits, 5 large cruise ships transits with 1 or 2 at anchor, 150 fishing vessels plying their trade at 7 canneries, 4 barge/tug transits, 30 to 40 kayaks transits; and an unknown number of recreation and transient boat traffic. These numbers are predicted to increase by 3 to 4 percent during the 1999 tourist season.

Numerous comments criticized the present speed limit, noting that it is impossible for floatplanes to comply with this restriction when on the water because they must exceed this speed in order to take off and land. Comments also noted that modern, small vessels with planing hulls actually create less wake when operated at higher speeds. Numerous comments thought that permitting smaller vessels to transit more rapidly would decrease congestion by clearing vessel traffic more quickly, while actually decreasing problems with the wakes from those vessels.

Comments were also received favoring extension of the speed limit zone to the north, as far as Channel Island, while clarifying the end of the speed limit in the west channel of Tongass Narrows. The extension northward was favored because it would help reduce in an area that has become more heavily developed, with regular ferry transits and significant floatplane traffic near the airport.

Large Vessel Anchorage. The operators of cruise ships commented that the slow and often erratic transits of small vessels made the maneuvering and anchoring of large cruise ships very difficult in the present safety zone in Ketchikan Harbor. Although comments generally favored relaxation of the speed limit for small vessels, there was concern that increased speed, when combined with erratic maneuvering, would actually worsen the situation for anchoring cruise ships.

Discussion of Proposed Rules

The proposed rule would modify the existing boundaries for the 7-knot speed limit. Currently the 7-knot speed limit applies to water traffic in the Tongass Narrows from Idaho Rock to Charcoal Point. This provides adequate protection for facilities and vessels in the southern portion of the narrows but not those located in the northern section. The current regulation also covers all types and sizes of vessels and does not make any allowances for floatplanes nor for smaller vessels that do not typically cause a large wake. As proposed, the revised rule would modify the geographical boundaries of the regulated area. The new boundaries would be: Channel Island in the north part of the narrows; Idaho Rock as the southermost boundary for the east channel; and West Pennock Light 4 as the southermost boundary in the west channel. The second change would be to add an exemption from the 7-knot speed limit for floatplanes during landings and takeoffs and for vessels of 26 feet or less in length.

By exempting smaller vessels and floatplanes from the speed limit, the traffic congestion in all of Tongass Narrows (including the northern section) should be eased. Without the speed limit for small vessels, they would depart from, or transit through, the congested areas more quickly. This is turn should ease congestion and reduce navigational conflicts that have arisen between slow moving small boats and cruise ships and other large waterway users. Large wakes would not become a problem because the exemption is limited to smaller vessels and because Tongass Narrows regularly experiences substantial wave action (due to the large fetch in the Narrows) that is equivalent to the wake from these smaller vessels. The speed limit is retained for vessels over 26 feet because they commonly operate in the displacement mode, in which case they generate considerable wake at higher speeds.

The proposed rule re-designates the present safety zone as an anchorage ground and requires motorized vessels to proceed directly, without delay or rapid course changes, while transiting through the anchorage area. This should allow smaller vessels to rapidly move through the area without slow or erratic maneuvers that create difficulties for large vessels using the anchorage area.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is so because the regulation is designed to reduce present impacts on waterway users of the existing speed limit. In regards to the extension of the speed limit northward to Channel Island, operators of larger vessels stated that their present practice is to slow down upon reaching Channel Island, so the proposed change conforms to an existing practice. In combination with the speed limit exemption for floatplanes and vessels 26 feet and less in length, the overall impact should be minimal. The new requirement to proceed directly, without erratic maneuvering, through the anchorage area, is expected, in combination with relaxation of the speed limit for small vessels, to result in less congestion and quicker and safer transits for all users.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard considers whether this proposed rule, if adopted, will have significant economic impacts on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard believes there will be some impact to small entities, but that it will be beneficial. This is so because the speed limit is relaxed for smaller waterway users; i.e., floatplanes and vessels 26 feet long and shorter, which eases their transit times and thus benefits these users. This group includes many small charter plane and charter fishing vessel operators. Although the Coast Guard is unsure of the economic impacts on other users, it believes such impact is generally beneficial because the combination of regulatory changes should reduce congestion and navigational conflicts

throughout the waterway and make transits safer and faster for all user groups. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If however, you think your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection-of-Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this advance notice under the principles and criteria contained in E.O. 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalisms Assessment.

Environment

The Coast Guard considered this proposal in accordance with paragraph 2.B.2.b of COMDTINST M16475.1C (National Environmental Policy Act—Implementing Procedures and Policy for Considering Environmental Impacts), and concluded that there are no circumstances that indicate a potential for significant effects. Therefore, the categorical exclusion provided in figure 2–1, paragraph 34(g) of COMDTINST M16475.1C is appropriate and no further environmental analysis or documentation is required. A ''Categorical Exclusion'' and an ''Environmental Analysis Checklist'' are available in docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 162

Navigation (water), Waterways.

33 CFR Part 165

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

Proposed Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 110, 162, and 165 as follows:

PART 162—[AMENDED]

1. The authority citation for part 162 continues to read a follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Revise § 162.240(b) to read as follows:

§ 162.240 Tongas Narrows, Alaska; Navigation.

* * * * *

(b) No vessel of over 26 feet in length, except for floatplanes during landings and take-offs, shall exceed a speed of seven knots in the region of Tongass Narrows bounded to the north by Channel Island and to the south by Idaho Rock in the east channel of Tongass Narrows and West Pennock Light 4 in the west channel of Tongass Narrows.

* * * * *

PART 165—[AMENDED]

PART 110—[AMENDED]

3. The authority citation for part 110 continues to read as follows:

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

§ 165.1705 [Redesignated as § 110.231]

4. Section 165.1705 is redesignated as § 110.23 and is revised to read as follows:

§ 110.231 Ketchikan Harbor, Alaska, Large Passenger Vessel Anchorage.

(a) *The anchorage grounds, Ketchikan Harbor, Alaska, Large Passenger Vessel Anchorage.* The waters of Ketchikan Harbor, Ketchikan, Alaska, enclosed by the following boundary lines: A line from Thomas Basin Entrance Light ''2'', to East Channel Lighted Buoy ''4A'', to Pennock Island Reef Lighted Buoy ''PR'', to Wreck Lighted Buoy ''WR6'', then following a line bearing 064 degrees true to shore. This anchorage is effective 24 hours per day from 1 May through 30 September, annually.

(b) *The regulations.* (1) When transiting through the anchorage, all vessels using propulsion machinery shall proceed across the anchorage by the most direct route and without unnecessary delay. Sudden course changes within the anchorage are prohibited.

(2) No vessels, other than a large passenger vessel over 1600 gross tons (including ferries), may anchor within the anchorage without the express consent of the Captain of the Port, Southeast Alaska.

A. Regalbuto,

Captain, U.S. Coast Guard, Acting Commander, Seventeenth Coast Guard District.

[FR Doc. 99–7270 Filed 3–22–99; 12:42 pm]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 201–0138b; FRL–6310–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) which concerns South Coast Air Quality Management District Rule 701. The intended effect of proposing approval of this rule is to update the episode criteria and to modify the boundary between two Source Receptor Area in accordance with 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 approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this 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 must be received in writing by April 26, 1999.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of this rule is available for public inspection at EPA's Region 9

office during normal business hours. Copies of the submitted rule revision is also available for inspection at the following locations:

South Coast Air Quality Management District, 21865 E., Copley Drive, Diamond Bar, CA 91765.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District Rule 701, Air Pollution Emergency Contingency Actions. This rule was submitted by the California Air Resources Board to EPA on September 8, 1997. 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: March 5, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 99–7177 Filed 3–24–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6313–7]

Protection of Stratospheric Ozone; Listing of Substitutes for Ozone-Depleting Substances; Correction

AGENCY: Environmental Protection Agency.

ACTION: Request for data and advance notice of proposed rulemaking; correction.

SUMMARY: On February 18, 1999, the Environmental Protection Agency published in the **Federal Register** (64 FR 8043), a Request for Data and Advance Notice of Proposed Rulemaking. Inadvertently, the docket number listing in the **ADDRESSES** section was incorrect. The correct docket number and contact information is listed in the **ADDRESSES** section of this document.

DATES: The comment period has been extended by two weeks to accommodate any inconvenience the incorrect information may have caused. Written comments on data provided in response to the ANPR must be submitted by May 3, 1999.

ADDRESSES: Comments on and materials supporting this advance notice are collected in Air Docket # A–91–42, U.S. Environmental Protection Agency, 401 M Street, SW, Room M–1500, Washington, DC, 20460. The docket is located at the address above in room M–1500, First Floor, Waterside Mall. The materials may be inspected from 8 am until 5:30 pm Monday through Friday. Telephone (202) 260–7548; fax (202) 260–4400. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying docket materials.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Hotline at (800) 296–1996 or Melissa Payne at (202) 564–9738 or fax (202) 565–2096, Analysis and Review Branch, Stratospheric Protection Division, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to our 501 3rd Street, NW., Washington, DC, 20001 location.

SUPPLEMENTARY INFORMATION: The EPA published an advance notice of proposed rulemaking in the **Federal Register** of February 18, 1999 (64 FR 8043) that incorrectly listed Air Docket #A–92–13 for materials supporting and comments on the advance notice. This correction replaces that Docket number with the correct Air Docket number. In addition, the appropriate Air Docket contact information (telephone and fax number) is provided in the **ADDRESSES** section of this document.

In proposed rule FR Doc. 99–3993 published on February 18, 1999 (64 FR 8043), make the following correction. On page 8043, in the third line of the **ADDRESSES** section, correct ''Air Docket #A–92–13'' to read ''Air Docket #A–91–42''.

Dated: March 15, 1999.

Robert D. Brenner,

Acting Assistant Administrator, OAR.

[FR Doc. 99–7084 Filed 3–24–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6313–8]

Protection of Stratospheric Ozone; Listing of Substitutes for Ozone-Depleting Substances; Correction

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: On February 18, 1999, the Environmental Protection Agency published in the **Federal Register** (64 FR 8038), a Notice of Proposed Rulemaking. Inadvertently, a paragraph in the table of appendix G to subpart G was incorrect. In the ''conditions'' column of the Fire Suppression and Explosion Protection Total Flooding Agents table for substitute IG–100, it was stated incorrectly that a design concentration of less than 10% may only be used in normally occupied areas, as long as an employee who could possibly be exposed can egress within 30 seconds. Instead, the table should read: ''A design concentration of less than 10% may only be used in normally unoccupied areas, as long as an employee who could possibly be exposed can egress within 30 seconds.''

DATES: The comment period has been extended to accommodate any inconvenience the incorrect information may have caused. Written comments on data provided in response to the Notice of Proposed Rulemaking must be submitted by May 3, 1999.

ADDRESSES: Written comments or data should be sent to Air Docket A–91–42, U.S. Environmental Protection Agency, 401 M Street, SW., Room M–1500, Washington, DC, 20460. The docket is located at the address above in room M–1500, First Floor, Waterside Mall. The materials may be inspected from 8 am until 5:30 pm Monday through Friday. Telephone (202) 260–7548; fax (202) 260–4400. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying docket materials. To expedite review, a second copy of the comments should be sent to Kelly Davis at the address listed below under **FOR FURTHER INFORMATION CONTACT.** Information designated as Confidential Business Information (CBI) under 40 CFR part 2, subpart 2, must be sent directly to the contact person for this document. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Hotline at (800) 296–1996 or Kelly Davis at (202) 564–2303 or fax (202) 565–2096, Analysis and Review Branch, Stratospheric Protection Division, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to our 501 3rd Street, NW., Washington, DC, 20001 location.

SUPPLEMENTARY INFORMATION: The EPA published a document in the **Federal**

Register of February 18, 1999 (64 FR 8038) which incorrectly listed a paragraph of the conditions for Fire Suppression and Explosion Protection Total Flooding Agents substitute IG–100. This correction replaces that paragraph in the table found in appendix G to subpart G to part 82.

In proposed rule FR Doc. 99–3992 published on February 18, 1999 (64 FR 8038), make the following correction. On page 8043, in the first table of appendix G to subpart G to part 82, correct the final paragraph under ''Conditions'' to read, ''A design concentration of less than 10% may only be used in normally unoccupied areas, as long as an employee who could possibly be exposed can egress within 30 seconds.''

Dated: March 12, 1999.

Robert D. Brenner,

Acting Assistant Administrator, OAR.

[FR Doc. 99–7085 Filed 3–24–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–6315–2]

RIN 2060–AG85

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Rocky Flats Environmental Technology Site for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on Department of Energy (DOE) documents applicable to characterization of transuranic (TRU) radioactive waste at Rocky Flats Environmental Technology Site (RFETS) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are entitled: (1) ''Transuranic Waste Management Manual, Rev. 2,'' (2) ''RFETS TRU Waste Characterization Program Quality Assurance Project Plan,'' and (3) ''Salt Residue Stabilization, Building 707 Process Control/Qualification Plan.'' They are available for review in the public dockets listed in **ADDRESSES.** EPA will conduct an inspection of waste characterization systems and processes at RFETS to verify that the proposed systems and processes at RFETS can characterize transuranic waste in accordance with EPA's WIPP compliance criteria at 40 CFR 194.24. EPA will perform this inspection the week of April 12, 1999. This notice of the inspection and comment period accords with 40 CFR 194.8.

DATES: EPA is requesting public comment on the document. Comments must be received by EPA's official Air Docket on or before April 26, 1999.

ADDRESSES: Comments should be submitted to: Docket No. A–98–49, Air Docket, Room M–1500 (LE–131), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. The DOE document is available for review in the official EPA Air Docket in Washington DC, Docket No. A–98–49, Category II–A–2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10am–9pm, Friday–Saturday, 10am–6pm, and Sunday 1pm–5pm; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: Monday—Thursday, 8am–9pm, Friday, 8am–5pm, Saturday–Sunday, 1pm–5pm; and in Santa Fe at the Fogelson Library, College of Santa Fe, Hours: Monday–Thursday, 8am–12am, Friday, 8am–5pm, Saturday, 9am–5pm, and Sunday, 1pm–9pm.

As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Scott Monroe, Office of Radiation and Indoor Air, (202) 564–9310 or call EPA's toll-free WIPP Information Line, 1–800–331-WIPP.

SUPPLEMENTARY INFORMATION:

Background

DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Public Law 102–579), as amended (Public Law 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of Appendix A to 40 CFR part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL until the EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of Appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, D.C., and informational dockets in the State of New Mexico for public review and comment.

EPA inspected certain waste characterization processes at RFETS on June 22–26, 1998. At the time of EPA's inspection, RFETS was using these processes to characterize waste that DOE categorizes as debris waste. DOE is proposing to characterize a different category of waste, called salt residues, using processes at RFETS that EPA did not previously inspect. DOE also is proposing to use a repackaging process for LECO crucibles, a type of debris waste. EPA will conduct a inspection of RFETS to verify that these additional processes comply with 40 CFR 194.24.

EPA has placed three documents pertinent to the inspection in the public dockets described in **ADDRESSES.** The documents are entitled: (1) ''Transuranic Waste Management Manual, Rev. 2,'' (2) ''RFETS TRU Waste Characterization Program Quality Assurance Project Plan,'' and (3) ''Salt Residue Stabilization, Building 707 Process Control/Qualification Plan.'' The first two documents are revised

versions of documents placed in the docket prior to the June 1998 inspection (Docket A–98–49, Items II–A2–1 and II–A2–2). In accordance with 40 CFR 194.8, as amended by the final certification decision, EPA is providing the public 30 days to comment on the document.

If EPA determines as a result of the inspection that the proposed systems and processes at RFETS can adequately characterize transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow the DOE to ship from RFETS the TRU waste that may be characterized using the approved processes. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at the three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: March 18, 1999.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 99–7331 Filed 3–24–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–80, RM–9493]

Radio Broadcasting Services; Hubbardston, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Garry Zack proposing the allotment of Channel 279A at Hubbardston, Michigan, as that community's first local broadcast service. The channel can be allotted to Hubbardston with a site restriction 2.1 kilometers (1.3 miles) west of the community at coordinates 43–05–53 NL and 84–51–54 WL. Canadian concurrence will be requested for the allotment at Hubbardston.

DATES: Comments must be filed on or before May 10, 1999, and reply comments on or before May 25, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Robert L. Olender, Baraff, Koerner & Olender, P.C., 3 Bethesda Metro Center, Suite 640, Bethesda, Maryland 20814–5330.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–80, adopted March 10, 1999, and released March 19, 1999. 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., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

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* contact.

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. 99–7315 Filed 3–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–77, RM–9489]

Radio Broadcasting Services; Frenchtown, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Idaho Broadcasting Consortium proposing the allotment of Channel 294C2 to Frenchtown, Montana, as that community's first local broadcast service. The channel can be allotted to Frenchtown without a site restriction at coordinates 47–00–54 NL and 114–14–00 WL. Canadian concurrence will be requested for the allotment of Channel 294C2 at Frenchtown.

DATES: Comments must be filed on or before May 10, 1999, and reply comments on or before May 25, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lee W. Shubert, Haley Bader & Potts P.L.C., 4350 North Fairfax Drive, Suite 900, Arlington, Virginia 22203–1633.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–77, adopted March 10, 1999, and released March 19, 1999. 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., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

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* contact.

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. 99–7314 Filed 3–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–78, RM–9487]

Radio Broadcasting Services; Blackduck, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Community Religious Broadcasters proposing the allotment of Channels 221A and 283A at Blackduck, Minnesota, as that community's second and third FM broadcast services. Both channels can be allotted to Blackduck without a site restriction using the city reference coordinates (47–43–48 NL and 94–32–54 WL). Canadian concurrence will be requested for the allotment of both channels at Blackduck.

DATES: Comments must be filed on or before May 10, 1999, and reply comments on or before May 25, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Harry F. Cole, Bechtel & Cole, Chartered, 1901 L Street, NW, Suite 250, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–78, adopted March 10, 1999, and released March 19, 1999. 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., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

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* contact.

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. 99–7313 Filed 3–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–79, RM–9488]

Radio Broadcasting Services; Broadview, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Windy Valley Broadcasting proposing the allotment of Channel 290C3 to Broadview, Montana, as that community's first local broadcast service. The channel can be allotted to Broadview without a site restriction at coordinates 46–06–00 NL and 108–52–36 WL.

DATES: Comments must be filed on or before May 10, 1999, and reply comments on or before May 25, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, Jr., President, Windy Valley Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–79, adopted March 10, 1999, and released March 19, 1999. 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., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

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* contact.

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. 99–7312 Filed 3–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–84, RM–9501]

Radio Broadcasting Services; Stratford, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Peter George seeking the allotment of Channel 254A to Stratford, NH, as the community's first local aural service. Channel 254A can be allotted to Stratford in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.6 kilometers (5.3 miles) north, at coordinates 44–43–54 NL; 71–34–10 WL, to avoid a short-spacing to the proposed allotment of Channel 256A at Whitefield, NH (MM Docket 99–42).

Canadian concurrence in the allotment is required since Stratford is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before May 10, 1999, and reply comments on or before May 25, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter George, 33 Stetson St., Apt. #2, Whitman, MA 02382 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–84, adopted March 10, 1999, and released March 19, 1999. 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 Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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. 99–7311 Filed 3–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–85, RM–9504]

Radio Broadcasting Services; Overton, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting seeking the allotment of Channel 295C1 to Overton, NV, as the community's first local aural service. Channel 295C1 can be allotted to Overton in compliance with the Commission's minimum distance separation requirements with a site restriction of 40 kilometers (24.9 miles) north, at coordinates 36–53–17 NL; 114–34–27 WL, to avoid short-spacings to Stations KSNE–FM, Channel 293C, Las Vegas, NV, KCCA, Channel 296C3, Colorado City, AZ, and to the construction permit of a new station on Channel 296B, Needles, CA.

DATES: Comments must be filed on or before May 10, 1999, and reply comments on or before May 25, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–85, adopted March 10, 1999, and released March 19, 1999. 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 Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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. 99–7310 Filed 3–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–86, RM–9505]

Radio Broadcasting Services; Fruitland, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting seeking the allotment of Channel 300A to Fruitland, NM, as its first local commercial aural service. Channel 300A can be allotted to Fruitland in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36–44–18 NL; 108–23–30 WL. Petitioner is requested to provide further information to demonstrate that Fruitland is a community for allotment purposes.

DATES: Comments must be filed on or before May 10, 1999, and reply comments on or before May 25, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Mivchael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No.

99–86, adopted March 10, 1999, and released March 19, 1999. 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 Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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. 99–7309 Filed 3–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–82, RM–9496]

Radio Broadcasting Services; Allen, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting seeking the allotment of Channel 265A to Allen, NE, as the community's first local aural service. Channel 265A can be allotted to Allen in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.4 kilometers (2.7 miles) north, at coordinates 42–27–14 NL; 96–51–07 WL, to avoid a short-spacing to Station KGBI–FM, Channel 264C, Omaha, NE.

DATES: Comments must be filed on or before May 10, 1999, and reply comments on or before May 25, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–82, adopted March 10, 1999, and released March 19, 1999. 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 Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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. 99–7308 Filed 3–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–83, RM–9500]

Radio Broadcasting Services; Saranac Lake, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Dana Puopolo to allot Channel 276A to Saranac Lake, as the community's third local FM service. Channel 276A can be allotted to Saranac Lake in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 44–19–48 NL; 74–08–00 WL. Canadian concurrence as a specially negotiated short-spaced allotment is required since Saranac Lake is located within 320 kilometers (200 miles) of the U.S.-Canadian border and the allotment would be short-spaced to the proposed allotment of Channel 276A, Huntington, Quebec, and vacant Channel 276A at Valleyfield, Quebec, Canada.

DATES: Comments must be filed on or before May 10, 1999, and reply comments on or before May 25, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dana Puopolo, 37 Martin St., Rehoboth, MA 02769–2103 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–83, adopted March 10, 1999, and released March 19, 1999. 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 Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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. 99–7307 Filed 3–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–76; RM–9400]

Radio Broadcasting Services; Silverton and Bayfield, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Voice Ministries of Farmington, Inc., permittee for a new FM broadcast station to operate on Channel 297C1, Silverton, Colorado, requesting the reallotment of Channel 297C1 from Silverton to Bayfield, Colorado, and modification of its authorization to specify operation on Channel 296C at the latter community, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. Coordinates used for this proposal are 37–13–32 NL and 107–35–53 WL.

DATES: Comments must be filed on or before May 10, 1999, and reply comments on or before May 25, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jeffrey D. Southmayd, Esq., Southmayd & Miller, 1220 19th Street, N.W., Suite 400, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–76, adopted March 10, 1999, and released March 19, 1999. 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, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

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. 99–7306 Filed 3–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–75, RM–9446]

Radio Broadcasting Services; Grants and Milan, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Don Davis, licensee of Station KQEO, Grants, NM, requesting the reallotment of Channel 264A from Grants to Milan, NM, as the community's second local and first fulltime aural service, and the modification of Station KQEO's license to specify Milan as its community of license. Channel 264A can be allotted to Milan in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.7 kilometers (3.6 miles) south, at coordinates 35–07–09 North Latitude; 107–54–08 West Longitude, which is Station KQEO's presently licensed transmitter site. The Commission also proposes to editorially amend the FM Table of Allotments by substituting Channel 224A for Channel 224C2 and Channel 264A for Channel 264C2 at Grants to reflect the license changes for Stations KAIU and KQEO, respectively.

DATES: Comments must be filed on or before May 10, 1999, and reply comments on or before May 25, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Barry D. Wood, Paul H. Brown, Wood, Maines & Brown, Chartered, 1827 Jefferson Place, N.W., Washington, D.C. 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–75, adopted March 3, 1999, and released March 19, 1999. 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 Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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. 99–7304 Filed 3–24–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 252

[DFARS Case 99–D006]

Defense Federal Acquisition Regulation Supplement; Oral Attestation of Security Responsibilities

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add a requirement for contractor employees that are cleared for access to certain classified information to attest orally that they will comply with the security requirements associated with the information.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before May 24, 1999, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Melissa Rider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 99–D006 in all correspondence related to this issue. E-mail comments should cite DFARS Case 99–D006 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes amendments to the DFARS to add a new clause for use in contracts requiring access to classified information. The new clause would require contractor employees that are cleared for access to information designated as Top Secret, Special Access Program, or Special Compartmented Information to attest orally that they will conform to the conditions and responsibilities imposed by law or regulation on those granted access to such information.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.*, because the conditions and responsibilities that are the subject of the oral attestation are conditions and responsibilities that already are placed on individuals granted access to classified information. To satisfy the requirement for oral attestation, the rule permits reading aloud from a form that the individual already is required to sign. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 99–D006 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 204 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 204 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.404–70 is amended by adding paragraph (c) to read as follows:

204.404–70 Additional contract clauses.

* * * * *

(c) Use the clause at 252.204–7XXX, Oral Attestation of Security Responsibilities, in solicitations and contracts that include the clause at FAR 52.204–2, Security Requirements.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.204–7XXX is added to read as follows:

252.204–7XXX Oral Attestation of Security Responsibilities.

As prescribed in 204.404–70(c), use the following clause:

ORAL ATTESTATION OF SECURITY RESPONSIBILITIES (XXX 19XX)

(a) Contractor employees cleared for access to Top Secret (TS), Special Access Program (SAP), or Special Compartmented Information (SCI) shall attest orally that they will conform to the conditions and responsibilities imposed by law or regulation on those granted access. Reading aloud the first paragraph of the Standard Form 312, Classified Information Nondisclosure Agreement, in the presence of a person designated by the Contractor for this purpose, and a witness, will satisfy this requirement. Contractor employees currently cleared for access to TS, SAP, or SCI may attest orally to their security responsibilities when being briefed into a new program or during their annual refresher briefing. There is no requirement to retain a separate record of the oral attestation.

(b) If an employee refuses to attest orally to security responsibilities, the Contractor shall deny the employee access to classified information and shall submit a report to the Contractor's security activity.

(End of clause)

[FR Doc. 99–7137 Filed 3–24–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding for a Petition To List the Black-Tailed Prairie Dog as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We have received a petition to list the black-tailed prairie dog (*Cynomys ludovicianus*) throughout its range in Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wyoming, southern Saskatchewan, Canada, and northern Mexico. The petition presents substantial scientific and commercial information that the request for listing may be warranted. Therefore, we are initiating a status review to determine if the petitioned action is warranted. To ensure that the review is comprehensive, we are soliciting information and data regarding this action. We will use information received during the comment period for this status review in our review of the black-tailed prairie dog.

DATES: The finding announced in this document was made on March 17, 1999. A status review is initiated. To have

information considered in the status review and subsequent 12-month finding for the petition, submit information to us by May 24, 1999.

ADDRESSES: Data, information, technical critiques, comments, or questions relevant to this finding should be submitted to the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501–5408. You may inspect the petition, finding, and supporting documents, by appointment, at the above address. You may request and receive electronic copies of the petition and finding via e-mail from r6fwe__pie@fws.gov.

FOR FURTHER INFORMATION CONTACT: Pete Gober, at the address given above, or telephone (605) 224–8693.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973 as amended (16 U.S.C. 1531 *et seq.*), requires us to make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific and commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to us at the time we make the finding. To the maximum extent practicable, we make this finding within 90 days of receipt of the petition and we promptly publish a Notice in the **Federal Register**. This document provides a summary of the information in the 90-day finding, which is our decision document. When we make a positive finding, we are required to promptly initiate a status review of the species. A positive 90-day finding is not a decision to list a species. This document meets the requirement for publication of a 90-day finding on the petition discussed below.

We have made a 90-day finding on a petition to list the black-tailed prairie dog (*Cynomys ludovicianus*). The petition, dated July 30, 1998, was submitted by Thomas France, Esq., and Dr. Sterling Miller, both of Missoula, Montana, and Kimberly Graber, Esq., of Denver, Colorado, on behalf of the National Wildlife Federation (NWF; ''the Petitioners''), and was received by us on July 31, 1998, accompanied by a letter from Mark Van Putten, Chief Executive Officer for NWF. The Petitioners requested that we list the black-tailed prairie dog as a threatened species throughout its range. The Petitioners also requested that the black-tailed prairie dog receive emergency listing under the Act.

We received another petition regarding the same species from the Biodiversity Legal Foundation, the Predator Project, and Jon C. Sharps on August 26, 1998. They requested that we list the black-tailed prairie dog as threatened throughout its known historic range in the contiguous United States. We accepted this second request as supplemental information to the NWF petition.

The Petitioners presented extensive information regarding the biology and ecology of the black-tailed prairie dog. The Petitioners and other interested parties also provided supplemental information to the NWF petition that has been considered in this finding. Additionally, we have reviewed information in our files, other readily available information, and information submitted by Federal, State, and Tribal agencies. We expect to solicit and receive additional information through the status review of the species.

The Petitioners expressed concern about continuing human activities that pose a threat to the black-tailed prairie dog and additional threats that might be anticipated following the filing of their petition. The Petitioners predicted that poisoning and shooting activities would increase and result in significant population declines for the species during the normal rulemaking process. Thus, the petitioners requested that we emergency list the black-tailed prairie dog. Under 16 U.S.C. 1533(b)(7), the Secretary of the Interior has the authority to suspend normal rulemaking procedures and issue emergency regulations for a species, when there is a significant risk to the species and where the routine listing process is not adequate to prevent losses that may result in extinction. We determined, and advised the Petitioners, that based on our initial review of the petition, it would be inappropriate to emergency list this species based on its current known status. Furthermore, it is typically inappropriate to emergency list a species as threatened because the threatened definition only covers species that are at risk of becoming endangered, not extinct. We acknowledged that existing regulatory mechanisms for black-tailed prairie dogs may not preclude continued losses of individuals from some populations of the species. However, we believe that the normal petition review and rulemaking procedures are sufficient and appropriate. We will revisit the issue of emergency listing if the immediacy or magnitude of threats increase such that black-tailed prairie dogs require immediate protection.

The historical range of the black-tailed prairie dog includes southern Saskatchewan, Canada; eastern Montana, Wyoming, Colorado, and New Mexico; western North Dakota; western and central South Dakota, Nebraska, Kansas, and Oklahoma; western, northwestern, and northern Texas; and northeastern Mexico (Miller et al. 1996). The species was present historically in eastern Arizona, but was extirpated in recent years (Alexander 1932). The Petitioners noted that the species still occurs generally throughout its historic range, although much reduced in numbers and in the amount of habitat that it occupies. The Petitioners asserted that the black-tailed prairie dog once occupied more than 100 million acres (ac) or 40 million hectares (ha) of western North America, contrasted that with current estimates of occupied habitat (Knowles 1998a), and concluded that the species' population has been reduced by 99 percent. The Petitioners attributed reductions in occupied habitat to habitat loss and degradation related to the conversion of prairie grasslands to farmland, urban development, extensive poisoning efforts, unregulated shooting, disease, combinations of these factors, and other causes.

The Petitioners asserted that the small size and widely spaced distribution of most remaining black-tailed prairie dog colonies create concerns of adverse influences of habitat fragmentation, dispersal limitations, and other factors. They asserted that the cumulative effect of these factors is to reduce the viability of the species and increase the probability of extinction for the species. They acknowledged that the number of individual black-tailed prairie dogs appears to be comparable to many other species that are not thought to be in danger of extinction. However, they argued that the species is threatened as evidenced by (and due to) its precipitous historic population decline, its recent population declines, and the number and variety of threats to it. The Petitioners emphasized the colonial nature of the black-tailed prairie dog and the subsequent population responses en masse to habitat conversion, poisoning efforts, and especially disease (i.e., sylvatic plague, a disease exotic to North America and to which prairie dogs have no immunity).

The Petitioners pointed out that all States within the range of the black-tailed prairie dog have classified it as a pest for agricultural purposes, either permitting or requiring eradication of the species. They also asserted that these States allow or promote unlimited

recreational shooting. The Petitioners believed that there are inconsistent Federal policies regarding all species of prairie dogs, and that the legal mechanisms under which they have declined remain in place. The Petitioners asserted that some Tribes have a sophisticated management program for the black-tailed prairie dog and play an important role in its conservation.

We have previously addressed the status of the black-tailed prairie dog. On October 21, 1994, the Biodiversity Legal Foundation and Jon C. Sharps petitioned us to classify the black-tailed prairie dog as a Category 2 candidate species pursuant to the Administrative Procedures Act and the ''intent of the Endangered Species Act'' (Biodiversity Legal Foundation and Sharps 1994). At that time a Category 2 candidate species was a taxon for which we believed listing might be appropriate, but for which there was not sufficient data regarding biological vulnerability or threats to support a proposed rule. We no longer use this candidate classification system. The addition of a species to the list of Category 2 candidates was not an action petitionable under the Act. However, we reviewed the status of the black-tailed prairie dog in 1994–1995 and concluded that the numbers, distribution, and reproductive capability of the species were such that it did not warrant candidate status at that time (Terrell, U.S. Fish and Wildlife Service, *in litt.* 1995). New information has become available since then and we believe that an additional status review is now appropriate.

Black-tailed prairie dogs are small, stout, ground squirrels approximately 14–17 inches (in) long and weighing 1–3 pounds (lbs). Black-tailed prairie dogs are highly social colonial, diurnal, burrowing animals. Individual appearance within the species varies with a mix of brown, black, gray, and white, but with a characteristic black-tipped tail (Hoogland 1995). The black-tailed prairie dog is a colonial ground squirrel and one of five species in the genus *Cynomys*, all of which occur in western North America. There are two subspecies of the black-tailed prairie dog—the Arizona black-tailed prairie dog (*C. l. arizonensis*), and the more widespread black-tailed prairie dog (*C. l. ludovicianus*) (Hall and Kelson 1959), which is usually what is thought of when the common name ''black-tailed prairie dog'' is used.

Historical and Current Distribution

The Arizona subspecies (*C. l. arizonensis*) is found in northeastern Mexico (Ceballos et al. 1993), is extirpated (extinct) in Arizona (Alexander 1932), may or may not be present in New Mexico, and is remnant in west Texas (Davis 1974; Hall and Kelson 1959). Individuals of this subspecies in Chihuahua, Mexico, comprise the largest prairie dog complex (90,000 ac or 36,000 ha) remaining in North America. This complex is the only significant population remaining in Mexico (Ceballos et al. 1993). The black-tailed prairie dog is listed as threatened by the Lista de las Especies Amerzadas, the official threatened and endangered species list of the Mexican Government (SEMARNAP 1994).

The major subspecies, *C. l. ludovicianus*, is found in Montana, Wyoming, Colorado, New Mexico, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, northern Texas, and Canada. In Canada, the black-tailed prairie dog is designated as vulnerable by the Committee on the Status of Endangered Wildlife in Canada. In the remainder of this finding, the name ''black-tailed prairie dog'' will be used to include both subspecies.

In addition to the large colony in Mexico, we know of only six other black-tailed prairie dog colonies larger than 10,000 ac (4,000 ha) remaining throughout the species' range—one in Montana, one in Wyoming, and four in South Dakota. South Dakota, the only State where plague is absent, contains an estimated 32 percent of the remaining black-tailed prairie dog occupied habitat. All other remaining black-tailed prairie dog colonies are smaller, more isolated, and spottily distributed throughout the species range.

Rangewide, the black-tailed prairie dog is estimated to inhabit only a small fraction of the area that it once occupied, perhaps as little as 800,000 ac (320,000 ha) (Knowles 1998a) of what may have been 300 million ac or more (120 million ha) in its original range (Seton 1953). Seton (1953) estimated that individuals of black-tailed prairie dogs once numbered 5 billion. Many prairie dog colonies were quite large and interconnected (Miller et al. 1996). By 1961, the area occupied by black-tailed prairie dogs in the United States had declined to approximately 364,000 ac (147,000 ha) (Bureau of Sport Fisheries and Wildlife 1961). Knowles (1998a), Weurthner (1997), Barko (1997), Knowles (1995), Mulhern and Knowles (1995), and Fagerstone and Ramey (1995) concluded that an approximate decrease in area occupied of 94–99 percent had occurred compared to historic estimates. Generally, State wildlife agencies confirm this decline, but some point out that disproportionately more occupied habitat remains in some areas than in others. Knowles' (1998a) estimated that 677,000 ac (274,000 ha) of black-tailed prairie dog occupied habitat in the United States remains. Some increases in black-tailed prairie dog occupied habitat occurred in 1961–1980 (notably in Wyoming and South Dakota), but in 1980–1998, significant declines occurred in Montana, Mexico, and South Dakota.

Three major impacts have had substantial influence on black-tailed prairie dog populations and distribution. The petitioners asserted that the first major impact on the species historically was the conversion of prairie grasslands to farmland in the eastern portion of its range, and that the second major impact on the species was large-scale poisoning conducted to reduce perceived competition between prairie dogs and domestic livestock. A third major impact on the species was the inadvertent introduction of an exotic disease from the Old World, sylvatic plague, into the North American prairie ecosystem. Other authors also address these threats to the black-tailed prairie dog, as discussed below.

Threats

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The petitioners asserted that conversion of prairie habitat to farmland was one of the primary causes of the decline in occupied habitat of the black-tailed prairie dog. Between 1880 and 1899, 104 million ac (42 million ha) of the total western plains surface area was converted to crop productions (Laycock 1987). Native grasslands have been reduced by approximately 60 percent (Burke *in prep.*) resulting in significant destruction of black-tailed prairie dog habitat. Some agricultural conversion of native grasslands continues today, and could accelerate with the increase of dryland cropping and use of genetically engineered drought resistant crop strains. Hexem and Krupa (1987) identified 57,700,000 ac (23,400,000 ha) of unplowed land in the western Great Plains with potential for cropland conversion. Such conversion could significantly reduce the remaining native prairie and black-tailed prairie dog habitat.

Urbanization also presents a significant loss of black-tailed prairie dog habitat in local areas near metropolitan areas such as Wichita,

Kansas; Helena, Montana (Knowles 1995); and the Front Range of Colorado near Denver (Weber, Colorado Division of Wildlife, pers. comm. 1998). Habitat loss also occurs through degradation of burrows and vegetation changes in areas where black-tailed prairie dogs have been removed. Once underground burrows collapse or there is an increase in woody or taller vegetation, the species is less likely to reestablish itself in the area. At the Rocky Mountain Arsenal National Wildlife Refuge in Colorado, reintroduced black-tailed prairie dogs reestablished themselves quickly where intact burrows constructed by previous prairie dogs (extirpated by sylvatic plague) had not deteriorated (Seery, U.S. Fish and Wildlife Service, pers. comm. 1998). Where burrows had deteriorated, prairie dogs established themselves slowly and with little success. Weltzin et al. (1997) determined that historically, black-tailed prairie dogs, and the herbivores and granivores associated with their colonies, probably maintained grassland and savanna by preventing woody species such as mesquite from establishing or attaining dominance. List (1997) reported that poisoning of black-tailed prairie dogs in Mexico resulted in the invasion of mesquite shrubs that rendered the landscape unsuitable for reoccupation by the species; moreover, fire suppression would likely maintain this situation. Davis (1974) also noted that removal of the species from some sites in Texas resulted in the invasion of brush. Thus, when degradation of burrows or vegetation changes occur, the amount of habitat suitable for recolonization may be reduced. Current levels of conversion of rangeland to farmland or urban development may not be as important to the species' numbers and viability as are indirect losses caused by poisoning or disease. These indirect losses of individuals or local populations may result in habitat loss for the species through the deterioration of burrows and the alteration of vegetative communities.

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

One activity impacting black-tailed prairie dog populations in some local areas is unregulated recreational (sport or varmint) shooting. Shooting has increased appreciably in popularity in recent years. An example of this is the Buffalo Gap National Grasslands in South Dakota where the number of annual shooter days has increased from a few hundred in the mid-1990's to an estimated 6,500 in 1998 (Perry, U.S. Forest Service, pers. comm., 1998). High-powered rifles with high-quality scopes enable the modern varmint shooter to be consistently accurate at distances of 400 yards (yd) (400 meters (m)) or greater, and an individual shooter may shoot a considerable number of animals each day (Kayser 1998). Many States do not require hunting licenses and have no bag limits or seasonal restrictions for taking prairie dogs. Prairie dog density may decrease with increased shooting pressure and prairie dogs may spend more time on alert and less time foraging (Vosberg 1996). Shooting also may contribute to population reduction and fragmentation, reduce colony productivity and health, and preclude or delay recovery of colonies reduced by other factors such as sylvatic plague. Recreational shooting may significantly impact colonies in local areas where shooting is most intense or colony numbers are already reduced from other losses.

C. Disease or Predation

Sylvatic plague is a non-native disease caused by the bacterium, *Yersinia pestis*, which fleas can harbor and transmit to rodents and other species (Cully 1989). The term ''sylvatic'' refers to the occurrence of the disease in the wild (Berkow 1982). Barnes (1993) recorded sylvatic plague in 76 species of 6 mammalian orders, although it is primarily a rodent disease. Rodent species vary in their susceptibility to plague, with some species acting as hosts or carriers of the disease or infected fleas and showing no symptoms (e.g., kangaroo rats, *Dipodomys* sp., and deer mice, *Peromyscus maniculatus*). Conversely, black-tailed and Gunnison's prairie dogs show nearly 100 percent mortality when exposed to sylvatic plague (Barnes 1993, Cully 1993).

Sylvatic plague is an exotic disease foreign to the evolutionary history of North American species. Scientists discovered the plague among wild rodents near San Francisco in 1908 and it has spread throughout much of the Great Plains over the past century (Eskey and Haas 1940, Miles et al. 1952 in Cully 1989, Ecke and Johnson 1952). Black-tailed prairie dogs show neither effective antibodies nor immunity to the disease. Death occurs quickly for prairie dogs exposed to sylvatic plague; noticeable symptoms usually do not develop (Cully 1993). Data obtained from the Rocky Mountain Arsenal National Wildlife Refuge show that plague has the potential to severely depress black-tailed prairie dog populations and cause local extirpations (Seery and Matiatos, in press; U.S. Fish and Wildlife Service 1998). Scientists have also observed longterm plague-related declines in white-tailed prairie dogs near Meeteetse, Wyoming (Biggins, U.S. Geological Survey, Biological Resources Division, pers. comm. 1998).

Many mammals, snakes, and raptors prey on prairie dogs (Hoogland 1995) and the species has evolved resilience to natural levels of predation. Scientists do not generally see predation as a threat to the species but, in unusual circumstances intense levels of predation may be problematic to individual small colonies, particularly if they are already reduced by other causes.

D. The Inadequacy of Existing Regulatory Mechanisms

All States within the historic range of the black-tailed prairie dog classify the species as a pest for agricultural purposes and either permit or require their eradication (Mulhern and Knowles 1995). Fish and wildlife agencies in many States classify black-tailed prairie dogs by categories such as ''unclassified game'' that permit licensed or unlicensed shooting with no limitations on take or season. Knowles (1995) reviewed Federal regulatory management policies as they relate to the black-tailed prairie dog. Significant black-tailed prairie dog occupied habitat is found on public lands managed by the BIA, the Bureau of Land Management (BLM), the Service, USFS, and the National Park Service (NPS). The BLM manages prairie dogs to meet multiple-use resource objectives (Knowles 1995). Various National Forest Resource Management Plans address black-tailed prairie dog habitat on USFS-administered land; these plans reflect Forest Service policy, not regulation. Two tribes have voluntary prairie dog management plans in place (Knowles 1995). In areas where black-footed ferrets are re-established, some programs to conserve prairie dogs are in place.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Control (Poisoning)

Hanson (1993) cited poisoning as a major factor in the reduction of prairie dog populations. An extensive poisoning effort has occurred over most of the species' range (Bell 1921, Cain et al. 1971, Anderson et al. 1986, Roemer and Forrest 1996, and Forrest and Proctor in prep.). Organized prairie dog control gained momentum from 1916 to 1920, when property owners and Federal agencies poisoned prairie dogs

on millions of acres of western rangeland (Bell 1921); Federal programs were responsible for much of this effort. From 1937–1968, 30,447,355 ac (12,321,875 ha) of occupied prairie dog habitat was controlled (Cain et al. 1971). After the 1970's some toxicants previously used for prairie dog control were banned and although prairie dog control continued, it occurred at a reduced rate.

Federal agencies are involved to varying degrees in active control of prairie dog colonies. The Environmental Protection Agency regulates use of prairie dog poisons. The Animal and Plant Health Inspection Service-Wildlife Services (APHIS-WS) provides technical assistance and distributes prairie dog poison to State and Federal agencies, Tribes, and private landowners. Based on information obtained from the APHIS Freedom of Information Act web page (foia.aphis.usda.gov), the agency controlled 95,076 ac (38,480 ha) of black-tailed prairie dog habitat from 1991–1996. Although this number could have included some acreage that was treated more than once, this number indicates that over a 5-year period, AHPIS-WS alone has conducted prairie dog control on 14 percent of the estimated remaining black-tailed prairie dog habitat.

Control programs have significantly reduced black-tailed prairie dog populations. These programs essentially remove all animals from the area treated and directly contribute to habitat fragmentation and vegetation changes that limit future recolonization by the black-tailed prairie dog. In particular, Federal control programs may play a significant role in the continued decline of black-tailed prairie dog populations.

Habitat Fragmentation

The grassland biome in North America has arguably suffered the most extensive fragmentation and transformation of any biome on the continent (Groombridge 1992). More fragmented, more isolated, and less connected populations usually have higher extinction rates (MacArther and Wilson 1967, Wilcox and Murphy 1985, Clark 1989). Miller et al. (1996) describe existing prairie dog populations as small, disjunct, and geographically isolated. They further describe the discontinuous nature of remaining populations as widely separated islands where habitat fragmentation has increased the likelihood of individual colony extinction due to genetic inbreeding and random demographic events. Lost genetic diversity is inherently detrimental to most species. Black-tailed prairie dog dispersal movements that previously offset these adverse effects likely are limited by short migration distances, as reported by Hoogland (1995) and Knowles (1985), and longer distances between remaining colonies.

Finding

We have reviewed the petition, as well as other available information, published and unpublished studies and reports, information received from State, Tribal and private entities, and agency files. On the basis of our review of the petition, literature cited in the petition, and other readily available information, we find there is sufficient information to indicate that listing of the black-tailed prairie dog may be warranted, and we initiate a status review. However, we also find there is no substantial information to warrant an emergency listing at this time, as was requested by the petitioner.

Based on our review of the petition and other readily available information, we believe that the decline, especially the recent decline, of the black-tailed prairie dog likely is due to many factors. One of the most influential and unpredictable factors is the widespread occurrence of plague, an exotic and completely lethal disease to the species. We believe that we should evaluate black-tailed prairie dog reduced colony size and connectivity in light of factors such as plague, control, land conversion, and shooting, in a thorough analysis of the status of the species. Therefore, with the completion of this 90-day Finding, a status review of the species will be undertaken with a subsequent Finding as to whether the petitioned action is warranted (section 4(b)(3)(B) of the Act). We will consider all relevant information in conducting a full status review to determine if listing is warranted. We are hereby requesting any additional data or scientific information from the public, scientific community, Tribal, State and Federal governments, and other interested parties concerning the status of and threats to the black-tailed prairie dog throughout the species' range.

References Cited

You may request a complete list of all references cited herein, as well as others, from the Service's Pierre Field Office (see **ADDRESSES** section).

Author

Pete Gober (see **ADDRESSES** section) prepared this document.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544 *et seq.*).

Dated: March 17, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–7273 Filed 3–23–99; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 64, No. 57
Thursday, March 25, 1999

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

Food and Nutrition Service

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted income eligibility guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program). These income eligibility guidelines are to be used in conjunction with the WIC Regulations.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice is exempted from review by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

Paperwork Reduction Act of 1995

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112 June 24, 1983).

Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786 (d)(2)(A)) requires the Secretary of Agriculture to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be income eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced price school meals under section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced price school meals is 185 percent of the Federal poverty guidelines, as adjusted.

Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 1999 was published by the Department of Health and Human Services (DHHS) in the **Federal Register** on March 18, 1999 at 64 FR 13428. The guidelines published by DHHS are referred to as the poverty guidelines.

Section 246.7(d)(1) of the WIC regulations specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced price school meals or identical to State or local guidelines for free or reduced price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines for reduced price school meals, or which are less than 100 percent of the Federal poverty guidelines. Consistent with the method used to compute income eligibility guidelines for reduced price meals under the National School Lunch Program, the poverty guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time the Department is publishing the maximum and minimum WIC income eligibility guidelines by household size for the period July 1, 1999 through June 30, 2000. Consistent with Section 17(f)(17) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(17)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*). State agencies may coordinate implementation with the revised Medicaid guidelines, but in no case may implementation take place later than July 1, 1999. State agencies that do not coordinate implementation with the revised Medicaid guidelines must implement the WIC income eligibility guidelines on July 1, 1999. The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the poverty guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

BILLING CODE 3410–30–U

INCOME ELIGIBILITY GUIDELINES
(Effective from July 1, 1999 to June 30, 2000)

Household Size	Federal Poverty Guidelines			Reduced Price Meals - 185%		
	Annual	Month	Week	Annual	Month	Week
48 CONTIGUOUS UNITED STATES, DISTRICT OF COLUMBIA, GUAM AND TERRITORIES						
1.....	8,240	687	159	15,244	1,271	294
2.....	11,060	922	213	20,461	1,706	394
3.....	13,880	1,157	267	25,678	2,140	494
4.....	16,700	1,392	322	30,895	2,575	595
5.....	19,520	1,627	376	36,112	3,010	695
6.....	22,340	1,862	430	41,329	3,445	795
7.....	25,160	2,097	484	46,546	3,879	896
8.....	27,980	2,332	539	51,763	4,314	996
For each add'l family member add	+2,820	+235	+55	+5,217	+435	+101
ALASKA						
1.....	10,320	860	199	19,092	1,591	368
2.....	13,840	1,154	267	25,604	2,134	493
3.....	17,360	1,447	334	32,116	2,677	618
4.....	20,880	1,740	402	38,628	3,219	743
5.....	24,400	2,034	470	45,140	3,762	869
6.....	27,920	2,327	537	51,652	4,305	994
7.....	31,440	2,620	605	58,164	4,847	1,119
8.....	34,960	2,914	673	64,676	5,390	1,244
For each add'l family member add	+3,520	+294	+68	+6,512	+543	+126
HAWAII						
1.....	9,490	791	183	17,557	1,464	338
2.....	12,730	1,061	245	23,551	1,963	453
3.....	15,970	1,331	308	29,545	2,463	569
4.....	19,210	1,601	370	35,539	2,962	684
5.....	22,450	1,871	432	41,533	3,462	799
6.....	25,690	2,141	495	47,527	3,961	914
7.....	28,930	2,411	557	53,521	4,461	1,030
8.....	32,170	2,681	619	59,515	4,960	1,145
For each add'l family member add	+3,240	+270	+63	+5,994	+500	+116

Dated: March 16, 1999.
Authority: 42 U.S.C. 1786.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–7263 Filed 3–24–99; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030599B]

Incidental Take of Marine Mammals; Taking of Ringed Seals Incidental to On-Ice Seismic Activities

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and with implementing regulations, notification is hereby given that a letter of authorization to take ringed seals incidental to on-ice seismic operations in the Beaufort Sea off Alaska was issued on March 21, 1999, to BP Exploration (Alaska), Anchorage, AK.

DATES: This letter of authorization is effective from March 21, 1999, through May 31, 1999.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and Western Alaska Field Office, NMFS, 701 C Street, Anchorage, AK 99513.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055 or Brad Smith, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of ringed and bearded seals incidental to on-ice seismic surveys were published on February 2, 1998 (63 FR 5277), and remain in effect until December 31, 2002.

Summary of Request

NMFS received a request for a letter of authorization on February 8, 1999, from BP Exploration (Alaska). This letter requested a take by harassment of a small number of ringed seals incidental to the described activity.

Issuance of these letters of authorization are based on findings that the total takings by this activity will have a negligible impact on the ringed and bearded seal stocks of the Western Beaufort Sea and that the applicants have met the requirements contained in the implementing regulations.

Dated: March 21, 1999.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–7351 Filed 3–24–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031799D]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council's (Council) Statement of Organization Practices and Procedures (SOPPs) Committee and ad hoc Reauthorization Committee will meet in Charleston, SC.

DATES: The SOPPs Committee meeting will be held on April 19, 1999 from 1:00 p.m. to 5:30 p.m., and on April 20, 1999 from 8:30 a.m. to 12:00 noon; the ad hoc Reauthorization Committee meeting will be held on April 20, 1999 from 1:00 p.m. to 5:30 p.m. and on April 21, 1999 from 8:30 a.m. to 12:00 noon.

ADDRESSES: The meetings will be held at the Town and Country Inn, 2001 Savannah Highway, Charleston, SC 29407; telephone: 843-571-1000.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (843) 571-4366; fax: (843) 769-4520; email: susan.buchanan@noaa.gov.

SUPPLEMENTARY INFORMATION: The SOPPs Committee will revise the Council's SOPPs manual for submission to the Secretary of Commerce for review. The ad hoc Reauthorization Committee will develop Council recommendations for changes to the Magnuson-Stevens Fishery Conservation and Management Act.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by April 12, 1999.

Dated: March 19, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–7350 Filed 3–24–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031999D]

Endangered Species; Permits

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

ACTION: Receipt of a request for modification 1 to permit 1094.

SUMMARY: Notice is hereby given that the Washington Department of Fish and Wildlife at Olympia, WA (WDFW) has applied in due form for a permit modification that would authorize takes of anadromous fish species listed under the Endangered Species Act for research/enhancement purposes.

DATES: Written comments or a request for a public hearing on this request for a permit modification must be received on or before April 26, 1999.

ADDRESSES: The application and related documents are available for review in the following office, by appointment:

Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, PRD in Portland, OR.

FOR FURTHER INFORMATION CONTACT: Robert Koch (503–230–5424).

SUPPLEMENTARY INFORMATION: WDFW requests a permit modification under the authority of section 10 of the Endangered Species Act (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217-227).

Permit 1094 authorizes WDFW an annual take of adult and juvenile, endangered, naturally produced and artificially propagated, upper Columbia River (UCR) steelhead (*Oncorhynchus mykiss*) associated with a hatchery supplementation program in the mid- to upper Columbia River Basin. Incidental takes of ESA-listed species resulting from WDFW hatchery operations and hatchery produced fish releases are also authorized by the permit. WDFW believes the artificial propagation of ESA-listed steelhead will benefit the species by enhancing the population, which is not currently able to naturally replace itself. For modification 1, WDFW requests an increase in the number of ESA-listed juvenile steelhead releases from the program in 1999 for scientific research and enhancement purposes, which may result in an increase in incidental takes of ESA-listed species. Also for modification 1, WDFW requests incidental takes of juvenile, endangered, UCR spring chinook salmon (*O. tshawytscha*) associated with the program. WDFW has provided a revised conservation plan designed to minimize and mitigate the potential increase in incidental takes of ESA-listed species. The revised conservation plan includes a strategy to manage adult returns. The increases in hatchery produced fish releases is requested to be valid in 1999 only. Takes of endangered, UCR spring chinook salmon are requested to be valid for the duration of the permit, which expires on May 31, 2003.

Those individuals requesting a hearing on this application should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: March 19, 1999.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–7236 Filed 3–24–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031899C]

Endangered Species; Permits

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

ACTION: Receipt of applications for permits (1201, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213); receipt of applications to modify permits (1038, 1048, 1050, 1060, 1131, 1141, 1166, 1181); and issuance of permits (1190, 1193).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received permit applications from: Dr. Thane Wibbels, of the University of Alabama at Birmingham (TW-UAB)(1201), the East Bay Municipal Utility District in Orinda, CA (EBMUD) (1204),

Oregon Department of Environmental Quality in Portland, OR (ODEQ) (1205), United States Forest Service, Klamath National Forest in Fort Jones, CA (USFS) (1206), Camm Swift, of Arcadia, CA (SWIFT) (1207), Robert Leidy, of San Francisco, CA (LEIDY) (1208), Mr. Ken Alfieri, of Cypress Gardens, FL (KA-CG) (1209), Mr. John Ritgers, NMFS Northeast Region (NER) (1210), East Bay Regional Park District, in Oakland, CA (EBRPD) (1211), and the Fish Ecology Division of the Northwest Fisheries Science Center, NMFS at Seattle, WA (NWFSC) (1212, 1213); NMFS has received applications for modifications to existing permits from: Trihey & Associates, Inc., of Walnut Creek, CA (TRIHEY) (1038), Sonoma County Water Agency, in Santa Rosa, CA (SCWA) (1048), Entrix, Inc., in Walnut Creek, CA (ENTRIX) (1050), Simpson Timber Company, in Korbel, CA (STC) (1060), the Port of Portland at Portland, OR (POP) (1131), the Public Utility District Number 2 of Grant County in Ephrata, WA (PUD GC)(1141), Alice A Rich and Associates (AAR) San Anselmo, CA (1166), and Mendocino Redwood Company (MRC) in Capella, CA (1181); and NMFS has issued permits to Charles Karnella, of the Pacific Islands Area Office, NMFS Southwest Region (SWR-PIAO) (1190), and the Fish Passage Center, in Portland, OR (FPC) (1193).

DATES: Written comments or requests for a public hearing on any of the new applications or modification requests must be received on or before April 26, 1999.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permit 1209: Protected Resources Division, F/SER3, 9721 Executive Center Dr., St. Petersburg, FL 33702–2432 (813–570–5312).

For permits 1131, 1141, 1193, 1205, 1212, 1213: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

For permits 1038, 1048, 1050, 1060, 1166, 1181 1204, 1206, 1207, 1208, 1211: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

For permits 1190, 1201, 1210: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permit 1209: Terri Jordan, Silver Spring, MD (301–713–1401).

For permits 1190, 1201, 1210: Karen Salvini, Silver Spring, MD (301–713–1401).

For permits 1038, 1048, 1050, 1060, 1166, 1181 1204, 1206, 1207, 1208, 1211: Dan Logan, Protected Resources Division, Santa Rosa, CA (707-575-6053).

For permit 1193: Leslie Schaeffer, Portland, OR (503–230–5433).

For permits 1131, 1212, 1213: Robert Koch, Portland, OR (503–230–5424).

For permits 1141, 1205: Tom Lichatowich, Portland, OR (503–230–5438).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the ESA, is based on a finding that such permits/modifications: (1) Are applied for in

good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

1. Green turtle (*Chelonia mydas*), Hawksbill turtle (*Eretmochelys imbricata*), Kemp's ridley turtle (*Lepidochelys kempii*), Leatherback turtle (*Dermochelys coriacea*), Loggerhead turtle (*Caretta caretta*), Olive ridley sea turtle (*Lepidochelys olivacea*), Shortnose sturgeon (*Acipenser brevirostrum*).

2. Chinook salmon (*Oncorhynchus tshawytscha*): Snake River (SnR) spring/summer, SnR fall, Upper Columbia River (UCR) spring.

3. Coho salmon (*Oncorhynchus kisutch*): Central California Coast (CCC), Southern Oregon/Northern California coast (SONCC).

4. Sockeye salmon (*Oncorhynchus nerka*): SnR.

5. Steelhead trout (*Oncorhynchus mykiss*): California Central Valley (CV), CCC, Lower Columbia River (LCR), SnR, Southern California coast (SoCC), South-Central California coast (SCCC), UCR.

To date, protective regulations for threatened LCR steelhead under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of applications requesting takes of LCR steelhead is issued as a precaution in the event that NMFS issues LCR steelhead protective regulations. The initiation of a 30-day public comment period on the applications, including their proposed takes of LCR steelhead, does not presuppose the contents of the eventual protective regulations.

New Applications Received

TW-UAB (1201) requests a 2-year permit to authorize takes of juvenile green, Kemp's ridley, and loggerhead sea turtles in the estuaries of Alabama, while conducting studies to potentially identify specific foraging areas. TW-UAB proposes to: (1) Identify potential foraging areas by conducting sampling surveys, and measuring and tagging all captured turtles, (2) perform radio tracking on some of the turtles to determine short term movements, home range, and identify foraging areas, (3) collect samples of fecal and stomach materials in order to identify and document the diets of juvenile turtles, and (4) collect blood samples to estimate the sex ratio.

EBMUD (1204) requests a 5-year permit to authorize takes of adult and juvenile, threatened, steelhead associated with fish population, migration, growth studies, dietary studies, and spawning studies within the CCC steelhead ESU. The applicant is requesting the intentional killing of targeted ESA-listed juveniles for a dietary studies; direct mortalities of 120 CCC juvenile steelhead annually are requested.

ODEQ (1205) requests a 5-year permit to authorize annual takes of juvenile, threatened, SONCC coho salmon and juvenile, threatened, LCR steelhead associated with water quality assessment studies in western Oregon. ODEQ proposes to capture juvenile fish in the Rogue River Basin and tributaries of the LCR with backpack electrofishing equipment; anesthetize them; collect biological information; tag a subsample; and release them. Data collected from these studies will be valuable in assessing the productivity status of these streams and the effectiveness of measures being taken to restore fish populations. Indirect mortalities of ESA-listed juvenile fish associated with the scientific research activities are also requested.

USFS (1206) requests a 5-year permit to authorize takes of juvenile, threatened, coho salmon associated with presence/absence and migration studies within the SONCC coho salmon ESU.

SWIFT (1207) requests a 5-year permit to authorize takes of adult and juvenile, endangered, steelhead associated with presence/absence studies throughout the SoCC steelhead ESU, and threatened, steelhead associated with presence/absence studies throughout the CCC and SCCC steelhead ESUs.

LEIDY (1208) requests a 5-year permit to authorize takes of adult and juvenile, threatened, steelhead associated with presence/absence surveys throughout the CV, CCC, SCCC steelhead ESUs, endangered, steelhead associated with presence/absence studies throughout the SoCC steelhead ESU, and threatened, coho salmon associated with presence/absence studies throughout the CCC coho salmon ESU.

KA-CG (1209) requests a 5-year permit to authorize maintenance of a population of six to eight shortnose sturgeon in a captive environment for educational purposes. This application meets Recovery Task 2.5 C concerning public education and raising public awareness of sturgeon issues.

NER (1210) requests a five-year research/enhancement permit to take listed green, Kemp's ridley, leatherback, and loggerhead sea turtles. The purpose of the activities will be to aid sick, injured, entangled, or stranded sea turtles through the activities of the Northeast Regional Stranding Network. The turtles will be collected opportunistically at sea and on coastal beaches from the Canadian border through Virginia. If possible, the turtles will be rehabilitated, tissue and blood sampled, tagged, and released in the area of collection; dead specimens will be used for scientific research or education.

EBRPD (1211) requests a 5-year permit to authorize takes of adult and juvenile, threatened, steelhead associated with presence/absence and migration studies within the CCC steelhead ESU. The applicant also requests minor takes of eggs from areas that are unsuitable for successful reproduction, to hatch the eggs and rear the juveniles in public school classrooms, and release the juveniles to their parent streams within the CCC steelhead ESU.

NWFSC (1212) requests a 5-year permit to authorize takes of juvenile, endangered, SnR sockeye salmon ; juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; juvenile, threatened, SnR fall chinook salmon; juvenile, endangered, naturally produced and artificially propagated, UCR steelhead; juvenile, threatened, SnR steelhead; and juvenile, endangered, naturally produced and artificially propagated, UCR spring chinook salmon associated with four studies at the hydropower dams on the Snake and Columbia Rivers in the Pacific Northwest. The goal of Study 1 is to provide up-to-date survival estimates of juvenile salmonids as they migrate past McNary Dam on the Columbia River. The goal of Study 2 is to evaluate the specific trouble areas in

the juvenile fish bypass system at Lower Monumental Dam on the Snake River. The goal of Study 3 is to compare the performance of juvenile salmonids tagged with Sham radiotransmitters with juvenile salmonids tagged with passive integrated transponders (PIT) at Lower Granite Dam on the Snake River. The goal of Study 4 is to determine tailrace residence times of radio-tagged hatchery chinook salmon under varying operational conditions at Lower Monumental Dam and to identify spill conditions that utilize the smallest volumes of water to maximize fish passage efficiency at Ice Harbor Dam on the Snake River. The research will provide information that will be used to develop corrective measures to improve juvenile fish passage at the dams. ESA-listed juvenile fish are proposed to be captured, handled (examined or tagged), and released. ESA-listed juvenile fish indirect mortalities are also requested. The take authorization for Study 1 is requested to be valid for five years. The take authorization for Studies 2–4 is requested to be valid for 2 years.

NWFSC (1213) requests a 1-year permit to authorize takes of juvenile, endangered, SnR sockeye salmon; juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; juvenile, threatened, SnR fall chinook salmon; juvenile, endangered, naturally produced and artificially propagated, UCR steelhead; juvenile, threatened, SnR steelhead; juvenile, threatened, LCR steelhead; and juvenile, endangered, naturally produced and artificially propagated, UCR spring chinook salmon associated with seven studies at the hydropower dams on the Snake and Columbia Rivers in the Pacific Northwest. The goal of Study 1 is to evaluate the extended length bar screen at Little Goose Dam on the Snake River. The goal of Study 2 is to evaluate a prototype separator at Ice Harbor Dam. The goal of Study 3 is to establish biological design criteria for the fish passage facility at McNary Dam. The goal of Study 4 is to evaluate an orifice shelter, an outlet-flow control device, and methods of debris control at McNary Dam. The goal of Study 5 is to evaluate the modified extended-length bar screens at John Day Dam on the Columbia River. The goal of Study 6 is to evaluate the juvenile fish bypass system at John Day Dam. The goal of Study 7 is to evaluate the modified juvenile fish bypass system at the second powerhouse of Bonneville Dam on the Columbia River. The research will provide information that will be used to develop corrective measures to improve juvenile fish passage at the dams. ESA-listed juvenile fish are proposed to be captured, handled (examined and fin-clipped or tagged with PITs or radiotransmitters), and released. ESA-listed juvenile fish indirect mortalities are requested. A lethal take of ESA-listed juvenile fish associated with Studies 5 and 7 are also requested.

Modification Requests Received

TRIHEY requests modification 1 to permit 1038 for authorization to include takes of adult and juvenile, threatened, steelhead associated with presence/absence studies, fish population and habitat studies, and genetic studies throughout the CCC and CV steelhead ESUs for the duration of the permit which expires on June 30, 2002.

SCWA requests modification 1 to permit 1048 for authorization to include takes of adult and juvenile, threatened, coho salmon associated with fish population and habitat studies throughout the Russian River Basin within the CCC coho ESU for the duration of the permit which expires on June 30, 2002.

ENTRIX requests modification 1 to permit 1050 for authorization to include takes of adult and juvenile, threatened, steelhead associated with fish population and habitat studies throughout the CCC steelhead ESU for the duration of the permit which expires on June 30, 2002.

STC requests modification 1 to permit 1060 for authorization to include takes of adult and juvenile, threatened, SONCC coho salmon associated with fish population, migration studies, and habitat studies in Little River Basin in Humboldt County, California for the duration of the permit which expires on June 30, 2003.

POP requests modification 1 to permit 1131 for authorization of an increase in the take of juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon and juvenile, threatened, SnR fall chinook salmon associated with research designed to determine the presence and distribution of fish in shallow water habitats between the lower end of Hayden Island and the Sandy River delta on the Columbia River. An associated increase in ESA-listed juvenile fish indirect mortalities are also requested. Modification 1 is requested to be valid for the duration of the permit which expires on January 31, 2000.

PUD GC requests modification 1 to permit 1141 for authorization of annual takes of adult and juvenile UCR spring chinook salmon associated with PUD GC's fish salvage operation and scientific research studies at Wanapum and Priest Rapids Dams located on the Columbia River in anticipation of a possible listing decision of this species by NMFS. PUD GC also requests takes of adult and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead and adult and juvenile UCR spring chinook salmon associated with two additional research studies (studies 3 and 4). For Study 3, PUD GC proposes to evaluate the fish fauna in the Priest Rapids project area during 1999. Fish will be collected with electrofishing equipment, seines, gill nets and minnow traps; anesthetized; sampled for biological information; and released. Results from this study will be used to evaluate the status of listed and non-listed fish inhabiting the project area. For study 4, PUD GC proposes to assess the survival of juvenile, endangered, artificially propagated, UCR steelhead as they migrate past Wanapum and Priest Rapids Dams. Fish will be collected with dip nets at dam gatewells, anesthetized, tagged with radio tags, released downstream, and tracked electronically. The results from this study will provide dam operators with valuable information on the survival of ESA-listed steelhead in the UCR. Juvenile fish indirect mortalities associated with the proposed activities are also requested. Study 4 is requested to be valid for the duration of the permit which expires on December 31, 2002.

MRC requests modification 1 to permit 1181 for authorization to include takes of juvenile, threatened, coho salmon associated with fish migration studies in several watersheds within the CCC coho salmon ESU for the duration of the permit which expires on June 30, 2004.

Permits Issued

Notice was published on January 4, 1999 (64 FR 148) that SWR-PIAO had requested a 5-year research permit. Permit 1190 was issued on March 8, 1999, and authorizes takes of loggerhead, green, hawksbill, leatherback, and olive ridley sea turtles in the Pacific Basin associated with studies to determine take rates of sea turtles incidental to the Hawaiian longline fishery, and to determine the fate of sea turtles released alive after incidental capture. Permit 1190 expires March 31, 2004.

Notice was published on February 2, 1999 (64 FR 5030), that FPC had requested a 5-year research permit. Permit 1193 was issued on March 12, 1999 and authorizes takes of juvenile, endangered, SnR sockeye

salmon; juvenile, threatened, SnR fall chinook salmon; juvenile, threatened, artificially propagated and naturally produced, SnR spring/summer chinook salmon; and juvenile, endangered, artificially propagated and naturally produced, UCR steelhead associated with the Smolt Monitoring Program (SMP). The objective of the SMP is to generate information on the migrational characteristics of various salmon and steelhead stocks in the Columbia River Basin, to provide advice on the implementation of flow and spill measures to improve fish passage conditions in the Snake and Columbia Rivers, to provide a long-term consistent database for year-to-year comparisons, and to monitor gas bubble trauma as required by the states' water quality agencies. Permit 1193 expires on December 31, 2003.

Dated: March 19, 1999.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–7348 Filed 3–24–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 030399C]

Marine Mammals; File No. 932–1489

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce and Office of Management Authority, U.S. Fish and Wildlife Service (USFWS), Interior.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that The National Marine Fisheries Service (NMFS), Office of Protected Resources (OPR), Marine Mammal Health and Stranding Response Program, 1315 East-West Highway, Silver Spring, MD 20910 has applied in due form for a permit to take various marine mammal species for scientific research and enhancement.

DATES: Written or telefaxed comments must be received on or before April 26, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment, see ''Address Information'' under the **SUPPLEMENTARY INFORMATION** section.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

NMFS/OPR/MMHSRP (File No. 932–1489) requests authorization to oversee the collecting, preserving, labeling, and transporting of all species of marine mammal cadavers or tissue and fluid samples for physical, chemical, or biological analyses, import, and export, and the taking of stranded or distressed endangered or threatened marine mammals, and the salvage of specimens from dead threatened or endangered marine mammals. The animals for which they are requesting authorization include all species of the Orders Cetacea, Pinnipedia, Sirenia, and polar bears (*Ursus maritimus*), sea otters (*Enhydra lutris*), and marine otters (*Lontra felina*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Address Information

The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001);

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Regional Administrator, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Dr., Gloucester, MA 01930–2298 (978/281–9250);

Regional Administrator, Southeast Region, National Marine Fisheries Service, NOAA, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (727/570–5301);

Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, BIN C15700, Bldg. 1, Seattle, WA 98115–0020(206/526–6150); and

Coordinator, Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole St., Room 106, Honolulu, HI 96822–2396 (808/943–1221).

Dated: March 3, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: March 18, 1999.

Margaret Tieger,

Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 99–7347 Filed 3–24–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.# 022699D]

Marine Mammals; File No. 77–1#73_967

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, Alaska Fisheries Science Center, National Marine Fisheries Service, 7600 Sand Point Way NE, Bin C15700, Seattle, Washington 98115–0070, has been issued an amendment to scientific research Permit No. 967 to extend the area of take to include Alaska waters.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221); and

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA, 98115–0070 (206/526–6150);

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro 301/713–2289.

SUPPLEMENTARY INFORMATION: On January 14, 1999, notice was published in the **Federal Register** (63 FR 2472) that an amendment of Permit No. 697, issued July 11, 1995 (60 FR 37053), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Date: March 19, 1999.

Jeannie Drevenak,

Acting Chief, Permits and Documentation, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–7349 Filed 3–24–99; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 99–1]

Cadet Manufacturing Company; Prehearing Conference

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of first prehearing conference.

DATE: This notice announces a prehearing conference to be held in the matter of Cadet Manufacturing Company on April 12, 1999, at 1:00 p.m. (EDT).

Location: The prehearing conference will be via conference telephone call. Pursuant to 16 C.F.R. 1025.21(d) and 1025.47, the conference shall be stenographically reported.

FOR FURTHER INFORMATION CONTACT: For additional information contact Sadye E. Dunn, Secretary, U.S. Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800, ext. 1230; facsimile (301) 504–0127.

SUPPLEMENTARY INFORMATION: This public notice is issued pursuant to 16 CFR 1025.21(b) of the U.S. Consumer Product Safety Commission's Rules of Practice for Adjudicative Proceedings to inform the public that a prehearing conference will be held in an administrative proceeding under Section 15 of the Consumer Product Safety Act (CPSA), captioned CPSC Docket No. 99–1, In the Matter of Cadet Manufacturing Company (''Cadet''). The Presiding Officer in the proceeding is United States Administrative Law Judge William B. Moran. The Presiding Officer has determined that, for good and sufficient cause, the time period for holding this first prehearing conference had to be extended to the date announced above, which date is beyond the fifty (50) day period referenced in 16 CFR 1025.21(a).

The public is referred generally to the Code of Federal Regulations citation listed above for identification of the issues to be raised at the conference, but the chief purpose will be to establish a schedule for discovery and for the initial exchange of witness lists, prepared testimony, and documents. The public is also advised that the date, time and location of the hearing will be established at the conference.

Substantively, the issue being litigated in this proceeding is described by the Presiding Officer as whether, as alleged in the Complaint, certain electric in-wall heaters manufactured by Cadet are defective in that their design causes overheating and fire hazards. The Complaint also asserts that the identified models have manufacturing or assembly defects created by inadequate or faulty components and/or contacts which cause overheating and multiple fire-related hazards.

On this basis it is alleged that the heater models identified in the Complaint present a ''substantial product hazard'' within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2).

In response, Cadet's Answer denies, generally and specifically, the allegations that its products are defective and that its heaters present a substantial product hazard within the meaning of the CPSA.

Should the allegations be proven, Complaint Counsel for the Office of Compliance of the U.S. Consumer Product Safety Commission seeks a finding that the product presents a substantial product hazard and that public notification be made pursuant to section 15(c) of the CPSA and that other appropriate relief be directed, as set forth in the Complaint.

Dated: March 19, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–7226 Filed 3–24–99; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Operational Test and Evaluation Advisory Group Meeting in support of the HQ USAF Scientific Advisory Board will meet in Kirtland AFB, NM on May 10–12, 1999 from 8 a.m. to 5 p.m.

The purpose of the meeting is to gather information and receive briefings in support of the Scientific Advisory Board.

The meeting will be closed to the public in accordance with section 552b (c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–7242 Filed 3–24–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Intelligence and Vigilance Panel Meeting will meet in Washington, DC on April 14–16, 1999 from 8 a.m. to 5 p.m.

The purpose of the meeting is to gather information and receive briefings in support of the USAF Scientific Advisory Board's 1999 Summer Study.

The meeting will be closed to the public in accordance with section 552b

(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–7299 Filed 3–24–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF ENERGY

Solicitation for Financial Assistance for Cooperative Automotive Research for Advanced Technologies (CARAT) Program Solicitation No. DE–PS02–99EE50493

AGENCY: Chicago Operations Office (DOE).

ACTION: Notice inviting financial assistance applications.

SUMMARY: The Department of Energy (DOE) invites applications for federal assistance for research on the Cooperative Automotive Research for Advanced Technologies (CARAT) Program. The purpose of the (CARAT) Program is to provide small businesses and institutions of higher education with an exclusive means to research, develop, and validate advanced automotive technologies that will enable the production of cars and light trucks which are extremely fuel efficient, have low emissions, and/or are fuel flexible. CARAT is intended to channel the creativity and resourcefulness of the small business and academic communities to remove technology barriers blocking the viability of promising technologies.

DATES: Pre-Application information is to be received no later than April 9, 1999. Applications are to be received no later than June 10, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rafa, Acquisition and Assistance Group, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439, Telephone No. (630) 252–2192, FAX No. (630) 252–5045, Internet—Michael.Rafa@ch.doe.gov.

SUPPLEMENTARY INFORMATION: There are 15 topics for which the DOE invites Financial Assistance Applications: Oxygen Reduction Catalysts for PEM Fuel Cell, Cooling Systems for PEM Fuel Cells, Direct-Methanol Proton-Exchange Membrane Fuel Cells, Ultralight Sandwich Structures, Processing of Metal Matrix Composites, Low-Cost Carbon Fiber Precursors and Production Methods, High-Volume, High-Rate, Low-Cost Manufacturing of Structural Thermoplastics Composites, Mass Flow Rate and Chemical Composition Sensor for Engine Intake System, Safe Electrolytes with Improved Operating Temperature Range, Low-Cost Packaging for Lithium-ion Cells, Stabilization of Manganese Spinel for Use as a Low-Cost Cathode Material in Lithium-ion Batteries, Traction Motors, Improved Coolant for Electrical/Electronic EV/HEV Systems and Waste Heat Recovery in Passenger Automobiles.

The solicitation will be available on the Internet to view and download at http://www.ch.doe.gov/business/ACQ.htm (It is critical that ACQ be in uppercase and all others are lower case). Printed copies will not be available from this office, therefore, copies must be downloaded from the Internet. Any amendments to this solicitation will be posted on the Internet. Please note that prospective applicants will not be alerted when the solicitation is issued on the Internet or when amendments are posted on the Internet.

Issued in Chicago, Illinois on March 17, 1999.

John D. Greenwood,

Acquisition and Assistance Group Manager Contracting Officer.

[FR Doc. 99–7329 Filed 3–24–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–241–000]

ANR Pipeline Company; Notice of Application

March 19, 1999.

Take notice that on March 8, 1999, as supplemented on March 19, 1999 ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an application pursuant to Section 7(c) of the Natural Gas Act and Subpart A of Part 157 of the Commission's regulations for a certificate of public convenience and necessity authorizing ANR to construct, own, and operate an expansion of its mainline facilities located west of its Joliet Compressor Station near Joliet, Illinois, and to its mainline facilities located in eastern Wisconsin (the Wisconsin Expansion Phase II facilities), all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

In order to meet increasing gas requirements in the State of Wisconsin by November 1, 2000, ANR proposes to install certain additional loop pipeline, compression, tie-line, and related facilities on parts of its existing mainline facilities located in Wisconsin and Illinois. ANR states that these facilities will increase its transmission capacity into Wisconsin by up to 194,000 dekatherms per day (194 Mdt/d), thereby enabling ANR to provide additional firm transportation service for shippers from the ANR Joliet Hub to the Wisconsin market area for ANR's system. In order to allow sufficient time for construction of the proposed facilities and to meet the proposed in-service date, ANR requests that the Commission issue a preliminary determination order by August 1, 1999 and a final order by no later than February 1, 2000.

Specifically, ANR seeks authority to construct: (1) approximately 3.0 miles of 42-inch diameter loop pipeline between milepost 801 and milepost 804 along ANR's existing Michigan Leg South in Kendall County, Illinois; (2) two 10,000 horsepower (hp) turbine compressor units to be located at ANR's existing Woodstock Compressor Station in McHenry County, Illinois; (3) one 1,500 hp turbine compressor unit to be located at ANR's existing Weyauwega Compressor Station in Waupaca County, Wisconsin; (4) 0.11 mile of 16-mile diameter pipeline traversing from the Weyauwega Compressor Station to the Marinette Junction tap site on ANR's existing 24-inch mainline; (5) one 1,500 hp reciprocating compressor unit to be located at ANR's existing Janesville Compressor Station in Rock County, Wisconsin; and (6) minor related facilities. ANR states that these facilities are estimated to cost $37,516,622.

ANR states that the proposed 3.0 miles of 42-inch loopline along the Michigan Leg South comprise an extension of a 15.9 mile segment of certain Michigan Leg South loopline facilities that are currently pending approval in Docket No. CP97–319–000 (ANR's ''SupplyLink'' project). ANR contends that, although the design for the facilities proposed herein includes this pending 15.9 mile loopline segment, the facilities proposed here are required to serve different market needs in Wisconsin, and are not part of Docket No. CP97–319–000. ANR presumes that the SupplyLink facilities will be in service by the time ANR places the

facilities proposed herein in service.[1] In the event that the SupplyLink loopline facilities are not available in the proposed time frame, ANR states that it will be required to seek appropriate authorizations from the Commission in this Docket to accommodate any such delays.

ANR proposes to charge the subscribing shippers rates that do not exceed its currently effective Mainline Area rates under the provisions of its rate schedules for firm service under its existing Second Revised Volume No. 1 to its FERC Gas Tariff.

ANR states that it recently conducted an open season. As a result, a number of shippers expressed an interest in receiving firm transportation service on ANR. According to ANR, these shippers desired service from various existing and proposed pipeline interconnecting points located near or within the vicinity of the ANR Joliet Hub near Chicago, to markets located within the State of Wisconsin. ANR states that those non-affiliated shippers have entered into executed precedent agreements with ANR for new services that will utilize 94 Mdt/d of the new capacity proposed herein. ANR is also proposing to construct as part of this project 100 Mdt/d of presently uncommitted capacity that will be used to serve, on a timely basis, the projected near term demand growth in Wisconsin.

According to ANR, a report recently published by the Wisconsin energy Bureau, entitled Wisconsin Energy Statistics 1998, indicates that, from 1987–1997, natural gas demand in Wisconsin grew at an annual rate of approximately 2.6 percent. ANR states that it currently serves firm peak day entitlements of approximately 2,200 Mdt/d, which equates to an annual growth in peak day requirements on the ANR system of approximately 57 Mdt per year. ANR contends that when this proposed project is placed in service approximately two years from now, normal growth patterns indicate that the 100 Mdt/d of additional capacity will be required in Wisconsin.

ANR submits that its proposal to build additional facilities to meet projected growth in demand is in the overall public interest, and is consistent with Commission precedent. According to ANR, additional unsubscribed capacity for future growth as required has been previously approved as part of an application to replace mainline facilities.[2] ANR further states that building all the necessary facilities as part of one single project will also reduce the potential for repeated environmental disturbance that might occur in the same location if the facilities were constructed on a piecemeal basis as part of two different projects.[3]

ANR argues that its expansion at the level proposed is justified, given that during the last two winter heating seasons ANR has experienced peak day throughout levels at or near capacity, despite the fact that both winters were warmer than normal. ANR states that its capacity expansion is an appropriate response to existing increased demands on its system, and the 100 Mdt/d of additional capacity represents only approximately four percent of ANR's current capacity into the State of Wisconsin.

ANR also states that it has also contacted shippers whose capacity, if reduced or released permanently, would reduce the need for the proposed new construction, in order to ensure that the new facilities are appropriately sized. ANR states that no shipper offered to reduce or release its capacity on a permanent basis.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before April 9, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commisson by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held with further notice before the Commisson or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7248 Filed 3–24–99 8:45 am]

BILLING CODE 6717–01–M

[1] In Docket No. CP97–319–000, ANR proposed to place the SupplyLink facilities in service by November 1, 1999.

[2] ANR cites Columbia Gas Transmission Corporation, 72 FERC ¶ 61,018 (1995).

[3] ANR cites Pacific Gas Transmission Company, 70 FERC ¶ 61,016 at 61,043 (1995).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2175–000]

ISO New England Inc. and New England Power Pool; Notice of Filing

March 19, 1999.

Take notice that on March 16, 1999, ISO New England Inc. (the ISO) and the New England Power Pool (NEPOOL) Executive Committee submitted for filing, pursuant to Section 205 of the Federal Power Act, a new Market Rule 15 and revisions to Market Rules 5 and 7, together with a request that the Commission accept Market Rule 15 and the revisions to Market Rules 5 and 7 on an expedited basis, by March 4, 1999. The ISO and the NEPOOL Executive Committee also requested that the Commission approve the remainder of the market rules previously filed by NEPOOL on an expedited basis, by that same date.

The ISO and the NEPOOL Executive Committee state that copies of these materials were sent to the participants in the New England Power Pool, and to the New England state governors and regulatory commissions, and to all parties in the existing proceedings in Docket Nos. ER99–1374–000 and ER99–1609–000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 29, 1999. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7247 Filed 3–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2169–000]

Minnesota Power, Inc.; Notice of Filing

March 19, 1999.

Take notice that on March 1, 1999, Minnesota Power, Inc. (Minnesota Power), tendered its filing in confirmation and support of the contemporaneous filing made by the Mid-Continent Area Power Pool (MAPP) in response to the Commission's order in North American Electric Reliability Council, 85 FERC ¶ 61,353 (1998) (TLR Order), regarding curtailments of generation to load transactions and regional redispatch solutions.

Any person desiring to be heard or to protest such 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 385.214). All such motions and protests should be filed on or before March 29, 1999. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7272 Filed 3–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–251–000]

Northern Natural Gas Company; Notice of Application

March 19, 1999.

Take notice that on March 11, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No.

Northern states that it proposes to abandon RS T–59 of its FERC Gas Tariff, Original Volume No. 2, and that it has entered into an agreement with Texas Gas Transmission Corporation for a self-implementing service under Subpart G of Part 284 of the Regulations which would replace the T–59 service requested to be abandoned herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 9, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, 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 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no protest or motion to intervene is filed within the time required herein. At that time, the Commission, on its own review of the matter, will determine whether granting the Abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7251 Filed 3–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–259–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

March 19, 1999.

Take notice that on March 16, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–259–000 a request pursuant to Sections 157.205, and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon facilities in Pine County, Minnesota under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Northern proposes to abandon the Hinckley Evergreen #1A town Border Station (TBS), including appurtenant facilities. The Local Distribution Company served by these facilities has provided written consent for the abandonment. Northern states that natural gas service downstream of the TBS will be provided through an alternate TBS.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7250 Filed 3–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–249–000]

Reliant Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

March 19, 1999.

Take notice that on March 11, 1999, Reliant Energy Gas Transmission (REGT) formerly NorAm Gas Transmission Company (NGT), 1100 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP99–249–000 a request pursuant to Sections 157.216 and 157.212 of the Commission's Regulations (18 CFR 157.216, 157.212) under its blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 to abandon and operate certain facilities in Louisiana, all as more fully set forth in the request which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

REGT specifically proposes to abandon a 1-inch meter station on Line F-east in Lincoln Parish, Louisiana and to operate a 2-inch meter station under Subpart G of the Regulations. It is stated that these facilities were constructed on Line F-east to upgrade the 1-inch meter station, solely to provide service under section 311 of the NGPA and Subpart B of the Regulations on behalf of Reliant Energy Arkla, a division of Reliant Energy, Inc. (Arkla). The volumes to be delivered to this meter are about 56,000 Dth annually and 240 Dth on a peak day. It is also stated that the meter station was upgraded on March 4, 1999, at a cost of $17,870 and Arkla will reimburse REGT. The cost to abandon the 1-inch station is $7,969, it is asserted.

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 Rule (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 date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7249 Filed 3–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–256–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

March 19, 1999.

Take notice that on March 16, 1999, Southern Natural Gas Company (Southern), PO Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP99–256–000 a request pursuant to Sections 157.205 and 211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new delivery point for service to the City of Calhoun, Georgia (Calhoun) under Southern's blanket certificate issued in Docket No. CP82–406–000 all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Southern proposes to construct and operate certain measurement and other appurtenant facilities in order to provide transpiration service to Calhoun at a new delivery point for service on Southern's 12-inch Chattanooga Branch Line in Gordon County, Georgia. The estimated cost of the construction and installation of the facilities is approximately $278,200, for which Calhoun would reimburse Southern. Southern contends that it would transport gas on behalf of Calhoun under its Rate Schedule IT.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed

for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7251 Filed 3–24–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6315–5]

Agency Information Collection Activities; Proposed Collection; Comment Request; Cooperative Agreements and Superfund State Contracts for Superfund Response Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR's) to the Office of Management and Budget (OMB): Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 24, 1999.

ADDRESSES: Office of Grants and Debarment, 401 M. Street SW., Washington, DC 20460, Mailstop 3903R.

FOR FURTHER INFORMATION CONTACT: Remit comments to: William G. Hedling, (202) 564–5377/Fax: (202) 565–2468 hedling.william@epa.gov

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which apply for EPA assistance.

Title: General Administrative Requirements for Assistance Programs. EPA ICR #0938.06, OMB Control #2030–0020, Expiration 6/30/99.

Abstract: The information is collected from applicants/recipients of EPA assistance and is used to make awards, pay recipients and collect information on how Federal funds are being spent. EPA needs the information to meet its Federal stewardship. This information Collection Request (ICR) renewal request authorizes the collection of information under EPA's General Regulations for Assistance programs that establishes minimum management requirements for all recipients of EPA grants or cooperative agreements (assistance agreements). 40 CFR part 30 ''Grants with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations'' includes the management requirements for these potential grantees. 40 CFR part 31 ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'' includes the management requirements for these potential grantees. These regulations include only those provisions mandated by statute, required by OMB Circulars or added by EPA to ensure sound and effective financial assistance management. This SF–83 combines all of these requirements under OMB Control Number 2030–0020. The information required by these regulations will be used by the EPA award official to make assistance awards, to make assistance payments, and to verify that the recipient is using Federal funds appropriately to comply with OMB Circulars. 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.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual record keeping burden for this collection is estimated to average 31 hours per application. The estimated annual number of respondents is approximated 4,360. The estimated total burden hours on respondents: 135,160. The frequency of collection: as required.

Send comments regarding these matters, or any other aspect of information collection, including suggestions for reducing the burden, to the address listed above.

Dated: March 21, 1999.

Gary M. Katz,

Director, Grants Administration Division.

[FR Doc. 99–7335 Filed 3–24–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6315–1]

Extension of Attainment Dates for Downwind Transport Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; proposed interpretation; request for comments.

SUMMARY: Today's document announces EPA's interpretation of the Clean Air Act (Act) regarding the possibility of extending attainment dates for ozone nonattainment areas that have been classified as moderate or serious for the 1-hour standard and which are downwind of areas that have interfered with their ability to demonstrate attainment by dates prescribed in the Act. The guidance memorandum that is being printed in today's notice is entitled ''Extension of Attainment Dates for Downwind Transport Areas'' and was signed by Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, on July 16, 1998. This notice follows up on the statement made in the guidance memorandum that EPA would request comments on its interpretation.

A number of areas may find themselves facing the prospect of being reclassified or ''bumped up'' to a higher classification in spite of the fact that pollution beyond their control contributes to the levels of ozone they experience. The notice addresses the problem by providing an avenue to extend the attainment dates for areas affected by transported pollution. The EPA intends to finalize the interpretation in this guidance only when it applies in the appropriate context of individual rulemakings addressing specific attainment demonstrations and requests for attainment date extensions. If EPA approves an area's attainment demonstration and attainment date extension request, the area would no longer be subject to bump up for failure to attain by its original attainment date.

DATES: The EPA is establishing an informal 30-day comment period for today's notice, ending on April 26, 1999.

ADDRESSES: Documents relevant to this action are available for inspection at the Air and Radiation Docket and Information Center (6101), Attention: Docket No. A–98–47, U.S. Environmental Protection Agency, 401 M Street, SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Written comments should be submitted to this address.

FOR FURTHER INFORMATION CONTACT: Denise Gerth, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, MD–15, Research Triangle Park, NC 27711, telephone (919) 541-5550.

SUPPLEMENTARY INFORMATION: On July 16, 1998, the following guidance was issued by Richard Wilson, Acting Assistant Administrator for Air and Radiation. It should be noted that the July 16, 1998 memorandum reprinted in this notice refers to EPA's proposed NO_X SIP call. After the memorandum was signed, EPA took final action on the SIP call and promulgated a final rule. See 63 FR 57356 (October 27, 1998).

Guidance on Extension of Attainment Dates for Downwind Transport Areas

Preface

The purpose of this guidance is to set forth EPA's current views on the issues discussed herein. EPA intends soon to set out its interpretation in an advance notice of proposed rulemaking on which the Agency will take comment.

While EPA intends to proceed under the guidance that it is setting out today, the Agency will finalize this interpretation only when it applies in the appropriate context of individual rulemakings addressing specific attainment demonstrations. At that time and in that context, judicial review of EPA's interpretation would be available.

Introductory Summary

A number of areas in the country that have been classified as moderate or serious nonattainment areas for the 1-hour ozone standard are affected by pollution transported from upwind areas. For these downwind areas, transport from upwind areas has interfered with their ability to demonstrate attainment by the dates prescribed in the Clean Air Act (Act). As a result, many of these areas find themselves facing the prospect of being reclassified, or ''bumped up,'' to a higher nonattainment classification in spite of the fact that pollution that is beyond their control contributes to the levels of ozone they experience. In the policy being issued today, EPA is addressing this problem by planning to extend the attainment date for an area that is affected by transport from either an upwind area with a later attainment date or an upwind area in another State that significantly contributes to downwind nonattainment, as long as the downwind area has adopted all necessary local measures, and has submitted an approvable attainment plan to EPA which includes those local measures. (By ''affected by transport,'' EPA means an area whose air quality is affected by transport from an upwind area to a degree that affects the area's ability to attain.) EPA intends to initiate rulemaking for each area seeking such relief and contemplates providing such relief to those who qualify. If after consideration of public comments EPA acts to approve an area's attainment demonstration and extend its attainment date, the area will no longer be subject to reclassification or ''bump-up'' for failure to attain by its otherwise applicable attainment date.

Background

The Act may be interpreted to allow a later attainment date than generally applicable to a particular ozone nonattainment area if transport of ozone or its precursors (nitrogen oxides (NO_X) and volatile organic compounds (VOCs)) prevents timely attainment. This principle has already been advanced in EPA's Overwhelming Transport Policy, which allowed a downwind area to assume the later attainment date if it could meet certain criteria, including a demonstration that it would have attained ''but for'' transport from an upwind nonattainment area with a later attainment date. See Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, entitled, ''Ozone Attainment Dates for Areas Affected by Overwhelming Transport,'' September 1, 1994. In the four years since the issuance of that memorandum, the history of the efforts to analyze and control ozone transport has led EPA to believe that it should expand the policy's reach to ensure that downwind areas are not unjustly penalized as a result of transport.

In March 1995, EPA called for a collaborative, Federal-State process for assessing the regional ozone transport problem and developing solutions, and the Ozone Transport Assessment Group (OTAG) was subsequently formed. See Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, entitled ''Ozone Attainment Demonstrations,'' March 2, 1995. The OTAG was an informal advisory committee with representatives from EPA, thirty-seven states in the Midwestern and eastern portions of the country, and industry and environmental groups. OTAG's major functions included developing computerized modeling analyses of the impact of various control measures on air quality levels throughout the region and making recommendations as to the appropriate ozone control strategy. Based on OTAG's modeling analyses, it developed recommendations concerning control strategies. These recommendations, issued in mid-1997, called upon EPA to calculate the specific reductions needed from upwind areas.

In November 1997, using OTAG's technical work, EPA issued a proposed NO_X State implementation plan (SIP) call, directing certain States to revise their SIPs in order to satisfy section 110(a)(2)(D) by reducing emissions of NO_X to specified levels, which in turn will reduce the amounts of ozone being transported into nonattainment areas from upwind areas. 62 FR 60318 (November 7, 1997). In July 1997, the EPA promulgated a revised 8-hour ozone NAAQS. 62 FR 38856 (July 18, 1997). That promulgation included regulations providing that the 1-hour NAAQS would be phased out, and would no longer apply to an area once EPA determined that the area had air quality meeting the 1-hour standard. 40 CFR 50.9(b). Until the 1-hour standard is revoked for a particular area, the area must continue to implement the requirements aimed at attaining that standard.

The Current Problem

The Act called on areas classified as moderate ozone nonattainment areas to submit SIPs that demonstrate attainment by 1996 (unless they receive an extension), and called on serious nonattainment areas to demonstrate attainment by November 1999 (unless they receive an extension). Section 181 and 182(b) and (c). For many of these areas, EPA has preliminarily determined in the proposed SIP call that transport from upwind areas is contributing to their nonattainment problems. Such transport also appears to be interfering with their ability to demonstrate attainment by the statutory attainment dates.

The graduated control scheme in sections 181 and 182 of the Act expressed Congress's intent that areas be assigned varying attainment dates, depending upon the severity of the air quality problem they confront. Sections 181 and 182 provide for attainment ''as expeditiously as practicable,'' but

establish later deadlines for attainment in more polluted areas, and additional control measures that the more polluted areas must accomplish over the longer time frame. Thus, many of the upwind areas have later attainment dates than the downwind areas which are affected by emissions from the upwind States. On the other hand, section 110(a)(2)(D)(i)(I) of the Act requires SIPs to prohibit ''consistent with the other provisions of [title I],'' emissions which will ''contribute significantly to nonattainment in * * * any other State.'' The EPA interprets section 110(a)(2)(A) to incorporate the same requirement in the case of intrastate transport. Sections 176A and 184 provide for regional ozone transport commissions that may recommend that EPA mandate additional regional control measures to allow areas to reach timely attainment in accordance with section 110(a)(2)(D)(i)(I).

These provisions demonstrate Congressional intent that upwind areas be responsible for preventing interference with timely downwind attainment. They must be reconciled with express Congressional intent that more polluted areas be allotted additional time to attain. As EPA pointed out in its overwhelming transport policy, Congress does not explicitly address how these provisions are to be read together to resolve the circumstance where more polluted upwind areas interfere with timely attainment downwind, during the time provided for those upwind areas to reduce their own emissions.

In the 1994 overwhelming transport policy, EPA stated that it would harmonize these provisions to avoid arguably absurd or odd results and to give effect to as much of Congress' manifest intent as possible. The EPA struck a balance in the overwhelming transport policy by requiring that the upwind and downwind areas reduce their contribution to the nonattainment problem while avoiding penalizing the downwind areas for failure to do the impossible.

In the 1994 policy, EPA reasoned that Congress did not intend the section 110(a)(2)(D)(i)(I) obligation to supersede the practicable attainment deadlines and graduated control scheme in sections 181 and 182, especially since section 110(a)(2)(D)(i)(I) specifically applies only ''to the extent consistent with the provisions of [title I].'' The same rationale applies in the intrastate context under section 110(a)(2)(A).

Developments since the issuance of the overwhelming transport policy in 1994 have prompted EPA once again to interpret these provisions so that they can be reconciled in light of existing circumstances. Since the issuance of that policy, EPA and the States, through OTAG, have made significant progress in addressing interstate transport in the eastern United States, and have worked to analyze the flow of transport and to allocate among the States their respective responsibilities for control. During the period required for this effort, which took longer than was anticipated, the resolution of the regional transport issue was held in abeyance. The effort to address regional transport recently resulted in EPA's proposed NO_x SIP call, expected to be finalized in the next few months. For areas in the OTAG region affected by transport, the conclusion of the OTAG and SIP call processes in September 1998 will result in assignments of responsibility that will assist in the design of SIPs and the formation and implementation of attainment demonstrations.

Because EPA had not previously determined how much to require upwind States in the OTAG region to reduce transport, downwind areas were handicapped in their ability to determine the amounts of emissions reductions needed to bring about attainment. While operating in this environment of uncertainty, many of these downwind areas confronted near-term attainment dates. Moreover, as described in the NO_X SIP call proposal, the reductions from the proposed NO_X SIP call will not likely be achieved until at least 2002, well after the attainment dates for many of the downwind nonattainment areas that depend on those reductions to help reach attainment.

The Solution

The EPA believes that a fair reading of the Act would allow it to take these circumstances into account to harmonize the attainment demonstration and attainment date requirements for downwind areas affected by transport both with the graduated attainment date scheme and the schedule for achieving reductions in emissions from upwind areas. Thus, EPA will consider extending the attainment date for an area that:

(1) Has been identified as a downwind area affected by transport from either an upwind area in the same State with a later attainment date or an upwind area in another State that significantly contributes to downwind nonattainment. (By ''affected by transport,'' EPA means an area whose air quality is affected by transport from an upwind area to a degree that affects the area's ability to attain);

(2) Has submitted an approvable attainment demonstration with any necessary, adopted local measures and with an attainment date that shows that it will attain the 1-hour standard no later than the date that the reductions are expected from upwind areas under the final NO_X SIP call and/or the statutory attainment date for upwind nonattainment areas, i.e., assuming the boundary conditions reflecting those upwind reductions;

(3) Has adopted all applicable local measures required under the area's current classification and any additional measures necessary to demonstrate attainment, assuming the reductions occur as required in the upwind areas. (To meet section 182(c)(2)(B), serious areas would only need to achieve progress requirements until their original attainment date of November 15, 1999);

(4) Has provided that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

EPA contemplates that when it acts to approve such an area's attainment demonstration, it will, as necessary, extend that area's attainment date to a date appropriate for that area in light of the schedule for achieving the necessary upwind reductions. The area would no longer be subject to reclassification or ''bump-up'' for failure to attain by its original attainment date under section 181(b)(2).

Legal Rationale

The legal basis for EPA's interpretation of the attainment date requirements employs and updates the rationale invoked in the Agency's overwhelming transport policy. By filling a gap in the statutory framework, EPA's interpretation harmonizes the requirements of sections 181 and 182 with the Act's requirements (sections 110(a)(2)(D)(i)(I), 110(a)(2)(A), 176A and 184) on inter-area transport. It reconciles the principle that upwind areas are responsible for preventing interference with downwind attainment with the Congressional intent to provide longer attainment periods for areas with more intractable air pollution problems. It also takes into account the amount of time it will take to achieve emission reductions in upwind areas under the NO_X SIP call, which EPA expects to finalize in September 1998.

The EPA's resolution respects the intent of sections 181 and 182 to provide longer attainment dates for areas burdened with more onerous air pollution problems, while allowing

reductions from upwind areas to benefit the downwind areas. Under EPA's interpretation, upwind areas will be required to reduce emissions to control transport, but should not find that the requirements imposed upon them amount to an acceleration of the time frames Congress envisioned for these areas in sections 181 and 182. Downwind areas will be provided additional time to accommodate the delayed control contributions from upwind areas, while at the same time being held accountable for all measures required to control local sources of pollution.

The EPA's interpretation of the Act allows it to extend attainment dates only for those areas which are prevented from achieving timely attainment due to a demonstrated transport problem from upwind areas, and which submit attainment demonstrations and adopt local measures to address the pollution that is within local control. The EPA believes that Congress, had it addressed this issue, would not have intended downwind areas to be penalized by being forced to compensate for transported pollution by adopting measures that are more costly and onerous and/or which will become superfluous once upwind areas reduce their contribution to the pollution problem.

This interpretation also recognizes that downwind areas in the OTAG region have been operating in a climate of uncertainty as to the allocation of responsibility for controlling transported pollution. Section 110(a)(2)(D) is not self-executing and, until the NO_X SIP call rulemaking, downwind areas in the OTAG region could not determine what boundary conditions they should assume in preparing attainment demonstrations and determining the sufficiency of local controls to bring about attainment. By allowing these areas to assume the boundary conditions reflecting reductions set forth in the NO_X SIP call and/or reductions from the requirements prescribed for upwind nonattainment areas under the Act, EPA will hold upwind areas responsible for reducing emissions of transported pollution, and downwind areas will be obliged to adopt and implement local controls that would bring about attainment but for the transported pollution.

The EPA's interpretation harmonizes the disparate provisions of the Act. It avoids accelerating the obligations of the upwind States so that downwind States can meet earlier attainment dates, which would subvert Congressional intent to allow upwind areas with more severe pollution longer attainment time frames to attain the ozone standards. In addition, EPA's interpretation of the Act takes into account the fact that, under the SIP call, upwind area reductions will not be achieved until after the attainment dates for moderate and serious ozone nonattainment areas. To refuse to interpret the Act to accomplish this would unduly penalize downwind areas by requiring them to compensate for the transported pollution that will be dealt with by controls adopted in response to the requirements of the NO_X SIP call or to achieve attainment in an upwind area. The EPA is thus interpreting the requirements to allow the Agency to grant an attainment date extension to areas that submit their attainment demonstrations and all adopted measures necessary locally to show attainment. This solution preserves the responsibility of these downwind areas to prepare attainment demonstrations and adopt measures, but does not penalize them for failing to achieve timely attainment by reclassifying them upwards, since such attainment was foreclosed by transport beyond their control.

Under this policy, once EPA has acted to approve the attainment demonstration and extend the area's attainment date, the area would no longer be subject to reclassification or ''bump-up'' for failure to attain by its original attainment date under section 181(b)(2).

The EPA requests comment on the interpretation in the guidance memorandum reprinted above.

Dated: March 18, 1999.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 99–7332 Filed 3–24–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–IA; FRL–6059–2]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities and Hazard Education Before Renovation of Target Housing; State of Iowa's Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On August 7, 1998, the State of Iowa submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA) and requirements for hazard education before renovation of target housing under section 406 of TSCA. This notice announces the receipt of the State of Iowa's application, provides a 45-day public comment period, and provides an opportunity to request a public hearing on the application.

DATES: Comments on the authorization application must be received on or before May 10, 1999. Public hearing requests must be received on or before April 26, 1999.

ADDRESSES: Submit all written comments identified by docket number PB–402404–IA (in duplicate) to: Environmental Protection Agency, Region VII, Mazzie Talley, Air, RCRA and Toxics Division, Radiation, Asbestos, Lead and Indoor Programs Branch, 726 Minnesota Ave., Kansas City, KS 66101.

Comments, data, and requests for a public hearing may also be submitted electronically to: talley.mazzie@epa.gov. Follow the instructions under Unit IV. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Mazzie Talley, Environmental Protection Agency, Region VII, Air, RCRA and Toxics Division, Radiation, Asbestos, Lead and Indoor Programs Branch, 726 Minnesota Ave., Kansas City, KS 66101; telephone (913) 551–7518; e-mail address: talley.mazzie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–2692), entitled *Lead Exposure Reduction*.

Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities

are certified and follow documented work practice standards. Under section 404 (15 U.S.C. 2684), a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

Section 406 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing the development of a lead hazard information pamphlet and requires each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation. Under section 404 (15 U.S.C. 2684), a State may seek authorization from EPA to develop their own pamphlet, administer and enforce its own pre-renovation notification program.

On August 29, 1996, (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). On June 1, 1998 (63 FR 29907) (FRL–5751–7), EPA promulgated final TSCA section 406 regulations governing hazard education before renovation of target housing. Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA (15 U.S.C. 2684(h)), EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized (15 U.S.C. 2684(a)). This authorization becomes ineffective, however, if EPA disapproves the application.

Pursuant to section 404(b) of TSCA (15 U.S.C. 2684(b)), EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before authorizing the program. Therefore, by this notice EPA is soliciting public comment on whether the State of Iowa's application meets the requirements for EPA approval. EPA's final decision on the application will be published in the **Federal Register**.

II. State Program Description Summary

The following summary of the State of Iowa's proposed program has been provided by the applicant:

Lead-Based Paint Activities Training and Certification Program and Pre-renovation Notification Program

The state of Iowa has submitted an application to the U.S. Environmental Protection Agency asking for the state's Lead-Based Paint Activities Training and Certification Program and Pre-renovation Notification Program to be authorized. The Iowa Department of Public Health is the lead agency for these programs.

The rules for the Lead-Based Paint Activities Training and Certification Program are found in 641-Chapter 70 of the *Iowa Administrative Code*. The training and certification requirements go into effect on August 1, 1999. These rules:

1. Establish the disciplines of lead inspector, elevated blood lead (EBL) inspector, lead abatement contractor, lead abatement worker, and visual risk assessor.

2. Establish work practice requirements for lead inspections, EBL inspections, risk assessments, lead hazard screens, visual risk assessments, and lead abatement.

3. Require individuals who conduct these activities to be certified by August 1, 1999. In order to be certified, individuals must complete an approved training program and meet additional education and experience requirements.

4. Establish procedures for the suspension, revocation, or modification of certifications.

5. Establish requirements for the approval of training programs and requirements and procedures for the administration of a third-party certification exam.

The rules for the Pre-renovation Notification Program are found in 641-Chapter 69 of the *Iowa Administrative Code*. These rules require the distribution of lead hazard information to owners and occupants of target housing before renovation for compensation. The pre-renovation notification goes into effect on August 1, 1999. These rules establish:

1. Clear standards for identifying home improvement activities that trigger the pamphlet distribution requirements.

2. Procedures for distributing the lead hazard information to owners and occupants of the housing prior to renovation activities.

3. Special procedures to be used for emergency renovation, remodeling, and repainting of target housing for compensation for the purpose of preventing significant property damage or threats to public safety or health.

III. Federal Overfiling

TSCA section 404(b) (15 U.S.C. 2684(b)) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number PB–402404–IA. Copies of this notice, the State of Iowa's authorization application, and all comments received on the application are available for inspection in the Region VII Office, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at Environmental Protection Agency, Region VII, Air, RCRA and Toxics Division, Radiation, Asbestos, Lead and Indoor Programs Branch, 726 Minnesota Ave., Kansas City, KS 66101.

Commenters are encouraged to structure their comments so as not to contain information for which Confidential Business Information (CBI) claims would be made. However, any information claimed as CBI must be marked ''confidential,'' ''CBI,'' or with some other appropriate designation, and a commenter submitting such information must also prepare a non-confidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at:

talley.mazzie@epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number PB–402404–

IA. Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 (*Regulatory Planning and Review*, 58 FR 51735, October 4, 1993), and Executive Order 13045 (*Protection of Children from Environmental Health Risks and Safety Risks*, 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: February 24, 1999.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 99–7338 Filed 3–24–99; 8:45 a.m.]

BILLING CODE 6560–50–F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection under review; recordkeeping requirements under the uniform guidelines on employee selection procedures.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the U.S. Equal Employment Opportunity Commission (EEOC or Commission) announces that it intends to submit to the Office of Management and Budget (OMB) a request to extend without change the existing collection of information listed below. The Commission is seeking public comments on the proposed extension.

DATES: Written comments on this notice must be submitted on or before May 24, 1999.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, N.W., Washington, D.C. 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4078 (voice) or (202) 663–4074 (TDD). (These are not toll-free numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, N.W., Washington, D.C. between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street, N.W., Washington, D.C. 20507, (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION: The Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary

for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's 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 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

Collection Title: Recordkeeping Requirements of the Uniform Guidelines on Employee Selection Procedures, 29 CFR part 1607.

Form Number: None.

Frequency of Report: None required.

Type of Respondent: Businesses or other institutions, state or local governments, and farms.

Standard Industrial Classification (SIC) Code: Multiple.

Description of Affected Public: Any employer, labor organization, or employment agency covered by the federal equal employment opportunity laws.

Responses: 666,000.

Reporting Hours: 1,450,000.

Number of Forms: None.

Abstract: The records required to be maintained by 29 CFR 1607.4 and 1607.15 are used by respondents to assure that they are complying with Title VII; by the Commission in investigating, conciliating, and litigating charges of employment discrimination; and by complainants in establishing violations of federal equal employment opportunity laws.

Burden Statement: There are no reporting requirements associated with UGESP. Thus the only paperwork burden derives from the required recordkeeping. There are a total of 666,000 employers who have 15 or more employees and that are, therefore, subject to the recordkeeping requirement. Prior to the imposition of the UGESP recordkeeping requirement, the Commission proposed to conduct a practical utility survey to obtain estimates of burden hours. The intended survey was not approved by OMB, however, and the Commission relied instead on data obtained from the Business Roundtable study on ''Cost of Government Regulation'' conducted by the Arthur Anderson Company.

In its initial estimate of recordkeeping burden the Commission relied on data from that study to derive the estimate of 1.91 million hours. In a subsequent submission to OMB for clearance of the UGESP collection, the Commission made an adjustment to reflect the increase in the incidence of computerized recordkeeping that had resulted in a reduction of total burden hours of approximately 300,000, and had brought the total burden down to 1.6 million hours.

In the calculation of the initial burden of UGESP compliance, the estimated number of employees covered by the guidelines was 71.1 million. Average cost per employee was taken to be $1.79. Since most of this cost, however, was for employers' administrative functions and represented the time spent in reviewing their selection processes for 'adverse impact' and in reviewing and validating their testing procedures, the actual recordkeeping function was estimated to be in the range of 10 to 15 percent of the total per-employee cost, or between $.179 and $.2685 per employee. The Commission used these per-employee costs, even though it believed that they were an over-estimate. In the initial estimate the Commission used the higher end of the range.

Subsequently in 1996, the Commission modified its burden estimate. It recognized the midpoint of the range or $.22 per employee as a better estimate of per-employee cost. The number of employees had also grown by 15 million since the initial estimate, increasing the number of employees covered to 86 million. Finally, from the private employer survey the Commission has been conducting for 30 years (the EEO–1), it knew that 29.7 percent of the private employers file their employment reports on magnetic tapes, on diskettes, or on computer printouts. Thus, at a minimum, that proportion of employers had computerized recordkeeping. From the same survey the Commission also learned that when records are computerized, the burden hours for reporting, and thus for recordkeeping, are about one-fifth of the burden hours associated with non-computerized records. Accordingly, the Commission's estimate of recordkeeping burden hours is as follows:

Computerized recordkeepers—(.29) × 86 mil × ($.044) = $ 1,097,360

All other recordkeepers—(.71) × 86 mil × ($.22) = $13,433,200

Total recordkeeping cost = $14,530,560

Total Burden Hours are then computed by dividing the total cost of recordkeeping by $10, the hourly rate of staff recordkeepers. The total new estimate of burden hours associated with the UGESP recordkeeping then is 1.45 million hours. Assumptions made in deriving the estimate are as follows:

Cost per employee for recordkeeping is $.22*

Cost per employee for computerized records is $.44*

Hourly rate of pay for recordkeeping staff is $10.00**

* Both of these are derived from a private employer study.

** To the extent that this is an under-estimate, the reporting burden is over-estimated.

Dated: March 19, 1999.

For the Commission.

Ida L. Castro,

Chairwoman.

[FR Doc. 99–7317 Filed 3–21–99; 8:45 am]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 18, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 24, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0386.

Title: Section 73.1635, Special Temporary Authorizations (STA).

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,645.

Estimated Time per Response: 1 to 4 hours.

Total annual burden: 3,165 hours.

Total annual costs: $1,074,935.

Needs and Uses: Section 73.1635 allows licensees/permittees of broadcast stations to file for special temporary authority to operate broadcast stations at specified variances from station authorization not to exceed 180 days. Data are used by FCC staff to ensure that such operation will not cause interference to other stations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–7254 Filed 3–24–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Submitted to OMB for Review and Approval

March 17, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 26, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 1 A–804, 445 12th St., S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Lesmith at 202–418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0669.

Title: Section 76.946, Advertising of Rates.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 11,365.

Estimated Time Per Response: 30 minutes.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 5,683 hours.

Total Annual Costs: None.

Needs and Uses: Section 76.946 states that cable operators that advertise rates for basic service and cable programming service tiers shall be required to advertise rates that include all costs and fees. Cable systems that cover multiple franchise areas having differing franchise fees or other franchise costs, different channel line-ups, or different rate structures may advertise a complete range of fees without specific identification of the rate for each individual area. In such circumstances, the operator may advertise a ''fee plus'' rate that indicates the core rate plus the range of possible additions, depending upon the particular location of the subscriber. The Commission has set forth this disclosure requirement to ensure consumer awareness of all costs and fees associated with basic service and cable programming service tier rates.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–7316 Filed 3–24–99; 8:45 am]

BILLING CODE 6712–10–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 of 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.: 202–010979–032

Title: Caribbean Shipowners Association

Parties:

Bernuth Lines, Ltd.
Cari Freight Shipping Co. Ltd.
Interline Connection, NV
Seaboard Marine, Ltd.
Tecmarine Lines, Inc.
Crowley American Transport, Inc.
Kent Line International Limited
SeaFreight Line, Ltd.
Tropical Shipping & Construction Co., Ltd.
King Ocean Service, S.A.
Sea-Land Service, Inc. (''Sea-Land'')
Navieras

Synopsis: The proposed amendment would expand the geographic scope of the Agreement to include Haiti and Jamaica. It also amends the independent action and service contract provisions of the Agreement to conform to the Ocean Shipping Reform Act of 1998 and deletes Sea-Land as a party to the Agreement.

Agreement No.: 217–011657

Title: Zim/Italia-D'Amico Space Charter Agreement

Parties:

Zim Israel Navigation Company Ltd.

Italia d'Navigazione S.p.A. (''Italia'')
D'Amico Societa di Navigazione S.p.A. (''D'Amico'')

Synopsis: The proposed Agreement would permit the parties to charter space to one another in the trade between United States Atlantic and Pacific Coast ports and ports in France, Spain, Italy, and Israel. For purposes of this Agreement, Italia and D'Amico will be considered a single party.

Dated: March 22, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–7268 Filed 3–24–99; 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 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.

Opus One USA, 1754 40th Avenue, San Francisco, CA 94122, Jo-Yu A. Wu, Sole Proprietor

The Pelixan Group, Inc., 3405–B NW 72 Ave., Suite 105, Miami, FL 33122, Officers: Francis W. Alter, President, Donna Pearson, Vice President

Dated: March 22, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–7267 Filed 3–24–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 16, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First Financial Banc Corporation, El Dorado, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of First Financial Bank, El Dorado, Arkansas (upon its conversion from a federal savings bank under the name of First Financial Bank, FSB, to a state chartered bank).

Board of Governors of the Federal Reserve System, March 19, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–7228 Filed 3-24-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 19, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. BanTenn Corp., Kingsport, Tennessee; to acquire 20 percent of the voting shares of Paragon Commercial Bank, Raleigh, North Carolina.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Roxton Corporation Employee Stock Ownership Plan, Waco, Texas; to acquire 42.74 percent of the voting shares of The Roxton Corporation, Celeste, Texas, and thereby indirectly acquire The First Bank, Roxton, Texas.

Board of Governors of the Federal Reserve System, March 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–7353 Filed 3–24–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-6649) published on page 13427 of the issue for Thursday, March 18, 1999.

Under the Federal Reserve Bank of Cleveland heading, the entry for Fifth Third Bancorp, Cincinnati, Ohio, is revised to read as follows:

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Fifth Third Bancorp., Cincinnati, Ohio; to merge with South Florida Bank Holding Corporation, Ft. Meyers, Florida, and thereby indirectly acquire South Florida Bank, Ft. Meyers, Florida.

Comments on this application must be received by April 12, 1999.

Under the Federal Reserve Bank of Chicago heading, the entry for Foresight Financial Group, Inc., Freeport, Illinois, is revised to read as follows:

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Foresight Financial Group, Inc., Freeport, Illinois; to acquire 100 percent of the voting shares of State Bank FFG, Freeport, Illinois.

Comments on this application must be received by April 12, 1999.

Under the Federal Reserve Bank of Dallas heading, the entry for Violeta Investments, Ltd., Hebbronville, Texas, is revised to read as follows:

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Violeta Investments, Ltd., Hebbronville, Texas; to acquire 12.34 percent of the voting shares of Hebbronville State Bank, Hebbronville, Texas.

Comments on this application must be received by April 12, 1999.

Board of Governors of the Federal Reserve System, March 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–7354 Filed 3–24–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 7, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Northwest Financial Corporation, Spencer, Iowa; to engage *de novo* through its subsidiary, Northwest Federal Savings Bank, Spencer, Iowa, in acquiring Gateway Savings Bank, Ankeny, Iowa (in organization), and thereby engage in the operation of a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, March 19, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–7229 Filed 3-24-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Committee on Employee Benefits of the Federal Reserve Systems.*

TIME AND DATE: 2:30 p.m., Tuesday, March 30, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551,

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Further consideration of a proposal relating to Federal Reserve System benefits.

2. Any items carried forward from a previously announced meeting.

*The Committee on Employee Benefits considers matters relating to the Retirement, Thrift, Long-Term Disability Income, and Insurance Plans for employees of the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement of this meeting. (The Web site also includes procedural and other information about the meeting.)

Dated: March 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–7378 Filed 3–22–99; 5:00 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 64 FR 13427, March 18, 1999.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Tuesday, March 23, 1999.

CHANGES IN THE MEETING: THE OPEN MEETING HAS BEEN CANCELED, AND THE SCHEDULED ITEM WAS HANDLED VIA NOTATION VOTING.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: March 23, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–7412 Filed 3–23–99; 12:28 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Ms. Maria Diaz, Rush-Presbyterian-St. Luke's Medical Center: Based on the report of the Rush-Presbyterian-St. Luke's Medical Center (RPMC) Research Integrity Investigation Committee dated May 13, 1998, which included a report of a special National Cancer Institute (NCI) audit, and additional information obtained by ORI during its oversight review, ORI finds that Ms. Diaz, former data manager for two multicenter cancer prevention clinical trials at RPMC,

engaged in scientific misconduct in this clinical research supported by NCI, National Institutes of Health (NIH), cooperative agreements.

Specifically, Ms. Diaz intentionally fabricated and/or falsified research data and information collected at RPMC for the Breast Cancer Prevention Trial (BCPT) under the National Surgical Adjuvant Breast and Bowel Project (NSABP) and a secondary prevention trial for lung cancer sponsored by the M.D. Anderson Cancer Center and Eastern Cooperative Oncology Group (ECOG). Ms. Diaz falsified data related to entry criteria and treatment compliance on the secondary lung cancer prevention trial. She fabricated reports of follow-up examinations for subjects entered on the BCPT, falsified laboratory test results, and forged signatures of physicians on informed consent documents.

ORI has implemented the following administrative actions for the three (3) year period beginning March 13, 1999:

(1) Ms. Diaz is prohibited from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) Any institution that submits an application for PHS support for a research project on which Ms. Diaz's participation is proposed or which uses her in any capacity on PHS supported research, or that submits a report of PHS-funded research in which she is involved, must concurrently submit a plan for supervision of her duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of Ms. Diaz's research contribution. The institution also must submit a copy of the supervisory plan to ORI.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations Office of Research Integrity 5515 Security Lane, Suite 700 Rockville, MD 20852 (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 99–7234 Filed 3–24–99 8:45 am]

BILLING CODE 4160–17–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98P–0043]

Agency Information Collection Activities; Announcement of OMB Approval; Food Labeling: Nutrition Labeling of Dietary Supplements on a ''Per Day'' Basis

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Food Labeling: Nutrition Labeling of Dietary Supplements on a ''Per Day'' Basis'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 12, 1999 (64 FR 1765), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–395. The approval expires on March 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at ''http://www.fda.gov/ohrms/dockets''.

Dated: March 17, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–7233 Filed 3–24–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–0487]

Exxon Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Exxon Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of fatty acids, C10-13-branched, vinyl esters as a comonomer in polymers used as components of adhesive formulations intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), 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 9B4650) has been filed by Exxon Chemical Co., P.O. Box 3272, Houston, TX 77253–3272. The petition proposes to amend the food additive regulations in § 175.105 Adhesives (21 CFR 175.105) to provide for the safe use of fatty acids, C 10-13-branched, vinylesters as a comonomer in polymers used as components of adhesive formulations intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the 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.

Dated: March 5, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–7231 Filed 3–24–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 77N–0240; DESI 1786]

Nitroglycerin Transdermal System; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to withdraw approval of one new drug application (NDA) and five abbreviated new drug applications (ANDA's) for certain single-entity coronary vasodilator drug products containing nitroglycerin in a transdermal system.

FDA is offering the holders of the applications an opportunity for a hearing on the proposal. The basis for the proposal is that the sponsors of these products have failed to submit acceptable data on bioavailability and bioequivalence.

DATES: Hearing requests are due by April 26, 1999; data and information in support of hearing requests are due by May 24, 1999.

ADDRESSES: Communications in response to this notice should be identified with the reference number DESI 1786 and directed to the attention of the appropriate office named below.

A request for a hearing, supporting data, and other comments are to be identified with Docket No. 77N–0240 and submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

A request for applicability of this notice to a specific product should be directed to the Division of Prescription Drug Compliance and Surveillance (HFD–330), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice (DESI 1786) published in the **Federal Register** of February 25, 1972 (37 FR 4001), FDA announced its evaluation of reports received from the National Academy of Sciences/National Research Council, Drug Efficacy Study Group, on certain coronary vasodilator drugs. FDA classified controlled-release tablets of nitroglycerin as possibly effective for indications relating to the management, prophylaxis, or treatment of anginal attacks.

Notices published in the **Federal Register** of August 26, 1977 (42 FR 43127), October 21, 1977 (42 FR 56156), and September 15, 1978 (43 FR 41282), amended earlier notices (37 FR 26623, December 14, 1972; and 38 FR 18477, July 11, 1973) by temporarily exempting nitroglycerin in controlled-release forms from the time limits established for the Drug Efficacy Study Implementation (DESI) program (paragraph XIV, category I exemption). FDA granted this exemption to allow manufacturers additional time to study the effectiveness and bioavailability of their products. FDA also added additional dosage forms of nitroglycerin to the Drug Efficacy Study and the paragraph XIV, category I exemption.

The exemption notices established conditions for marketing the single-entity coronary vasodilators and identical, similar, or related products (§ 310.6 (21 CFR 310.6)), whether or not they had been marketed and whether or not they were subjects of approved NDA's. FDA required distributors and manufacturers to have ANDA's (conditionally approved, pending the results of ongoing studies) to market products not the subject of NDA's. If at least one drug sponsor was conducting clinical studies on a chemical entity, FDA permitted the marketing of all firms' products containing the same chemical entity in a similar dosage form, provided each product met the other conditions. Not all sponsors, therefore, were required to conduct clinical studies. Because bioavailability is specific for an individual product, however, FDA required each firm to conduct a bioavailability study on its own product.

In a notice published in the **Federal Register** of July 15, 1993 (58 FR 38129), after completing its review of the clinical studies submitted for the transdermal delivery system of nitroglycerin, FDA announced its conclusions that this dosage form of nitroglycerin is effective. The notice set forth the conditions for marketing and approval of such products. To receive full approval of an application based on effectiveness, as well as safety, the notice required that sponsors submit bioavailability/bioequivalence studies within 1 year.

The sponsors of the drug products listed in section II of this document are not in compliance with the July 15, 1993, notice in that they either have not submitted any bioavailability/bioequivalence data or have not submitted additional data on incomplete or inadequate studies.

Accordingly, this notice reclassifies the products to lacking substantial evidence of effectiveness, proposes to withdraw approval of the applications, and offers an opportunity for a hearing on the proposal.

II. NDA's and ANDA's Known by FDA to Be Subject to This Notice

1. NDA 20–146; Nitrodisc, release rate 0.2 milligrams (mg) of nitroglycerin per hour (h); G.D. Searle & Co., P.O. Box 5100, Chicago, IL 60680 (Searle).

Nitrodisc, release rate 0.3 mg of nitroglycerin per h; Searle.

Nitrodisc, release rate 0.4 mg of nitroglycerin per h; Searle.

2. ANDA 88–727; Deponit, release rate 0.2 mg of nitroglycerin per h; Schwarz Pharma, Inc., 5600 West County Line Rd., Mequon, WI 53092 (Schwarz) (formerly held by Wyeth Laboratories, Inc., P.O. Box 8297 Philadelphia, PA 19101).

3. ANDA 88–782; Nitroglycerin Transdermal System (NTS), release rate 0.2 mg of nitroglycerin per h; Hercon Pharmaceutical Co., Inc., P.O. Box 786, York, PA 17405 (Hercon).

4. ANDA 88–783; NTS, release rate of 0.6 mg of nitroglycerin per h; Hercon.

5. ANDA 89–022; Deponit, release rate 0.4 mg of nitroglycerin per h; Schwarz.

6. ANDA 89–516; NTS, release rate of 0.4 mg of nitroglycerin per h; Hercon.

III. Notice of Opportunity for a Hearing

On the basis of all the data and information available to her, the Director of the Center for Drug Evaluation and Research is unaware of any adequate and well-controlled clinical investigation conducted by experts who are qualified by scientific training and experience meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355), 21 CFR 314.126, and 21 CFR part 320 that demonstrates effectiveness (i.e., bioavailability/bioequivalence) of the drugs that have been found to be in compliance with the conditions established for continued marketing.

Therefore, notice is given to the holders of the NDA and ANDA's listed in section II of this document and to all other interested persons that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the act withdrawing approval of the applications and all amendments and supplements thereto on the ground that new information before her with respect to the drug products, evaluated with the evidence available to her when the applications were approved, shows there is a lack of substantial evidence that the drug products will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

In addition to the holders of the applications specifically named in section II of this document, this notice of opportunity for a hearing applies to all persons who manufacture or distribute a drug product, not the subject of an approved application, that is identical, related, or similar to a drug product named in section II of this document, as defined in § 310.6. It is the responsibility of every drug

manufacturer or distributor to review this notice of opportunity for a hearing to determine whether it covers any drug product that they manufacture or distribute. Such persons may request an opinion on the applicability of this notice to a specific drug product by writing to the Division of Prescription Drug Compliance and Surveillance (address above).

This notice of opportunity for a hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in § 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act (21 U.S.C. 321(p)) or because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962 (Pub. L. 87–781), or for any other reason.

In accordance with section 505 of the act and parts 310 and 314 (21 CFR parts 310 and 314), an applicant and all other persons subject to this notice are hereby given an opportunity for a hearing to show why approval of the applications should not be withdrawn.

An applicant or any other person subject to this notice who decides to seek a hearing shall file: (1) On or before April 26, 1999, a written notice of appearance and request for hearing; and (2) on or before May 24, 1999, the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing, as specified in § 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, a notice of appearance, and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in §§ 314.151 and 314.200 and in 21 CFR part 12.

The failure of an applicant or any other person subject to this notice to file a timely written notice of appearance and request for a hearing, as required by § 314.200, constitutes an election by that person not to use the opportunity for a hearing concerning the action proposed and a waiver of any contentions concerning the legal status of that person's drug products.Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice of opportunity for a hearing are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505 (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: March 3, 1999.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 99–7232 Filed 3–24–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Workshop on International Outreach and Training on Good Agricultural and Good Manufacturing Practices for Fresh Produce

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA) is announcing the following meeting: Workshop on International Outreach and Training on Good Agricultural and Good Manufacturing Practices for Fresh Produce. The topics to be discussed are developing a collaborative process for identifying training needs for foreign growers and producers who export fresh produce to the United States and identifying effective strategies to best meet those needs.

Date and Time: The meeting will be held on April 26 and 27, 1999, from 8:30 a.m. to 5:30 p.m., and on April 28, 1999, from 8:30 a.m. to 12 noon.

Location: The workshop will be held at the Inn and Conference Center, University of Maryland University College, University Blvd. at Adelphi Rd., College Park, MD, 301–985–7300.

Contact: Camille E. Brewer, Center for Food Safety and Applied Nutrition (HFS–32), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–260–2314, FAX 202–260–9653, e-mail ''cbrewer@oc.fda.gov''.

Registration: The meeting is open to the public. However, space is limited and preregistration is required. Send preregistration information (including name, title, firm name, address, telephone, and fax number), to Wendy Buckler, JIFSAN (HFS–6), Center for Food Safety and Applied Nutrition, FDA, 200 C St. SW., Washington, DC 20204, 202–205–4153, FAX 202–260–1654, e-mail ''wbuckler@bangate.fda.gov''. Translation into Spanish will be available. Limited space will be available at no cost to groups interested in exhibiting outreach, education, and training materials on produce safety. However, all exhibitors must preregister with Ms. Buckler.

If you need special accommodations due to a disability, please contact Ms. Buckler at least 7 days in advance.

SUPPLEMENTARY INFORMATION: On October 2, 1997, the President announced the ''Initiative to Ensure the Safety of Imported and Domestic Fruits and Vegetables'' (fresh produce safety initiative). As part of the fresh produce safety initiative, the President directed the Secretary of the Department of Health and Human Services (DHHS) and the Secretary of the U.S. Department of Agriculture (USDA), in cooperation with the agricultural community, to issue within 1 year guidance on good agricultural practices and good manufacturing practices for fresh fruits and vegetables. FDA coordinated the effort for DHHS.

FDA announced the availability of the final good agricultural practices and good manufacturing practices guidance on October 29, 1998 (63 FR 58055), after receiving and considering comments on the draft guidance from producers, foreign governments, and trade associations both in writing and during two separate rounds of public meetings on successively more developed drafts of the guide. The final guide (the guide) details a broad approach on how to minimize microbial contamination of produce through the control of: Water, manure, worker health and hygiene,

field and facility sanitation, and transportation.

On February 24, 1998, USDA and FDA issued a progress report to the President on the Initiative to Ensure the Safety of Imported and Domestic Fruits and Vegetables. The report summarized the progress USDA and FDA have made in providing good agricultural practices and good manufacturing practices guidance to domestic and international growers, harvesters, handlers, and transporters of fresh fruits and vegetables. The report discussed, among other things, the agencies' plans for assisting domestic and foreign producers to improve those practices.

The report stated that education and outreach programs are essential to foster appropriate application of the guidance by the domestic and international fresh fruit and vegetable industry, and that such programs are pivotal to industry's understanding of the essential principles of the guidance, as well as the scientific and practical reasons for application of the guidance as everyday production and processing practice.

The FDA workshop will begin the process for determining how to develop an education and outreach program for growers and producers of fresh fruit and vegetables imported into the United States. Participants will have the opportunity to discuss the most effective approaches for education and training and to identify any science-based needs that will further the implementation of the guide. At the meeting, foreign and domestic scientific experts, extension professionals, and industry representatives will make presentations on the applications of the guide. Representatives from donor organizations (e.g., the InterAmerican Development Bank) will also address infrastructure improvements needed to enhance food safety. Although the meeting will not offer training, per se, participants will have the opportunity to share current educational information and industry strategies that can further enhance the microbiological safety of fresh fruits and vegetables and contribute to the development of an educational framework for users of the guide.

Dated: March 17, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–7230 Filed 3–24–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–0282]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

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, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Blood Bank Inspection Checklist and Report and Supporting Regulations in 42 CFR 493.1269–493.1285; *Form No.:* HCFA–0282 (OMB# 0938–0170); *Use:* The Clinical Laboratory Improvement Amendments (CLIA) of 1988 requires the Department of Health and Human Services (HHS) to establish certification requirements for any laboratory that performs tests on human specimens, and to certify through the issuance of a certificate that those laboratories meet the requirements established by HHS. The law provides for inspections on an announced or unannounced basis during regular hours of operation. All records and information having a bearing on whether the laboratory is being operated in accordance with the law can be requested by the surveyor. The HCFA–0282 is the Blood Bank Inspection Checklist and Report which is outlined in the CLIA of 1988.; *Frequency:* Biennially; *Affected Public:* Not-for-profit institutions, Business or other for-profit, Federal Government, and State, Local, and Tribal Government; *Number of Respondents:* 1,250; *Total Annual Responses:* 1,250; *Total Annual Hours:* 625.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 15, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–7292 Filed 3–24–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–0319, 2786, and R–0074]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

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, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to

minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* State Medicaid Eligibility Quality Control (MEQC) Sample Section Lists and Supporting Regulations in 42 CFR 431.800–431.865; *Form No.:* HCFA–0319 (OMB# 0938–0147); *Use:* At the beginning of each month, State agencies are required to submit sample selection lists which identify all of the cases selected for review in the States' samples. These reviews are conducted to determine whether the sampled cases meet applicable State Title XIX eligibility requirements. The sample selection lists contain identifying information on Medicaid beneficiaries such as: State agency review number; beneficiary's name and address; the name of the county where beneficiary resides; and the Medicaid case number. The reviews are also used to assess beneficiary liability, if any, and to determine the amounts paid to provide Medicaid services for these cases.; *Frequency:* Monthly; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 55; *Total Annual Responses:* 660; *Total Annual Hours:* 5,280.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Fire Safety Survey Report Forms and Supporting Regulations in 42 CFR 416.44, 418.100, 482.41, 483.70, 483.470; *Form No.:* HCFA–2786 A–D, F, G, H, J, K, L, M, P and Q (OMB# 0938–0242); *Use:* The information from these forms will be used to make Medicare/Medicaid certification decisions. We request information in accordance with the Life Safety Code of the National Fire Protection Association. HCFA then surveys all facilities based upon prior compliance history; that is, the ''good'' facilities will be surveyed less frequently. Either the short or long fire safety form will be utilized each time a health survey is performed, depending on the circumstances.; *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 53; *Total Annual Responses:* 30,000; *Total Annual Hours:* 25,000.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Income and Eligibility Verification System (IEVS) and Supporting Regulations in 42 CFR 431.17, 431.306, 435.910, 435.920, 435.940–435.960; *Form No.:* HCFA–R–0074 (OMB# 0938–0467); *Use:* Section 1137 of the Social Security Act requires Medicaid State agencies and other federally funded welfare agencies to request income and resource data from certain federal agencies, State wage information collection agencies, and State unemployment compensation agencies through an IEVS. The purpose of the IEVS is to ensure that only eligible individuals receive benefits.; *Frequency:* Annually; *Affected Public:* Individuals or Households, and State, Local, or Tribal government; *Number of Respondents:* 54; *Total Annual Responses:* 54; *Total Annual Hours:* 101,414.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503

Dated: March 15, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–7291 Filed 3–24–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–79]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Payment Adjustment for Sole Community Hospitals and Supporting Regulations in 42 CFR 412.92;

Form No.: HCFA–R–79 (OMB# 0938–0477);

Use: Hospitals designated as ''Sole Community Hospitals'' that experience a five percent decrease in discharges in one cost reporting period, due to unusual circumstances, beyond its control, may request an adjustment to its Medicare payment amount;

Frequency: On occasion;

Affected Public: Not-for-profit institutions, business or other for-profit, and State, Local or Tribal Government;

Number of Respondents: 40;

Total Annual Responses: 40;

Total Annual Hours: 160.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice 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: March 8, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–7293 Filed 3–24–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: February 1999

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of February 1999, 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, and all Federal Health Care 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	
ATEGBOLE, OLUSEGUN V .... LAKELAND, FL	03/18/1999
AU, PUI-YEN ..... MERCER ISLAND, WA	09/24/1998
AU, ALLEN T C ..... MERCER ISLAND, WA	09/24/1998
BENNETT, JAMES W ..... TUCSON, AZ	10/05/1998
BOGGS, RENEE BOBBIE ..... HOBBS, NM	03/18/1999
BORNN, BRENDA F ..... CARSON, IA	03/18/1999
BROWN, ANGELA DENISE ..... NASHVILLE, TN	03/18/1999
CHAVEZ, ARLENE ..... ALBUQUERQUE, NM	03/18/1999
CHRISTIANSON, CLAYTON OSCAR ..... GAINESVILLE, FL	03/18/1999
CLEMENDOR, ROBERT ..... DECATUR, GA	03/18/1999
CLEMENTE, FRANK ..... E MARLBORO, NY	03/18/1999
FRANK, GARY D ..... PHOENIX, AZ	11/05/1998
GABANI, YASIR AHMED ..... HUNTSVILLE, AL	03/18/1999
GEHA, JAMES ..... SCOTTSDALE, AZ	03/18/1999
HAIL, ANN ..... HOBBS, NM	03/18/1999
JACKSON, ZUNILDA REYES .. PAHOKEE, FL	03/18/1999
LLOYD, TIMIKA ..... DECATUR, GA	03/18/1999
MILLER, LAUREN OVAL ..... MCKINLEYVILLE, CA	03/18/1999
SAGHERIAN, ARTIN ..... GLENDALE, CA	03/18/1999
SOLARZ, LAUREN ..... VOORHEES, NJ	03/18/1999
FELONY CONTROL SUBSTANCE CONVICTION	
THIRKILL, SHARRON K ..... LIMA, OH	03/18/1999
PATIENT ABUSE/NEGLECT CONVICTIONS	
BALTIERRA, JUAN R ..... SOLEDAD, CA	03/18/1999
BLOOD, BRAD R ..... DOWNEY, CA	03/18/1999
BRANAM, MICHAEL DARRYL PETALUMA, CA	03/18/1999
BRIMELLI, JUDITH L ..... SOLVAY, NY	03/18/1999
DARRELL, DAVID RYAN ..... STILLWATER, OK	03/18/1999
FLOWERS, HERMAN JOEL JR PEMBERTON, NJ	03/18/1999
GOMEZ, ANGELA MARIE ..... LINCOLN, CA	03/18/1999
GREEN, MICHAEL DEE ..... EUREKA, CA	03/18/1999
HENRICKSEN, RUTH ANN ..... CLOVER, SC	03/18/1999
KIRKLAND, FANNIE MARIE .... ALEXANDRIA, LA	03/18/1999
MCALLISTER, LAGINA RENEE ..... FAYETTEVILLE, NC	03/18/1999
PEDEGLORIO, GIL ASPIRAS VALLEJO, CA	03/18/1999
RANK, DENNIS R ..... SIDNEY, OH	03/18/1999
SHAFT, GEORGIA ANN ..... PERRY, MI	03/18/1999
THORNTON, SCOTT WAYNE HARRIMAN, TN	03/18/1999
TWYMAN, TOMMY T ..... CHESTER, PA	03/18/1999
WALTUCH, THEODORE L ..... COALINGA, CA	03/18/1999
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ALEMAN, LINDA L ..... BELLEVILLE, IL	03/18/1999
BELANGER, KENNETH JR ..... CHICAGO, IL	03/18/1999
BENSON, LAUREL A ..... DES MOINES, IA	03/18/1999
BETHANY, EVA CARPENTER LEXINGTON, MS	03/18/1999
BISHOP, ALMA R ..... HAYWARD, CA	03/18/1999
BOLLES, LEO JOSEPH ..... BELLEVUE, WA	03/18/1999
BOWEN, ALLEN J ..... MUSCATINE, IA	03/18/1999
CAMPBELL, MARGARET A .... STOCKTON, CA	03/18/1999
CHANCE, KIRBY R ..... DES MOINES, IA	03/18/1999
CHAVIS, PATRICK ..... LOS ANGELES, CA	03/18/1999
COUNTS, EDWARD F ..... LEXINGTON, KY	03/18/1999
DARK, PAUL L ..... CHICAGO, IL	03/18/1999
DATES, DELORES A ..... CHICAGO, IL	03/18/1999
DICKINSON, DAVID ..... CARSON CITY, NV	03/18/1999
DILLIGARD, JANICE W ..... NEW BERN, NC	03/18/1999
DIXIT, AMEER M ..... LAGUNA NIGUEL, CA	03/18/1999
DIXON, DAVID ..... CORONA, CA	03/18/1999
DULAC, MARK BRIAN ..... WILLIAMSBURG, MI	03/18/1999
ESPINOZA, RURICO ROBERT IMPERIAL, CA	03/18/1999
FITZGERALD, DAVID A ..... GLENCOE, IL	03/18/1999
FOURNIER, BARRY P ..... BULRINGTON, MA	03/18/1999
FRALISH, BILLIE J ..... HARRISBURG, NC	03/18/1999
GABRIELE, VICTORIA ..... WATERBURY, CT	03/18/1999
GOEI, GORDON ..... BEVERLY HILLS, CA	03/18/1999
HAGGERTY, THOMAS MICHAEL ..... ESCONDIDO, CA	03/18/1999
HERGENRADER, SHARON M DES MOINES, IA	03/18/1999
HILL, JAMES L ..... ANACORTE, WA	03/18/1999
JACKSON, MONA E ..... BRIGHTON, IA	03/18/1999
JENKINS, JULIA ..... KING, NC	03/18/1999
JOHNSON, ROY J JR ..... SHELBY, OH	03/18/1999
KIRGAN, KEVIN W ..... MARISSA, IL	03/18/1999
LARK, DAVID LEE ..... CORCORAN, CA	03/18/1999
LEE, ANNETTE ..... HICKORY, NC	03/18/1999
LONG, KATHLEEN M ..... OCEANSIDE, CA	03/18/1999
MARINESCU, TEOHARI STEFAN ..... W BLOOMFIELD, MI	03/18/1999
MAY, INGRID E ..... GREENFIELD, IA	03/18/1999
MCKINNON, JAMES A ..... CORONA, CA	03/18/1999
MCLACHLAN, CYNTHIA ANN ORION, MI	03/18/1999
MCNEILL, MARY G ..... GAFFNEY, SC	03/18/1999
MINKOWSKI, WILLIAM LOUIS SANTA CRUZ, CA	03/18/1999
NAAYEM, HOUDA ..... MINNEAPOLIS, MN	03/18/1999
NAHAM, RICHARD E ..... LOS ANGELES, CA	03/18/1999
NETZEL, LYNN A ..... CICERO, IL	03/18/1999
PANSCIK, CYNTHIA L	03/18/1999

Subject city, state	Effective date
AVOCA, MI	
PEAVY, WINDY ..... BATESVILLE, MS	03/18/1999
POWELL, KATHRYNE SHAW BUTNER, NC	03/18/1999
RANDOL, BARBARA ..... MARION, IL	03/18/1999
RISENHOOVER, PATRICIA MARIE ..... FRESNO, CA	03/18/1999
ROBERTS, JUDY ..... SHELTON, CT	03/18/1999
RYAN, JEANETTE ..... WASHINGTON, NC	03/18/1999
SANBORN, MICHAEL T ..... DES MOINES, IA	03/18/1999
SANEZ, CHRISTOPHER CHARLES ..... RESEDA, CA	03/18/1999
SAWIN, DOUGLAS B ..... LAGUNA BEACH, CA	03/18/1999
SCARBEAU, RUTH O ..... NEEDHAM, MA	03/18/1999
SIPLE, JONI ..... REDDING, CA	03/18/1999
STEWART, CHARLES DAVID LAMESA, TX	03/18/1999
STRONG, REBECCA ..... WATERLOO, IA	03/18/1999
SUTTON, TAWANA LEE ..... CARMI, IL	03/18/1999
TERRELL, PAULA EUGENA ... GASTONIA, NC	03/18/1999
THOMPSON, KAREN ..... SPARKS, NV	03/18/1999
TRAHMS, ROBERT GEORGE GREENBRAE, CA	03/18/1999
TUCHSCHER, THOMAS J ..... SAN DIEGO, CA	03/18/1999
WAGNER, CAROL JEAN ..... YUCAIPA, CA	03/18/1999
WERNER, FABANN M ..... MANSFIELD, OH	03/18/1999
WICKREMASINGHE, FELIX A PEEBLES, OH	03/18/1999
WODKA, RICHARD MARK ..... MARANA, AZ	03/18/1999
ZAGURSKI, DEBORAH A ..... LUDLOW, MA	03/18/1999
FEDERAL/STATE EXCLUSION/ SUSPENSION	
LARICCHIA, SAMUEL ..... RIDGEFIELD, CT	03/18/1999
MSK PHARMACY, INC ..... BROOKLYN, NY	03/18/1999
MUNIR, SHAHID ..... BROOKLYN, NY	03/18/1999
SYMA PHARMACY, INC ..... BROOKLYN, NY	03/18/1999
OWNED/CONTROLLED BY CONVICTED/ EXCLUDED	
ALLCARE HEALTH SERVICES, INC ..... MONROE, CT	03/18/1999
G & A TRANSPORTATION SERVICES ..... HUNTSVILLE, AL	03/18/1999
MILLER MED TRANS ..... MEKINLEYVILLE, CA	03/18/1999
ORANGE CENTER PHARMACY, INC ..... MONROE, CT	03/18/1999
PEACH STATE HOME MEDICAL ..... COLLEGE PARK, GA	03/18/1999
DEFAULT ON HEAL LOAN	
AHRENDT, ANDREW R ..... MARIETTA, GA	03/18/1999
ANDERSON, MICHAEL L ..... RED BUD, IL	03/18/1999
COBY, MICHAEL E ..... HADLEY, MA	03/18/1999
OBOT, ETIOWO A ..... LITHONIA, GA	03/18/1999
ROBLES, ALLEN ..... SAN FRANCISCO, CA	03/18/1999
ROMANICK, MICHAEL R ..... LONG BEACH, CA	03/18/1999
SHARP, GREGORY D ..... COLVILLE, WA	03/18/1999
SHERRON, HUGH KEITH ..... BROWNSVILLE, TX	03/18/1999
SHINDER, THOMAS W ..... SEAGOVILLE, TX	03/18/1999
SPAULDING, MICHELE DELOIS ..... WASHINGTON, DC	03/18/1999
TURNER, ANTHONY J ..... WICHITA, KS	03/18/1999
VIGIL, JACOB ..... EL PASO, TX	03/18/1999
VINCENTI, CAMILLA C ..... PLAINSBORO, NJ	03/18/1999
WEBSTER, LAWRENCE H ..... SEABECK, WA	03/18/1999
WRIGHT, LARRY ALAN ..... CHICO, CA	03/18/1999

Dated: March 4, 1999.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 99–7289 Filed 3–24–99; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4316–FA–04]

Announcement of Funding Award—Fiscal Year 1998 Lead-Based Paint Hazard Control Midwest Research Institute

AGENCY: Office of the Secretary—Office of Lead Hazard Control, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department to the Midwest Research Institute. This announcement contains the name and address of the awardee and the amount of the award.

FOR FURTHER INFORMATION CONTACT: David Levitt, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 755–1785, ext. 156. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Research to develop improved methods for measuring lead in paint films, dust, and soil samples is authorized by section 1052(3) of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992).

The Midwest Research Institute will provide oversight, maintenance and storage for the HUD owned lead-based paint archives. The lead-based paint archives consist of approximately 150 real world housing components which are lead-based painted. These components have served as the basis for the development of Performance Characteristic Sheets (PCS) for use with field-portable X-ray Fluorescence (XRF) instruments, which are currently the most common technology utilized for performing lead-based paint inspections. PCSs are utilized in conjunction with an XRF to facilitate the accurate interpretation of data generated by that specific XRF instrument. Use of the XRF, its manufacturer's instructions, and the PCS are important elements necessary for conducting a lead-based paint inspection in conjunction with the HUD Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing (HUD, 1995, with a 1997 revision of chapter 7 on inspection).

The lead-based paint archives will continue to be used for the testing of XRF instruments, and will also be used for the testing of alternative technologies developed for the identification of lead-based paint (e.g., spot test kits). The use of existing lead-based paint archive components for evaluating testing instrumentation is an important part of ongoing efforts to develop new, improved, and cost-effective methods for accurately identifying and quantifying lead-based paint in target housing. The results of these efforts will continue to support HUD's goal of reducing the incidence of childhood lead poisoning.

The Midwest Research Institute (MRI) will continue to provide oversight and coordination with manufacturers and research entities on the testing of new and existing technologies for the identification of lead-based paint. In addition, MRI will ensure that the lead-

based paint archives are maintained in good condition to allow for their continued use as components in instrument testing protocols.

This notice announces the award of $24,612 to MRI. This funding will be used by MRI for the continued oversight of the lead-based paint archive facility and coordination of instrument testing activities.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of the award as follows: Midwest Research Institute, 425 Volker Boulevard, Kansas City, MO 64110–2299. Amount of Grant: $24,612

Dated: March 18, 1999.

David E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 99–7343 Filed 3–24–99; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

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.*).

Permit Number TE009163

Applicant: Raptor Resource Project, Ridgeway, Iowa.

The applicant requests a permit to take (capture, temporarily hold, translocate, and release) Peregrine falcons (Falco peregrinus) in Minnesota, Iowa, and Wisconsin. Activities are proposed for the enhancement of survival of the species in the wild.

Permit Number TE009168

Applicant: Leon C. Hinz, Jr.

The applicant requests a permit to take (capture and release; limited removal from the wild for voucher specimens) Hungerford's crawling water beetle (*Brychius hungerfordi*) in Michigan. Surveys are proposed to document the distribution of the species for the purpose of enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: March 18, 1999.

T.J. Miller,

Acting Program Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–7246 Filed 3–24–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. TE–800929.

Applicant: City of San Diego, San Diego, California.

The applicant requests a permit amendment to take (harass by survey, capture and release) the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with population monitoring in vernal pools in San Diego County, California for the purpose of enhancing its survival.

Permit No. TE–007628.

Applicant: Darren Smith, San Diego, California.

The applicant requests a permit to take (pursue by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout the species' range for the purpose of enhancing its survival.

Permit No. TE–008031.

Applicant: David W. Flietner, Riverside, California.

The applicant requests a permit to take (pursue by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout the species' range for the purpose of enhancing its survival.

Permit No. TE–844475.

Applicant: Shapiro & Associates, Portland, Oregon.

The applicant requests a permit to take (capture and collect) the Lost River sucker (*Deltistes luxatus*) and the shortnose sucker (*Chasmistes brevirostrum*) in conjunction with surveys, and DNA and otolith analyses in Klamath County, Oregon for the purpose of enhancing their survival.

Permit No. TE–007907.

Applicant: U.S. Geological Survey, Western Fisheries Research Center, Cook, Washington.

The applicant requests a permit to take (capture, mark, and collect) the Lost River sucker (*Deltistes luxatus*) and the shortnose sucker (*Chasmistes brevirostrum*) in conjunction with population monitoring and life history studies in Klamath and Lake Counties, Oregon for the purpose of enhancing their survival.

Permit No. TE–799569.

Applicant: Renee Y. Owens, Jamul, California.

The applicant requests a permit amendment to take (harass by survey, locate and monitor nests, and remove brown-headed cowbird eggs) the southwestern willow flycatcher (*Empidonax extimus traillii*) and take (locate and monitor nests, and remove brown-headed cowbird eggs) the least Bell's vireo (*Vireo bellii pusillum*) in conjunction with population monitoring and presence or absence surveys in San Diego, Orange, and Riverside Counties, California for the purpose of enhancing their survival.

Permit No. TE–799568.

Applicant: Dana K. Kamada, San Clemente, California.

The applicant requests a permit amendment to take (harass by survey, locate and monitor nests, and remove brown-headed cowbird eggs) the southwestern willow flycatcher (*Empiodonax extimus traillii*) throughout the species' range in California, Arizona, New Mexico, Nevada, and Colorado in conjunction with population monitoring and presence or absence surveys for the purpose of enhancing its survival. The applicant also requests a permit amendment to take (locate and montor nests, and remove brown-headed

cowbird eggs) the least Bell's vireo (*Vireo bellii pusillus*) and take (pursue by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) throughout the species' range in conjunction with population monitoring and presence or absence surveys for the purpose of enhancing their survival.

Permit No. TE–008547.

Applicant: Botany Department, San Diego Natural History Museum, San Diego, California.

The applicant requests a permit to take (remove and reduce to possession) *Chorizanthe orcuttiana* and *Arctostaphylos vanessae* from the Marine Corp Air Station in Miramar, California, as voucher specimens for the purpose of enhancing their survival.

Permit No. TE–009015.

Applicant: Jason Lee Berkley, Whittier, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax trailli extimus*) throughout the species' range in California for the purpose of enhancing its survival.

Permit No. TE–009018.

Applicant: Rancho Santa Ana Botanic Garden, Claremont, California.

The applicant requests a permit to take (remove and reduce to possession) *Berberis nevinii* and *Dodecahema leptoceras* from the Angeles National Forest in California as voucher specimens for the purpose of enhancing their survival.

Permit No. TE–785148.

Applicant: Ogden Environmental and Energy Services, San Diego, California.

The applicant requests a permit amendment to take (harass by survey) the Yuma clapper rail (*Rallus longirostris yumanensis*) and light-footed clapper rail (*Rallus longirostris levipes*) throughout each species' range in conjunction with presence or absence surveys for the purpose of enhancing their survival.

Permit No. TE–810394.

Applicant: Daniel A. Guthrie, Claremont, California.

The applicant requests a permit amendment to take (harass by survey, locate and monitor nests, and remove brown-headed cowbird eggs) the southwestern willow flycatcher (*Empiodonax extimus traillii*) and take (locate and montor nests and remove brown-headed cowbird eggs) the least Bell's vireo (*Vireo bellii pusillum*) in Ventura County, California, in conjunction with population monitoring and presence or absence surveys for the purpose of enhancing their survival.

Permit No. TE–007456.

Applicant: Leonard A. Freed, University of Hawaii, Honolulu, Hawaii.

The applicant requests renewal of his permit to take (capture, mark, collect biological samples) the Hawaii Akepa (*Loxops coccineus coccineus*), Hawaii Creeper (*Oreomystis mana*), Akiapolaau (*Hemignathus munroi*), and Hawaiian Hawk (*Buteo solitarius*) in conjunction with demographic, genetic, and disease research for the purpose of enhancing their survival. All of these activities have previously been authorized under subpermit UMNZA.

Permit No. 825573.

Applicant: Janet A. Randall, San Francisco State University, San Francisco, California.

The applicant requests an amendment to her permit to take (harass by radio-tagging) additional giant kangaroo rats (*Dipodomys ingens*) in conjunction with scientific research in Merced, Fresno, Monterey, San Luis Obispo, Kings, Kern, and Santa Barbara Counties, California, for the purpose of enhancing its survival.

Permit No. TE–745541.

Applicant: Stephen J. Montgomery, San Diego, California.

The applicant requests an amendment to his permit to take (capture and collect biological samples) the Amargosa vole (*Microtus californicus scirpensis*) in conjunction with life history studies throughout the species range for the purpose of enhancing its survival.

Permit No. TE–834489.

Applicant: Stacie Tennant, Costa Mesa, California.

The applicant requests a permit amendment to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout the species range in California for the purpose of enhancing its survival.

Permit No. TE–797233.

Applicant: Entomological Consulting Services, LTD., Pleasant Hill, California.

The applicant requests a permit to take (harass, pursue, capture, collect) the Mount Hermon June beetle (*Polyphylla barbata*), valley elderberry longhorn beetle (*Desmocerus californicus*), bay checkerspot butterfly (*Euphydryas editha bayensis*), Behrens silverspot butterfly (*Speyeria zerene behrensii*), Callippe silverspot butterfly (*Speyeria callippe callippe*), Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*), lotis blue butterfly (*Lycaeides argyrognomon lotis*), mission blue butterfly (*Icaricia icarioides missionensis*), Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*), Quino checkerspot butterfly (*Euphydryas editha quino*), San Bruno elfin butterfly (*Callophrys mossii bayensis*), Smith's blue butterfly (*Euphilotes enoptes smithi*), Laguna Mountains skipper (*Pyrgus ruralis lagunae*), Delhi sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*), Zayante band-winged grasshopper (*Trimerotropis infantilis*), and the California freshwater shrimp (*Syncaris pacifica*) in conjunction with monitoring, surveys, and life history studies throughout each species range in California and Oregon for the purpose of enhancing their survival.

Permit No. TE–009066.

Applicant: Debby Martin, Sacramento, California.

The applicant requests a permit amendment to take (harass by survey, capture, and collect) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) throughout the range of the species in California in conjunction with surveys for the purpose of enhancing their survival.

Permit No. TE–797267.

Applicant: H.T. Harvey & Associates, Alviso, California.

The applicant requests an amendment to his permit to take (harass by survey) the California clapper rail (*Rallus longirostris obsoletus*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–004578.

Applicant: Robin Bolser, Goleta, California.

The applicant requests a permit amendment to take (harass by survey, capture, and collect) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) throughout the range of the species in California in conjunction with demographic research for the purpose of enhancing their survival.

Permit No. TE–009173.

Applicant: Cary Myler, Pocatello, Idaho.

The applicant requests a permit to take (collect and sacrifice) the Bruneau hot springsnail (*Pyrgulopsis bruneauensis*) throughout Bruneau River and its associated tributaries in conjunction with scientific studies for the purpose of enhancing its survival.

DATES: Written comments on these permit applications must be received by April 26, 1999.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Recovery, Planning and Permits, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–7266 Filed 3–24–99; 8:45 am]

BILLING CODE 4310–55–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–009303

Applicant: Keith Brewer, Stateline, NV

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.

PRT–009306

Applicant: Marc Cheramie, Golden Meadow, LA

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.

PRT–009421

Applicant: Steven J. Ennis, Tullahoma, TN

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.

PRT–009420

Applicant: Jordan E. Ennis, Tullahoma, TN

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.

PRT–007657

Applicant: Clint Heiber, Red Bluff, CA

The applicant requests a permit to import the sport-hunted trophy on one male straight-horned markhor (*Capra falconeri jerdoni*) from the Torghar Hills, Baluchistan Province, Pakistan for the purpose of enhancement of the survival of the species.

PRT–005736

Applicant: The Wildlife Conservation Society's Bronx Zoo/Wildlife Conservation Park, Bronx, New York

The applicant requests a permit to import four male and six female proboscis monkeys (*Nasalis larvatus*) from the Surabaya Zoo, Surabaya, Java, Indonesia. These animals were captive born at the zoo or rescued from a recent forest fire. The import is for the purpose of enhancement of the survival of the species through the development of a cooperative breeding program.

PRT–006843

Applicant: Richard Ayres, Anaheim Hills, CA

The applicant requests a permit to conduct the interstate commerce of two male and three female radiated tortoises (*Geochelone radiata*) from Wayne Hill, Winterhaven, FL for the purpose of cooperative breeding for enhancement of the survival of the species.

PRT–008967

Applicant: Brian Reichart, Frankton, IN

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–008968

Applicant: Walter A. Oleniwski, Silver Spring, MD

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–008969

Applicant: John R. Garland, Round Lake, IL

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–008961

Applicant: Tom E. Smith, Salisbury, NC

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–008875

Applicant: Bradley W. Nicholson, Pearisburg, VA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–008656

Applicant: Robert W. Landis, Fountain City, IN

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–008747

Applicant: John L. Estes, Dallas, TX

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, 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 a hearing is at the discretion of the Director. Documents and other information submitted with these applications are available for

review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 22, 1999.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–7277 Filed 3–24–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–034–1010–00]

Closure of Public Land to Camping in Yavapai County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of public lands to camping.

SUMMARY: Notice is hereby given that the following described lands are temporarily closed until further notice for camping for the protection of public health and safety under the provisions of 43 CFR 8364.1. The closure will remain in effect until rescinded or modified by the Phoenix Field Manager.

Gila and Salt River Meridian, Arizona

T. 12 N.,R. 1 E.,
Sec. 23, Lot 3, MS 3991, SW¼SE¼.

EFFECTIVE DATE: This order is effective March 16, 1999.

SUPPLEMENTARY INFORMATION: The public lands involved (approximately 94 acres) are adjacent to areas of expanding urban development. Unregulated and extended overnight camping use is not consistent with the orderly growth of the communities and presents health and safety problems.

ORDER: Notice is hereby given that effective the date of signature by the authorized officer of this notice the above disposal lands are closed to camping until further notice.

FOR FURTHER INFORMATION CONTACT: Michael A. Taylor, Field Manager, Phoenix Field Office, 2015 West Deer Valley Road, Phoenix, AZ 85027, (602) 580–5500.

Dated: March 16, 1999.

Michael A. Taylor,

Field Manager.

[FR Doc. 99–7294 Filed 3–24–99; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–952–1010–00–EAA1]

Order—Vehicle Route Closure in Lawrence County, SD

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of vehicle route closures.

SUMMARY: A portion of contiguous vehicle routes on Federal public lands in the vicinity of the Belle Eldridge Mine, east of Deadwood, South Dakota, are being closed to all motorized and mechanized (bicycles, etc.) vehicular traffic, and foot access, except as noted below, under the provisions of 43 CFR 8364.1. These closures are being initiated to protect the public from heavy metals contamination as well as physical hazards at the mine site.

SUPPLEMENTARY INFORMATION: The closures are within a portion of:

Legal Description

Black Hills Principal Meridian

T. 5 N., R. 3 E.,
Sec. 25, NW¼,
Lawrence County, South Dakota.

and include the following routes within this legal description:

(1) The route in Spruce Gulch beginning 1.0 miles upstream from the intersection of Railroad Avenue and Sampson Street within the city of Deadwood, South Dakota, to the intersection of the Spruce Gulch road and the East Spruce Gulch road, for 0.2 miles, then continuing up Spruce Gulch to the point where the Spruce Gulch road crosses the Spruce Gulch stream, for 0.05 miles, and also from the intersection of the Spruce Gulch road and the East Spruce Gulch road, continuing up East Spruce Gulch road, for a distance of 0.2 miles.

These routes are being closed to all motorized and mechanized vehicles with the following exceptions:

1. Law enforcement and other emergency personnel while engaged in emergency operations and official duties.

2. BLM employees while engaged in approved official duties.

3. Contractors, cooperating entities, and regulators involved in approved reclamation actions designed to restore the Belle Eldridge Mine site.

4. Individuals or other entities, and their agents, having ownership of lands necessitating passage through the closed road, who apply for an exception and whose need for access is found to be legitimate.

Failure to comply with this closure may result in a fine of not more than $1,000 or imprisonment not to exceed 12 months, or both, in accordance with 43 CFR 8360.0–7.

These closures are being initiated to protect the public from heavy metals contamination as well as physical hazards at the mine site.

A Removal Site Evaluation (RSE) and Engineering Evaluation/Cost Analysis Report (EECA) for the Belle Eldridge Mine, addressing the closure and other activities, is available for inspection at the address listed below.

EFFECTIVE DATES: The closures will be effective upon posting and closure of the route(s) by the Authorized Officer. The closure will be in effect until completion of the rehabilitation of the Belle Eldridge Mine site.

FOR FURTHER INFORMATION CONTACT: Charles A. Berdan, South Dakota Field Office, Acting Field Manager, or Russell Pigors, Natural Resource Specialist, 310 Roundup Street, Belle Fourche, South Dakota 57717, telephone (605) 892–2526.

Dated: March 10, 1999.

Charles A. Berdan,

Acting South Dakota Field Manager.

[FR Doc. 99–7239 Filed 3–24–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–00; AA–6649 and AA–6689]

Public Land Order No. 7380; Withdrawal of Public Lands for Atka Village Selection and Pauloff Harbor Village Selection; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 26,579.51 acres of public lands located within the Alaska Peninsula National Wildlife Refuge or the Alaska Maritime National Wildlife Refuge, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, pursuant to section 22(j)(2) of the Alaska Native Claims Settlement Act. This action reserves 13,968.61 acres of the lands for selection by the Atxam Corporation, the village corporation for

Atka, and reserves 12,610.90 acres of the lands for selection by the Sanak Corporation, the village corporation for Pauloff Harbor. This withdrawal is for a period of 120 days; however, any lands selected shall remain withdrawn by the order until they are conveyed. Any lands described herein that are not selected by the corporations will remain withdrawn as part of the Alaska Peninsula National Wildlife Refuge or the Alaska Maritime National Wildlife Refuge, pursuant to the Alaska National Interest Lands Conservation Act, and will be subject to the terms and conditions of any withdrawal of record.

EFFECTIVE DATE: March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5049.

By virtue of the authority vested in the Secretary of the Interior by section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands located within the Alaska Peninsula Wildlife Refuge or the Alaska Maritime National Wildlife Refuge, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and are hereby reserved for:

(a) The selection of the remaining entitlement under section 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 (1994), by the Atxam Corporation, village corporation for Atka:

Seward Meridian

T. 52 S., R. 72 W.,
Secs. 15 to 34, inclusive.
T. 75 S., R. 121 W.,
Secs. 28, 33, 34, and 35.
T. 76 S., R. 121 W.,
Secs. 3 and 4.
T. 93 S., R. 177 W., (Unsurveyed)
Sec. 8.
T. 93 S., R. 179 W., (Unsurveyed)
Sec. 28.

The areas described aggregate approximately 13,968.61 acres.

(b) The selection of the remaining entitlement under section 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 (1994), by the Sanak Corporation, village corporation for Pauloff Harbor:

Seward Meridian

T. 53 S., R. 68 W.,
Secs. 3, 4, 5, 8, 9, 10, 15, 16, 20, and 21.
T. 52 S., R. 70 W.,
Secs. 17 to 20, inclusive.
T. 52 S., R. 71 W.,
Secs. 9, 10, 13 to 16, inclusive;
Secs. 21 to 24, inclusive; and
Secs. 26 to 32, inclusive.
T. 53 S., R. 73 W.,
Secs. 33 and 34.

The areas described aggregate 12,610.90 acres.

The areas described in (a) and (b) above aggregate a total of approximately 26,579.51 acres.

2. Prior to conveyance of any of the lands withdrawn by this order, the lands shall be subject to administration by the Secretary of the Interior under applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by this withdrawal.

3. This order constitutes final withdrawal action by the Secretary of the Interior under section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1994), to make lands available for selection by the Atxam Corporation, to fulfill the entitlement of the village for Atka, and to make lands available for selection by the Sanak Corporation, to fulfill the entitlement of the village for Pauloff Harbor, under section 12 and section 14(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 and 1613 (1994).

4. This withdrawal will terminate 120 days from the effective date of this order; provided, any lands selected shall remain withdrawn pursuant to this order until conveyed. Any lands described in this order not selected by the corporation shall remain withdrawn as part of the Alaska Peninsula National Wildlife Refuge or the Alaska Maritime National Wildlife Refuge, pursuant to sections 302(1), 303(1) and 304(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 668(dd) (1994); and will be subject to the terms and conditions of any other withdrawal or segregation of record.

5. It has been determined that this action is not expected to have any significant effect on subsistence uses and needs pursuant to section 810(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120(c) (1994) and this action is exempted from the National Environmental Policy Act of 1969, 42 U.S.C. 4321 note (1994), by section 910 of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1638 (1994).

Dated: March 12, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–7290 Filed 3–24–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; MTM 86164]

Public Land Order No.7381; Withdrawal of Public Land for Protection of the Crystal Cave Area; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 174.48 acres of public land from surface entry and mining for a period of 50 years to protect the unique and significant geologic resources of the Crystal Cave area. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, PO Box 36800, Billings, Montana 59107, 406–255–2949, or Loretta Park, BLM Lewistown Field Office, Box 1160, Lewistown, Montana 59457, 406–538–7461.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described land is hereby withdrawn from settlement, sale, location or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, for the Bureau of Land Management to protect the unique and significant geologic resources of the Crystal Cave area:

Principal Meridian, Montana

T. 16 N., R. 19 E.,
Sec. 15, lot 15, lots 25 to 28, inclusive, NW¼SW¼, and MS 9204;
Sec. 16, MS 5974.

The area described contains 174.48 acres in Fergus County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: March 12, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–7296 Filed 3–24–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–050–1110–00; NMNM 95104]

Public Land Order No. 7382; Withdrawal of Public Lands for the Devil's Backbone Desert Bighorn Sheep Habitat Area; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 5,607.52 acres of public lands from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect and preserve endangered desert bighorn sheep habitat within the Devil's Backbone Desert Bighorn Sheep Habitat Area. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Lois Bell, BLM Socorro Field Office, 198 Neel Avenue NW, Socorro, New Mexico 87801, 505–835–0412.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws, (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect and preserve endangered desert bighorn sheep habitat within the Devil's Backbone Desert Bighorn Sheep Habitat Area:

New Mexico Principal Meridian

T. 5 S., R. 3 W.,
sec. 16, lots 5 to 8, inclusive, N½, and N½S½
secs. 21, 28, 29, and 32.
T. 6 S., R. 3 W.,
sec. 4, lots 3 and 4, and SW¼;
sec. 9, W½;
sec. 15, W½;
sec. 16;
sec. 22, NE¼, N½NW½, SE¼W E½SW¼, and SE¼.
T. 5 S., R. 4 W.,
sec. 25, E½.

The areas described aggregate 5,607.52 acres in Socorro County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: March 12, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–7300 Filed 3–24–99; 8:45 am]

BILLING CODE 4310–VC–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–020–1430–01; NMNM 97074/G–010–G9–0251]

Public Land Order No. 7383; Withdrawal of Public Lands for the Rio Grande Corridor; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 2,151.80 acres of public lands from surface entry and mining, and 52.30 acres of federally reserved mineral interests underlying private surface estate from mining, for a period of 50 years, for the Bureau of Land Management to protect the outstanding recreational, scenic, wildlife, and riparian values of the Rio Grande Corridor. The lands have been and will remain open to mineral leasing. An additional 1,129.96 acres of non-Federal lands and the surface estate of the above 52.30 acres would become subject to the withdrawal if acquired.

EFFECTIVE DATE: March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Francina Martinez, BLM Taos Field Office, 226 Cruz Alta Road, Taos, New Mexico 87571, 505–758–8851.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws, (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, for the Bureau of Land Management to protect the outstanding recreational, scenic, wildlife, and riparian values of the Rio Grande Corridor:

New Mexico Principal Meridian

T. 23 N., R. 9 E.,
Sec. 22, SE¼SE¼;
Sec. 23, lots 1 to 4, inclusive;
Sec. 24, lot 2 and SW¼NW¼;
Sec. 26, NW¼NW¼;
Sec. 27, NE¼, SE¼NW¼, SW¼, and W½SE¼;
Sec. 34, N½NW¼, SW¼NW¼, and N½SW¼.
T. 23 N., R. 10 E.,
Sec. 15, lots 6 to 9, inclusive;
Sec. 16, lot 3 and SW¼SW¼;
Sec. 19, lots 14, 20, 21, 22, 36, and 37;
Sec. 20, lots 13 to 16, inclusive;
Sec. 21, lots 1, 2, 6, 7, and 8.
T. 24 N., R. 11 E.,
Sec. 32, lot 3.
T. 27 N., R. 11 E.,
Sec. 36, lots 5 to 7, inclusive, and a parcel of land consisting of 5.6 acres lying along the west boundary of and within the Antoine Leroux Land Grant.
T. 27 N., R. 12 E.,
Sec. 30, SW¼NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
Sec. 31, lots 1 to 4, inclusive, N½NW¼, and 130 acres of the Antoine Leroux Land Grant meandering the east boundary of the Rio Grande.
T. 28 N., R. 12 E.,
Sec. 10, N½NW¼ except patent No. 39879.

The areas described aggregate 2,151.80 acres in Taos and Rio Arriba Counties.

2. Subject to valid existing rights, the federally reserved mineral interests in the following described lands are hereby withdrawn from mining under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, for the Bureau of Land Management to protect the outstanding recreational, scenic, wildlife, and riparian values of the Rio Grande Corridor:

New Mexico Principal Meridian

T. 23 N., R. 9 E.,
Sec. 24, tract A and NE¼SW¼.
T. 23 N., R. 10 E.,
Sec. 19, lot 13.

The areas described aggregate 52.30 acres in Rio Arriba County.

3. The surface estate of the lands described in Paragraph 2 is non-Federal. In the event these lands return to Federal ownership, they would be subject to the terms and conditions of this withdrawal as described in Paragraph 1.

4. The following described non-Federal lands are located within the Rio Grande Corridor. In the event these

lands return to Federal ownership, they would be subject to the terms and conditions of this withdrawal as described in Paragraph 1:

New Mexico Principal Meridian

T. 23 N., R. 9 E.,
Sec. 23, tract A, NE¼SW¼, and SE¼;
Sec. 24, lot 1, patent No. 178, patent No. 179, N½NE¼, SW¼NE¼, SE¼NW¼, SW¼SW¼, and NW¼SE¼.
T. 23 N., R. 10 E.,
Sec. 16, lots 1 and 2, small holding claim (SHC) 966 tract 2, SHC 2143, and SHC 1536;
Sec. 19, lots 3 and 4, SHC 3266, SHC 388, SHC 969, SHC 561 tract 3, SHC 559 tract 1, SHC 556 tract 2, SHC 560 tracts 2 and 4, SHC 792 tracts 1 and 2, SHC 792, (two separate tracts numbered 792), SHC 966, SHC 380 tract 3, SHC 386, SHC 389, SHC 382 tract 1, and SHC 494 tract 2;
Sec. 20, lots 1, 3, and 4, SHC 560 tract 4, SHC 968 tract 2, SHC 556 tract 3, SHC 1121 Borrego, SHC 1121 Archuleta, and SHC 1121 Roybal, SHC 561 tract 4, SHC 798 Romero and SHC 798 Bolton, SHC 801 tracts 1, 2, and 3, SHC 1000, SHC 1120, SHC 4472 tract 2, and SHC 1111 tract 3;
Sec. 21, SHC 1111 tract 3, SHC 1120, SHC 966 tract 1, SHC 349, SHC 355, SHC 402, SHC 403, SHC 488, SHC 487 tracts 1 and 2, SHC 490 Romero and SHC 490 Roybal, SHC 487 Romero and SHC 487 Ortega, SHC 966 tract 2, SHC 2143, and SHC 1536.

The areas described aggregate 1,129.96 acres in Taos and Rio Arriba Counties.

5. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

6. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: March 12, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–7302 Filed 3–24–99; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–046–09–1430–00; UTU–77260]

Realty Action; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, Recreation and Public Purposes (R&PP) Act Classification, Utah.

SUMMARY: The following public land in Garfield County, Utah has been examined and found suitable for classification for lease or conveyance to Garfield County under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*):

Salt Lake Meridian,

Utah, T. 34 S., R. 5 W.,
Sec. 30, SE¼NE¼NE ¼, NE¼SE¼NE¼,
containing 20 acres.

Garfield County proposes to use the land for a public safety facility; i.e., law enforcement complex. The land is not needed for Federal purposes. Lease or conveyance is consistent with current Bureau of Land Management land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

3. A right-of-way for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

4. Those rights for power transmission line purposes granted to Garkane Power Association by right-of-way No. UTU–52866.

5. All other valid existing rights.

6. The leasee/patentee assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or attributable to: (a) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (b) the sole fault, failure, or negligence of the United States.

7. Title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the lands in accordance with the approved plan of development on or before the date five years after the date of conveyance.

Upon publication of this notice in the **Federal Register**, the lands are segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a public service facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the Bureau of Land Management followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public service facility. Any adverse comments will be reviewed by the Utah State Director who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this classification will become effective on May 24, 1999.

ADDRESSES: Comments will be accepted until May 10, 1999. Address comments to the Bureau of Land Management, Kanab Field Office Manager, 318 North 100 East, Kanab, Utah 84741. Detailed information concerning this action is available at the same address.

Arthur L. Tait,

District Manager.

[FR Doc. 99–7240 Filed 3–24–99; 8:45 am]

BILLING CODE 4310–DQ–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID), is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by

the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections 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 burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on this information collection on or before May 5, 1999.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail bjohnson@usaid.gov.

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–0004.

Form No.: AID 11.

Title: Application for Approval of Commodity Eligibility.

Type of Review: Renewal of Information Collection.

Purpose: USAID provides loans and grants to some developing countries in the form of Commodity Import Programs (CIPs). These funds are made available to host countries to be allocated to the public and private sectors for purchasing various commodities from the U.S., or in some cases, from other developing countries. In accordance with section 604(f) of the Foreign Assistance Act of 1961, as amended, USAID may finance only those commodities which are determined eligible and suitable in accordance with various statutory requirements and agency policies. Using the Application for Approval of Commodity Eligibility (Form AID 11), the supplier certifies to USAID information about the commodities being supplied, as required in section 604(f), so that USAID may determine eligibility.

Annual Reporting Burden:

Respondents: 365 (twice a year).

Total annual responses: 730.

Total annual hours requested: 365 hours.

Dated: March 17, 1999.

Willette L. Smith,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 99–7301 Filed 3–24–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a consent decree in *United States and Commonwealth of Pennsylvania* v. *American Color and Chemical Corporation, et al.,* Civil Action No. 4:CV–92–1352 (M.D. Pa.) was lodged with the court on December 1, 1998.

The proposed decree resolves claims of the Untied States against Pfister Chemical Corporation, Inc. under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. §§ 9606 and 9607, for response costs and actions at the Drake Chemical Superfund Site in Lock Haven, PA. The decree obligates the Settling Defendant to reimburse to the United States and Pennsylvania up to $3 million of response costs over a period of ten years.

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 and Commonwealth of Pennsylvania* v. *American Color and Chemical Corporation, et al.,* Civil Action No. 4:CV–92–1352 (M.D. Pa.), DOJ Ref. #90–11–2–7A.

The proposed consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 2005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $11.00 (25 cents per page reproduction cost), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–7284 Filed 3–24–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act, the Comprehensive Emergency Response, Compensation and Liability Act, and the Emergency Planning and Community Right-to-Know Act

Under 28 CFR § 50.7, notice is hereby given that on March 15, 1999, a proposed Consent Decree in *United States v. BP Exploration & Oil Inc.* Civil Action No. 3:97CV7790, was lodged with the United Stated District Court for the Northern District of Ohio, Western Division.

In this action, the United States south penalties and injunctive relief against BP Exploration & Oil Inc. (''BP'') for claims arising in connection with BP's refinery in Toledo, Ohio, under the Clean Air Act, 42 U.S.C. 7401 *et seq.,* the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.,* and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 1101 *et seq.*. Under the Consent Decree, PB will monitor, report on, and undertake corrective actions to remedy process operations that lead to the flaring of refinery gases that are high in hydrogen sulfide. BP also will develop a training program for its Toledo refinery employees designed to assist in minimizing sulfur dioxide emissions from flaring and process operations. Similarly, BP will undertake a study to optimize the performance of its existing sulfur recover unit. BP will pay a civil penalty of $1,400,000 and will spend $350,000 on two Supplemental Environmental Projects. In one project, BP will spend $150,000 to fund an emergency response telephone notification system for Lucas County. In another project, BP will spend $200,000 to fund and upgraded radio and paging system for the Oregon, Ohio, fire department, the fire department that serves BP's Toledo refinery.

The Department of Justice will receive for period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General to the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to the *United States* v. *BP Exploration & Oil Inc.* D.J. Ref.No 90–5–2–1–1916.

The Consent Decree may be examined at the Office of the United States Attorney, Four Seagate, Suite 308, Toledo, Ohio, 43604–2624, at the Region 5 Office of the United States

Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 2005. In requesting a copy, please refer to the above-referenced case and enclose a check in the amount of $39.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section Environmental and Natural Resources Division.

[FR Doc. 99–7286 Filed 3–24–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on February 23, 1999 proposed Consent Decree (the ''decree'') in *United States* v. *Jason Properties, Ltd. and Jason Properties LLLC,* Civil Action No. 99 Z 346 was lodged with the United States District Court for the District of Colorado.

In this action the United States sought to recover EPA's past costs incurred in connection with a removal action at the RAMP Industries Superfund site (the ''Site''). Jason Properties, Ltd. and Jason Properties, LLLC (collectively ''Jason Properties'') owns the so-called ''1031 Parcel,'' one of three parcels comprising the RAMP Industries Superfund Site (the ''RAMP Site'') located in northwest Denver, Colorado. Jason Properties leased the so called 1031 Parcel to the owner and operator of the main portions of the RAMP Site, RAMP Industries, Inc. The proposed decree is a cash-out of Jason Properties' liability under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). Pursuant to an administrative order on consent (''AOC'') attached to the proposed decree, Jason Properties will complete any final soils cleanup necessary for the unrestricted use of the 1031 Parcel. Under the terms of the proposed decree, Jason Properties will reimburse the United States the sum of $8,000 and complete of all work required under the AOC attached to the decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Jason Properties, Ltd. and Jason Properties LLLP,* D.J. Ref. 90–11–6–79.

The Consent Decree may be examined at the Office of the United States Attorney, 1961 Stout Street, Suite 1200, Denver, CO 80294, at U.S. EPA Region, 999 18th Street, Suite 700, Denver, CO 80202, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $26.75 payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–7285 Filed 3–24–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement in In Re Montgomery Ward Holding Company Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a Settlement Agreement (''Agreement'') in *In re Montgomery Ward Holding Corp., et al.,* No. 97–1409 (PJW) (Bankr. D. Del.), has been entered into by the United States on behalf of U.S. EPA, U.S. DOI, and the National Oceanic and Atmospheric Administration (''NOAA'') of the United States Department of Commerce, the State of California, and Montgomery Ward & Co., Incorporated and certain of its subsidiaries (collectively the ''Debtors'') and was lodged with the United States Bankruptcy Court for the District of Delaware on March 10, 1999. The agreement relates to liabilities under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. §§ 9601 *et seq.* The Agreement resolves CERCLA claims against the Debtors for the following forty-seven (47) hazardous waste sites, denominated as ''Liquidated Sites'' under the Agreement: the American Chemical Services Site in Griffith, Indiana; the Arcanum Iron and Metal Site in Arcanum, Ohio; the Arrowhead Site in Hermantown, Minnesota; the Auburn Incinerator Site in Auburn, Indiana; the Batavia Landfill Site in Batavia, New York; the Bay Drum Site in Tampa, Florida; the Bypass 601 Site in Concord, North Carolina; the Casmalia Site in Casmalia, Santa Barbara County, California; the Calumet Container Site in Cook County, Illinois; the Cam-Or Site in Westville, Indiana; the Chemical Control Site in Elizabeth, New Jersey; the Chemical Recycling Site in Wylie, Texas; the Coakley Landfill Site in North Hampton, New Hampshire; the Combustion Inc. Site in Livingston Parish, Louisiana; the Doepke Disposal Site in Johnson County, Kansas; the Ekotek Site in Salt Lake City, Utah; the Envirochem Site in Zionsville, Indiana; the Envirochem (Third Site) in Zionsville, Indiana; the Gould Site in Portland, Oregon; the Brand Trunk Site in Battle Creek, Michigan; the Great Lakes Asphalt Site in Zionsville, Indiana; the H. Brown Site in Walker, Michigan; the Hardage Site in Criner, Oklahoma; the Huth Oil Site in Cleveland, Ohio; the Lenz Oil Site in Lemont, Illinois; the Liquid Disposal Site in Shelby Township, Michigan; the Miami County Incinerator Site in Troy, Ohio; the New Lyme Site in New Lyme, Ohio; the Ninth Avenue Dump Site in Gary, Indiana; the Operating Industries Site in Los Angeles, California; the PSC Resources Site in Palmer, Massachusetts; the Peak Oil Site in Tampa, Florida; the Petroleum Products Corp. Site in Pembroke Park, Florida; the Purity Oil Site in Malaga, California; the SAAD Superfund Site in Nashville, Tennessee; the Sapp Battery Salvage Site in Alford, Florida; the Seaboard Chemical Site in Jamestown, North Carolina; the Sidney Mine Site in Hillsborough County, Florida; the Standard Steel Site in Anchorage, Alaska; the Thermo Chem Inc. Site in Muskegon, Michigan; the Tri-County/Elgin Landfill Site in Kane County, Illinois, the Torrington Hide & Metal Site and the Smith Residence Site in Goshen County, Wyoming; the U.S. Scrap Site in Chicago, Illinois; the Waste Inc. Site in Michigan City, Indiana; the Wayne Reclamation and Recycling, Inc. Site in Columbia City, Indiana; the Yeoman Creek Site in Waukegan, Illinois; and the York Oil Site in Moira, New York.

Under the Agreement, the Debtors have agreed to allowed claims in the total amount of $4,611,683 for these sites as specified in the Agreement. Of this amount, EPA, or PRPs doing work for EPA under consent decrees with EPA, will have allowed claims for $4,234,761, DOI will have an allowed claim of $350,222, NOAA will have allowed claim of $20,000 and California

will have an allowed claim of $6,700. The Agreement also contains provisions pertaining to the treatment of three other categories of sites: Debtor-Owned Sites, Work Consent Decree Sites, and Additional Sites.

The Department of Justice will receive comments relating to the proposed Agreement for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re Montgomery Ward Holding Corp.*, D.J. Ref. No. 90–11–2–1321.

The proposed Agreement may be examined at the Office of the United States Attorney for the District of Delaware, 1201 Market Street, Suite 1100, Chemical Bank Plaza, Wilmington, DE 19899–2046; the United States Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005 (202–624–0892). A copy of the proposed Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy of the proposed Amended Settlement Agreement, please enclose a check in the amount of $12.50 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 99–7287 Filed 3–24–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection, Comment Request; Requirements: Data Collection Application for the Juvenile Accountability Incentive Block Grant (JAIBG) Program

ACTION: Notice of information collection under review; new collection.

The Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval is being sought for the information collection listed below. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Mr. Alex Hunt, (202) 395–7860, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Rodney Albert, Deputy Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments 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 agency's 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

(1) *Type of Information Collection:* New collection.

(2) *The title of the form/collection:* Requirements: Data Collection Application for the Juvenile Accountability Incentive Block Grant Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* New collection; Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State.

Public Law 105–119, November 26, 1997, Making Appropriations for the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1998, and for other Purposes (Appropriations Act) appropriated $250,000,000 for the Juvenile Accountability Incentive Block Grants (JAIBG) described in Title III of H.R. 3, as passed by the House of Representatives on May 8, 1997.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Fifty-six (56) respondents will complete a 1-hour follow-up information form for each unit of local government receiving JAIBG funds and on funds retained by the State for program expenditure.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the information form will range from one (1) to 75 hours based on the number of units of local government receiving JAIBG funds and on funds retained by the State for program expenditure.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy 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, or via facsimile at (202) 514–1534.

Dated: March 19, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–7262 Filed 3–24–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

March 17, 1999.

The Department of Labor has submitted the following emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the

Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by April 1, 1999. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Pauline Perrow ((202) 219–5095, x. 165). Comments and questions about the ICR listed below should be forwarded to Office Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316).

The Office of Management and Budget 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 response.

Agency: U.S. Department of Labor/ Employment and Training Administration.

Title: O*NET data Collection Program Survey Pretest.

OMB Number: 1205–0NEW.

Frequency: The pretest is one time only; the full data collection effort will be ongoing and renew information for each occupation every five years.

Affected Public: Employers (includes private and not for profit businesses and government); and individuals (employees).

Number of Respondents: Total: 10,257.

Estimated Time Per Respondent: Employer response time ranges from ¼ an hour to approximately 3 and ½ hours. Individual worker response time averages ½ hour.

Total Burden Hours: 5,522.

Total Burden Costs (capital/startup): $92,165.

Total Burden Cost (operating/ maintaining): 0.

Description: The goal of the Occupational Information Network (O*NET) Data Collection Program Pretest is to identify the specific features which will ultimately increase the response rate for the full data collection effort contained in the O*NET Data Collection Program. The O*NET Data Collection Program will be a continuing activity to develop and maintain a current database on the detailed characteristics of workers and jobs. The resulting O*NET database will be the most comprehensive standard source of occupational information in the United States and will be a valuable tool for all members in the employment and training communities. O*NET will be at the center of an extensive network of occupational information used by a wide range of audiences, from individuals making career decisions, to public agencies and schools making training investment decisions, to employers making job structure and hiring decisions.

Information for this data collection activity will be collected using a two-stage design, including a statistical sample of businesses expected to employ workers in the specific occupations being surveyed, and a sample of workers in the occupations within the sampled businesses. Using this design, the Pretest will test the use of alternative sample sizes per establishment and the use of incentives for their impact on business response rates. It will also test the impact of alternative outreach methods and monetary incentives on improving response rates. The total average burden for businesses is not expected to exceed 3 hours and 25 minutes. The total average burden for employee respondent is 30 minutes. The findings of this pretest will be incorporated into the final ''O*NET Data Collection Program'' that will be submitted to the Office of Management and Budget for approval.

The O*NET, Occupational Information Network, is a complex database. Our research has shown that no single system currently exists that will accommodate all of the needs of the O*NET database. Therefore, given the magnitude and pressing importance of filing the O*NET database, ETA will continue to examine alternative methods to populating the database.

ETA's current approach, to go forward with the survey methodology while remaining open to parallel approaches, is based on the recommendations of the Advisory for the Dictionary of Occupational Titles (APDOT). The APDOT concluded that a variety of data collection methodologies may have to be employed to populate the database. The survey methodology is one way; some information may be more appropriately determined through other forms of data collection.

Therefore, ETA continues to investigate other data collection strategies to populate the O*NET database, including collaborating with employer association groups, skill standard efforts, expert panels, and ETA initiatives and grantees using transactional data from a variety of sources.

By using a multiple source data collection strategy to populate O*NET, ETA will avoid duplication of effort thus maximizing the government resources while maintaining high validity and reliability of O*NET data.

Pauline D. Perrow,

Acting Departmental Clearance Officer.

[FR Doc. 99–7325 Filed 3–24–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

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 pre-clearance consultation program to provide the general public and Federal agencies 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 Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed new collection of ''General Inquiries to State Agency Contacts.''

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 24, 1999. The Bureau of Labor Statistics 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.

ADDRESSEES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, DC 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Labor Statistics (BLS) awards funds to State agencies in the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and American Samoa (hereinafter referred to as the ''States'') in order to jointly conduct BLS/State Labor Market Information and Occupational Safety and Health Statistics cooperative statistical programs, which themselves have been approved by OMB separately, as follows:

Current Employment Statistics	1220–0011
Local Area Unemployment Statistics	1220–0043
Occupational Employment Statistics	1220–0042
Employment and Wages Report	1220–0012
Annual Refile Survey	1220–0032
Multiple Worksite Report	1220–0134
Mass Layoff Statistics	1220–0090
Annual Survey of Occupational Injuries & Illnesses	1220–0045
Census of Fatal Occupational Injuries	1220–0133

(This list of BLS/State cooperative statistical programs may change over time.)

To ensure the timely flow of data and to be able to evaluate and improve the programs, it is necessary to conduct ongoing communications between BLS and its State partners. Whether information requests deal with program deliverables, program enhancements, or administrative issues, questions and dialogue are crucial.

II. Current Actions

Information collected under this clearance is used to support the administrative and programmatic needs of these jointly conducted BLS/State programs.

Type of Review: New Collection.

Agency: Bureau of Labor Statistics.

Title: General Inquiries to State Agency Contacts.

OMB Number: 1220–New.

Affected Public: State, Local or Tribal Government.

Total Respondents: 53.

Frequency: As needed.

Total Responses: 22,618.

Average Time Per Response: 42 minutes.

Estimated Total Burden Hours: 15,639 hours.

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 request; they also will become a matter of public record.

Signed at Washington, DC, this 19th day of March 1999.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 99–7326 Filed 3–24–99; 8:45 am]

BILLING CODE 4510–24–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities Arts and Artifacts Indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 714, from 9:00 to 5:30 p.m., on Friday, April 30, 1999.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after July 1, 1999.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemptions (4) and (9) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Nancy E. Weiss, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/606–8322.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 99–7327 Filed 3–24–99; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 5, 1999.
Time: 9:00 a.m. to 5:30 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations in History I, submitted to the Division of Public Programs at the February 1, 1999 deadline.

2. *Date:* April 9, 1999.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 1999 deadline.

3. *Date:* April 12, 1999.
Time: 9:00 a.m. to 5:30 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations in History II, submitted to the Division of Public Programs at the February 1, 1999 deadline.

4. *Date:* April 15, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: M–07.
Program: This meeting will review applications for Education Development and Demonstration in Schools for a New Millennium I, submitted to the Division of Research and Education at the April 1, 1999 deadline.

5. *Date:* April 16, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: M–07.
Program: This meeting will review applications for Education Development and Demonstration in Schools for a New Millennium I, submitted to the Division of Research and Education at the April 1, 1999 deadline.

6. *Date:* April 16, 1999.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Program at the February 1, 1999 deadline.

7. *Date:* April 16, 1999.
Time: 9:00 a.m. to 5:30 p.m.
Room: 426.
Program: This meeting will review applications for Special Projects, submitted to the Division of Public Programs at the February 1, 1999 deadline.

8. *Date:* April 19, 1999.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers in American Studies I, submitted to the Division of Research and Education at the March 1, 1999 deadline.

9. *Date:* April 19, 1999.
Time: 9:00 a.m. to 5:30 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations in Art History, submitted to the Division of Public Programs at the February 1, 1999 deadline.

10. *Date:* April 20, 1999.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers in World History and Culture, submitted to the Division of Research and Education at the March 1, 1999 deadline.

11. *Date:* April 22, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Education Development and Demonstration in Schools for a New Millennium II, submitted to the Division of Research and Education at the April 1, 1999 deadline.

12. *Date:* April 23, 1999.
Time: 8:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Education Development and Demonstration in Schools for a New Millennium II, submitted to the Division of Research and Education at the April 1, 1999 deadline.

13. *Date:* April 23, 1999.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 1999 deadline.

14. *Date:* April 26, 1999.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 1999 deadline.

15. *Date:* April 28, 1999.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers in Latin American Studies and American Studies II, submitted to the Division of Research and Education at the March 1, 1999 deadline.

16. *Date:* April 29, 1999.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers in Western Civilization, submitted to the Division of Research and Education at the March 1, 1999 deadline.

17. *Date:* April 29, 1999.
Time: 9:00 a.m. to 5:00 p.m.
Room: M–07.
Program: This meeting will review applications for Education Development and Demonstration in Schools for a New Millennium III, submitted to the Division of Research and Education at the March 1, 1999 deadline.

18. *Date:* April 30, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: M–07.
Program: This meeting will review applications for Education Development and Demonstration in Schools for a New Millennium III, submitted to the Division of Research and Education at the March 1, 1999 deadline.

19. *Date:* April 30, 1999.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers in World History and Culture, submitted to the Division of Research and Education at the March 1, 1999 deadline.

Nancy E. Weiss,
Advisory Committee Management Officer.

[FR Doc. 99–7328 Filed 3–24–99; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company; San Diego Gas and Electric Company; The City of Riverside, CA; The City of Anaheim, CA; San Onofre Nuclear Generating Station, Unit Nos. 2 and 3; 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 to Facility Operating License Nos. NPF–10 and NPF–15, issued to Southern California Edison Company (the licensee), for operation of the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 located in San Diego County, California.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the licensee to submit revisions to the Updated Final Safety Analysis Report (UFSAR) to the NRC within 6 months after completion of the SONGS Unit 3 refueling outage, but not less frequently than every 24 months. In addition, pursuant to 10 CFR 50.59(b)(2), reports containing a brief description of changes, tests, and experiments, including associated safety evaluation summaries, will be submitted at the same time as revisions to the UFSAR.

The proposed action is in accordance with the licensee's application for the exemption dated December 18, 1998.

The Need for the Proposed Action

The proposed action is needed to address the undue regulatory burden for units that share a common UFSAR regarding the requirements of Section 50.71(e)(4). Section 50.71(e)(4) requires licensees to submit updates to its UFSAR annually or within 6 months after each refueling outage providing that the interval between successive updates does not exceed 24 months. Since SONGS Units 2 and 3 share a common UFSAR, the licensee must update the same document annually or within six months after a refueling outage for either unit. The underlying purpose of the rule was to relieve licensees of the burden of filing annual FSAR revisions while assuring that such revisions are made at least every 24 months.

The Commission reduced the burden, in part, by permitting a licensee to submit its FSAR revisions six months after refueling outages for its facility, but did not provide for multiple unit facilities sharing a common FSAR in the rule. Rather, the Commission stated that ''With respect to the concern about multiple facilities sharing a common FSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis'' (57 FR 39355). Allowing the exemption would maintain the UFSAR current within 24 months of the last revisions. Submission of the 10 CFR 50.59 design change report for either unit together with the UFSAR revision as permitted by 10 CFR 50.59(b)(2), also would not exceed a 24-month interval.

Environmental Impacts of the Proposed Action

The Commisison has completed its evaluation of the proposed action and concludes that the proposed action is administrative in nature, unrelated to plant operations.

The proposed action 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 occupational exposure or public radiation exposure. Therefore, there are no radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impacts. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with this action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the exemption 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 did not involve the use of any resources not previously considered in the ''Final Environmental Statement Related to the Proposed San Onofre Nuclear Generating Station, Units 2 and 3,'' dated April 1981 (NUREG–0490).

Agencies and Persons Contacted

In accordance with its stated policy, on March 15, 1999, the staff consulted with the California State official, Mr. Steve Hsu of the Radiologic Health Branch of the State Department of Health Services, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of 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 December 18, 1998, 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 Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 18th day of March 1999.

For the Nuclear Regulatory Commission.

James W. Clifford,

Senior Project Manager, Project Directorate IV–2, Division of Licensing Project Management, Office of Nuclear Reactor Regulation

[FR Doc. 99–7279 Filed 3–24–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Use of Low Power and Shutdown Risk in Plant Specific Reactor Regulatory Activities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Nuclear Regulatory Commission has issued guidance for power reactor licensees on acceptable methods for using probabilistic risk assessment (PRA) information and insights in support of plant-specific applications to change the current licensing basis. The use of such PRA information and guidance is voluntary. This guidance is documented in Regulatory Guide (RG) 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis.'' RG 1.174 states that a risk-informed regulatory process must consider risk associated with all operating modes (full power, low power and shutdown). The staff is developing (as necessary) acceptable methods to provide an understanding of the risk associated with low power and shutdown (LPSD) operations sufficient to support decision-making for risk-informed regulation.

SUPPLEMENTARY INFORMATION: Listed below are topics on which discussion and feedback are sought at the workshop:

1. Are LPSD core damage frequency (CDF) and large early release frequency (LERF) comparable to full power CDF and LERF? What methods and assumptions should be used to answer this question?

2. Are the LPSD CDF and LERF contributors comparable to the contributors from full power? What are the methods and assumptions should be used to answer this question?

3. How many plant operational states (POS) are needed to adequately represent the risk associated with LPSD operations?

4. Should the scope of LPSD analyses include fuel handling and storage, e.g., full core offloading? What methods and assumptions should be used to answer this question?

5. Is there a sufficient technical basis (knowledge of core melt phenomena, source terms, varying containment configurations, etc.) available to support LERF analysis for LPSD? If not, what issues require additional study? If a sufficient technical basis exists, what information sources can be cited to support the assertion?

6. Is the CDF and LERF associated with the transition from one operational state to another important? What methods and assumptions should be used to answer this question?

7. Is a traditional PRA approach needed to provide an understanding of LPSD for risk-informed regulatory decision-making? If not, what other approaches are available? What are their strengths and limitations?

8. Currently, the staff is supporting efforts to produce a nation consensus standard on full power PRA to support risk-informed decision-making. Is a standard on LPSD needed or desirable? Should it be a national consensus standard?

9. Draft NUREG–1602 provides reference material on the scope and quality of a LPSD PRA. Is the information in this draft complete and correct? Is it useful as reference material in making assessments on an application specific basis on the scope and quality of a LPSD risk assessment to support that particular application? How could it be improved?

10. Would draft NUREG–1602 be useful as a starting point to develop a standard on LPSD PRA? What would be needed? Should it specify acceptable LPSD PRA methods?

11. Given the lack of experience in performing LPSD PRAs, should a standard for LPSD PRA provide both (1) requirements for what activities should be performed and (2) detailed information/instructions on how those activities should be performed?

12. Is LERF an appropriate metric for meeting the Safety Goal Policy Statement for all POS? If not, what metrics should be used? For example, should there be a metric on long term release frequency to supplement LERF? What should it be based upon?

13. Can NUREG/CR–6595 be used to calculate LERF for LPSD conditions? If not, what additional guidance should be added to the report to support LERF calculations for LPSD conditions?

14. Are average equipment unavailabilities during LPSD conditions (resulting in average CDF and LERF estimates) sufficient to support risk-informed decision-making?

15. Is the following definition of an initiating event during LPSD adequate: ''An event that causes loss of the function(s) necessary to maintain the plant in its existing operating state?'' If not, then what changes should be made to enhance the definition?

16. Are there generic data sources for the identification and quantification of LPSD initiating events? If so, are the data sources publicly available? Are these generic data sources consistent?

17. Do certain LPSD operational states have the potential to have more human failures than full power operation? If event trees and fault trees are used to model the response of a plant to LPSD initiating events, where is the more appropriate place to model these human failures? What is the basis for this choice?

18. Are the human reliability analysis methods used in full power analyses sufficient to characterize the unique characteristics and conditions under which humans operate during LPSD? If not, what improvements are required to ensure an adequate representation of human actions during LPSD conditions? If so, how are these methods being used to identify errors of commission?

19. What are the important uncertainties (parameter, model, and completeness) that should be considered in LPSD analyses? How should these uncertainties be evaluated in LPSD analyses?

20. Are there any other issues related to Level 1 and 2 analyses that are important to the development of LPSD risk (CDF and LERF)?

Reference material (available for inspection and copying for a fee a the NRC Public Document Room, 2120 L Street N.W. (Lower Level), Washington D.C. 20555–0001; a free single copy of each document, to the extent of supply, may be requested by writing to Distribution Series, Printing and Mail Services, Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington D.C. 20555–0001) includes:

- RG 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis''.
- NUREG/CR 6143, ''Evaluation of Potential Severe Accidents During Low Power and Shutdown Operation at Grand Gulf, Unit 1,'' 1995.
- NUREG/CR–6144, ''Evaluation of Potential Severe Accidents During Low Power and Shutdown Operation at Surry, Unit 1,'' 1995.
- NUREG–1602, ''The Use of PRA in Risk-Informed Applications,'' Draft, June 1997.
- NUREG/CR–6595, ''An Approach for Estimating the Frequencies of Various Containment Failure Modes and Bypass Events,'' January 1999.

In addition (available via the ASME web site, or contact Jess Moon at ASME, email *moonj@asme.org):*

- ASME RA–s–1999, Draft #10, ''Standard for Probabilistic Risk Assessment for Nuclear Power Plant Applications,'' Draft for public review and comment.

WORKSHOP MEETING INFORMATION: The Commission intends to conduct a workshop to solicit information related to the risk associated with low power and shutdown conditions sufficient to support decision-making for risk-informed regulation. Persons other than NRC staff and NRC contractors interested in making a presentation at the workshop should notify Erasmia Lois, Office of Nuclear Regulatory Research, MS: T10–E50, U.S. Nuclear Regulatory Commission, Washington D.C., 20555–0001, (301) 415–6560, email: exl1@nrc.gov

DATES: April 27, 1999.

AGENDA: Preliminary agenda is as follows (a final agenda will be available at the workshop):

Tuesday, April 27, 1999

7:45 a.m. to 8:00 a.m. Introduction, opening remarks

8:00 a.m. to 8:45 a.m. NRC Presentations plus open discussion

—Purpose

—Status of Activities

—Plans

—Understanding of LPSD risk

8:45 a.m. to 9:15 a.m. Industry Presentations

9:15 a.m. to 9:30 a.m. BREAK

9:30 a.m. to 11:30 a.m. Industry Presentations

11:30 a.m. to 12:45 p.m. LUNCH

12:45 p.m. to 2:15 p.m. General Discussion of Issues/Topics

2:15 p.m. to 2:30 p.m. BREAK

2:30 p.m. to 4:15 p.m. General Discussion of Issues/Topics

4:15 p.m. to 4:45 p.m. Wrapup

LOCATION: DoubleTree Hotel, 1750 Rockville Pike, Rockville, Maryland.

REGISTRATION: No registration fee for workshop; however, notification of attendance is requested so that adequate space, etc. for the workshop can be arranged. Notification of attendance should be directed to Erasmia Lois,

Office of Nuclear Regulatory Research, MS: T10–E50, U.S. Nuclear Regulatory Commission, Washington D.C., 20555–0001, (301) 415–6560, email: *exl1@nrc.gov*

FOR FURTHER INFORMATION CONTACT: Mary Drouin, Office of Nuclear Regulatory Research, MS: T10–E50, U.S. Nuclear Regulatory Commission, Washington D.C., 20555–0001, (301) 415–6675, email: *mxd@nrc.gov*

Dated this 18 day of March, 1999.

For the Nuclear Regulatory Commission.

Mary Drouin,

Acting Chief, Probabilistic Risk Analysis Branch, Division of Systems Technology, Office of Nuclear Regulatory Research.

[FR Doc. 99–7275 Filed 3–24–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

State of Ohio: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Ohio

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed agreement with the State of Ohio.

SUMMARY: By letter dated June 22, 1998, former Governor George V. Voinovich of Ohio requested that the U.S. Nuclear Regulatory Commission (NRC) enter into an Agreement with the State as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act). Under the proposed Agreement, the Commission would give up, and Ohio would take over, portions of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing the summary of an assessment by the NRC staff of the Ohio regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the NRC staff assessment, the adequacy of the Ohio program staff, and the State's commitments concerning the program staff, as discussed in this notice.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in Ohio from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period expires April 26, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Copies of the proposed Agreement, copies of the request for an Agreement by the Governor of Ohio including all information and documentation submitted in support of the request, and copies of the full text of the NRC staff assessment are also available for public inspection in the NRC's Public Document Room.

FOR FURTHER INFORMATION CONTACT: Richard L. Blanton, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2322 or e-mail rlb@nrc.gov.

SUPPLEMENTARY INFORMATION: Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 30 States. The Agreement States currently regulate approximately 16,000 agreement material licenses, while NRC regulates approximately 5800 licenses. Under the proposed Agreement, approximately 550 NRC licenses will transfer to Ohio. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials[1] and activities that involve use of the materials. In a letter dated June 22, 1998, Governor Voinovich certified that the State of Ohio has a program for the control of radiation hazards that is adequate to protect public health and safety within Ohio for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') which the State of Ohio requests authority over are: (1) The possession and use of byproduct materials as defined in Section 11e.(1) of the Act; (2) the generation, possession, use, and disposal of byproduct materials as defined in Section 11e.(2) of the Act; (3) the possession and use of source materials; (4) the possession and use of special nuclear materials in quantities not sufficient to form a critical mass; (5) the regulation of the land disposal of byproduct materials as defined in Section 11e.(1) of the Act, source, or special nuclear waste materials received from other persons; and (6) the evaluation of radiation safety information on sealed sources or devices containing byproduct materials as defined in Section 11e.(1) of the Act, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

(b) The proposed Agreement contains articles that:

—Specify the materials and activities over which authority is transferred;
—Specify the activities over which the Commission will retain regulatory authority;
—Continue the authority of the Commission to safeguard nuclear materials and restricted data;
—Commit the State of Ohio and NRC to exchange information as necessary to maintain coordinated and compatible programs;
—Provide for the reciprocal recognition of licenses;
—Provide for the suspension or termination of the Agreement;
—Provide for the transfer of any financial surety funds collected by Ohio for reclamation or long-term surveillance of sites for the disposal of byproduct materials (as defined in Section 11e.(2) of the Act) to the United States if custody of the

[1] The radioactive materials, sometimes referred to as ''agreement materials,'' are: (a) byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) source materials as defined in Section 11z. of the Act; and (d) special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

material and the disposal site are transferred; and

—Specify the effective date of the proposed Agreement. The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the Chairman of the Commission and the Governor of Ohio.

(c) Ohio currently regulates the users of naturally-occurring and accelerator-produced radioactive materials. The regulatory program is authorized by law in Section 3748 of the Ohio Revised Code. Subsection 3748.03 provides the authority for the Governor to enter into an Agreement with the Commission.

Ohio law contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Ohio licenses until the licenses expire or are replaced by State issued licenses. NRC licenses transferred to Ohio which contain requirements for decommissioning and express an intent to terminate the license when decommissioning has been completed in accordance with a Commission approved decommissioning plan will continue as Ohio licenses and will be terminated by Ohio when the Commission approved decommissioning plan has been completed.

(d) As described below, the proposed Agreement will be signed only after the fulfillment of commitments by Ohio to hire, train, and qualify a sufficient number of professional/technical staff. Contingent on the fulfilment of these commitments, the NRC staff assessment finds that the Ohio program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of agreement materials.

II. Summary of the NRC Staff Assessment of the Ohio Program for the Control of Agreement Materials

NRC staff has examined the Ohio request for an Agreement with respect to the ability of the radiation control program to regulate agreement materials. The examination was based on the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement'' (referred to herein as the ''NRC criteria'') (46 FR 7540; January 23, 1981, as amended).

(a) Organization and Personnel. The agreement materials program will be located within the existing Bureau of Radiation Protection (Bureau) of the Ohio Department of Health. The program will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the Bureau staff members are specified in the Ohio State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection. Supervisory level staff have more than ten years working experience each in radiation protection.

The Bureau currently has staff vacancies, which it is actively recruiting to fill. In response to NRC comments, the Bureau performed, and NRC staff reviewed, an analysis of the expected Bureau workload under the proposed Agreement. Based on the analysis, Ohio has made three commitments. First, the Bureau will employ a staff of at least 21 full-time professional/technical employees for the agreement materials program. Second, the distribution of the qualifications of the individual staff members will be balanced to the distribution of categories of licensees transferred from NRC. For example, there will be enough inspectors trained and qualified to inspect industrial radiography operations that the program will be able to inspect all of the industrial radiography licensees transferred from NRC without developing a backlog of overdue inspections. Third, each individual on the staff will be qualified in accordance with the Bureau's training and qualification procedure (including use of interim qualification) to function in the areas of responsibility to which the individual is assigned. In the case of individuals assigned to review radiation safety information on sealed sources or devices containing byproduct materials as defined in Section 11e.(1) of the Act, source, or special nuclear materials, this commitment includes assuring that the individuals will be able to:

—Understand and interpret, if necessary, appropriate prototype tests that ensure the integrity of the products under normal, and likely accidental, conditions of use,

—Understand and interpret test results,

—Read and understand blueprints and drawings,

—Understand how the device works and how safety features operate,

—Understand and apply appropriate regulations,

—Understand the conditions of use,

—Understand external dose rates, source activities, and nuclide chemical form, and

—Understand and utilize basic knowledge of engineering materials and their properties.

(b) Legislation and Regulations. The Ohio Department of Health is designated by law in Chapter 3748 of the Ohio Revised Code to be the radiation control agency. The law provides the Department the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors. The Public Health Council is authorized to promulgate regulations.

The law requires the Public Health Council to adopt rules that are compatible with the equivalent NRC regulations and that are equally stringent to, or to the extent practicable more stringent than, the equivalent NRC regulations. The Council has adopted, by reference, the NRC regulations in Title 10 of the Code of Federal Regulations that were in effect on October 19, 1998. The adoption by reference is contained in Chapter 3701–39–021 of the Ohio Administrative Code (OAC). The Board of Health has extended the effect of the rules, where appropriate, to apply to naturally occurring radioactive materials and to radioactive materials produced in particle accelerators, in addition to agreement materials.

Ohio rule 3701–39–021 (A) specifies that references to the NRC shall be construed as references to the Director of the Department of Health. It is noted, however, that Ohio has adopted most of the NRC regulations as entire Parts, including sections that address regulatory matters reserved to the Commission. Ohio has adopted a provision in Rule 3701–39–021 (A) excepting such sections from being construed as enforced by the Director of the Department of Health. The OAC also contains a provision to avoid interference with licensees when they are complying with regulatory requirements which the Act specifies NRC must enforce and when they are complying with NRC regulatory

requirements from which the State licensees have not been exempted by the proposed Agreement. The NRC staff concludes that Ohio will not attempt to enforce the regulatory matters reserved to the Commission. In accordance with NRC Management Directive 5.9, ''Adequacy and Compatibility of Agreement State Programs,'' this approach is considered compatible.

The NRC staff review verified that the Ohio rules contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The adoption of the NRC regulations by reference assures that the standards will be uniform.

The Ohio regulations are different from the NRC regulations with respect to the decommissioning of a licensed facility and the termination of the license. Current NRC regulations permit a license to be terminated when the facility has been decommissioned, i.e., cleaned of radioactive contamination, such that the residual radiation will not cause a total effective dose equivalent greater than 25 millirem per year to an average member of the group of individuals reasonably expected to receive the greatest exposure. Normally, the NRC regulations require that the 25 millirem dose constraint be met without imposing any restrictions regarding the future use of the land or buildings of the facility (''unrestricted release''). Under certain circumstances, NRC regulations in 10 CFR Part 20, Subpart E, allow a license to be terminated if the 25 millirem dose constraint is met with restrictions on the future use (''restricted release''). Ohio law does not allow a license to be terminated under restricted release. Ohio will instead issue special ''decommissioning-possession only'' licenses as an alternative to license termination under restricted release. The Commission has concluded that Ohio's approach, although different, is compatible.

(c) Storage and Disposal. Ohio has also adopted, by reference, the NRC requirements for the storage of radioactive material, and for the disposal of radioactive material as waste. The waste disposal requirements cover both the disposal of waste generated by the licensee and the disposal of waste generated by and received from other persons.

(d) Transportation of Radioactive Material. Ohio has adopted the NRC regulations in 10 CFR Part 71 by reference. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. Ohio will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) Recordkeeping and Incident Reporting. Ohio has adopted, by reference, the sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or accidents involving materials.

(f) Evaluation of License Applications. Ohio has adopted, by reference, the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use radioactive materials. Ohio has also developed a licensing procedures manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) Inspections and Enforcement. The Ohio radiation control program has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by NRC. The program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the report of inspection results to the licensees. The program has also adopted, by rule in the OAC, procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. The Ohio Department of Health is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Ohio law prescribes standards of ethical conduct for State employees.

(i) Cooperation with Other Agencies. Ohio law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Ohio. The law provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is later. In the case of NRC licenses that are terminated under restricted conditions pursuant to 10 CFR 20.1403 prior to the effective date of the proposed Agreement, Ohio deems the termination to be final despite any other provisions of State law or rule. For NRC licenses that, on the effective date of the proposed Agreement, contain a license condition indicating intent to terminate the license upon completion of a Commission approved decommissioning plan, the transferred license will be terminated by Ohio in accordance with the plan so long as the licensee conforms to the approved plan.

Ohio also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The OAC provides exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors.

The proposed Agreement commits Ohio to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that Ohio's program will continue to be compatible with the Commission's program for the regulation of agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Ohio to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its assessment, the NRC staff concludes that the State of Ohio meets the requirements of the Act, conditioned on completion of the commitments made in regard to the program staff. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is

compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

NRC will continue the formal processing of the proposed Agreement, however, the signing of the Agreement will be contingent upon the Bureau's completion of the staffing commitments.

IV. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Dated at Rockville, Maryland, this 5th day of March, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

An Agreement Between the United States Nuclear Regulatory Commission and the State of Ohio for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of Ohio is authorized under Chapter 3748. of the Ohio Revised Code to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of Ohio certified on June 22, 1998, that the State of Ohio (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the health and safety of the public and to protect the environment with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on (date to be determined) that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now Therefore, It is hereby agreed between the Commission and the Governor of the State of Ohio, acting in behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(2) of the Act;
3. Source materials;
4. Special nuclear materials in quantities not sufficient to form a critical mass;
5. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons; and,
6. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

Article II

A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission.

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Atomic Energy Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.
2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material.

Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States

or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license, if any, for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or the State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety, and other actions as the Commission deems necessary; and

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.

Article III

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article IV

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article V

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VI

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article VIII

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which results in production of such material, the State shall comply with the provisions of Section 274o of the Act. If in such licensing and regulation, the State requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material,

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

Article IX

This Agreement shall become effective on July 22, 1999, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Columbus, Ohio this (date to be determined).

For the United States Nuclear Regulatory Commission.

_____, *Chairman.*

For the State of Ohio.

_____, *Governor.*

[FR Doc. 99–7278 Filed 3–24–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Availability for Work.

(2) *Form(s) submitted:* UI–38, UI–38s, ID–8k.

(3) *OMB Number:* 3220–0164.

(4) *Expiration date of current OMB clearance:* 5/31/1999.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households, Non-profit institutions.

(7) *Estimated annual number of respondents:* 7,600.

(8) *Total annual responses:* 7,600.

(9) *Total annual reporting hours:* 1,085.

(10) *Collection description:* Under section 1(k) of the Railroad Unemployment Insurance Act, unemployment benefits are not payable for any day in which the claimant is not available for work. The collection obtains information needed by the RRB to determine whether a claimant is willing and ready to work.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (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 and the OMB reviewer, Laurie Shack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–7297 Filed 3–24–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41191; File No. SR–DTC–98–26]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Establishment of an Interface With National Securities Clearing Corporation Regarding the Automated Customer Account Transfer Service

March 19, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 18, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments 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

Under the proposed rule change, DTC will establish an interface with National Securities Clearing Corporation (''NSCC'') to allow certain DTC participants that are not NSCC members to participate in NSCC's Automated Customer Account Transfer Service (''ACATS'')

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, DTC will give its participants that are not direct members of NSCC access to NSCC's ACATS via DTC's Participant Terminal System, NSCC's PC Web Direct service, or both and later through DTC's computer to computer facility. Through ACATS, DTC participants will be able to transfer customer accounts in an automated manner with standardized input and output.[3]

Currently, ACATS enables NSCC members to effect automated transfers of customer accounts among themselves.[4] On November 10, 1998, the Commission approved a proposed rule change by NSCC to expand the types of eligible ACATS participants and kinds of accounts that may be transferred.[5] NSCC's rule change permits a qualified securities depository (''QSD'') such as DTC to effect customer account transfers in ACATS on behalf of its participants.[6]

As recently revised, ACATS will allow ACATS participants to transfer an account from one institution to another in a standardized, book-entry environment utilizing NSCC's links to DTC, The Option Clearing Corporation, Government Securities Clearing Corporation, the MBS Division of DTC, and approximately 120 mutual fund families through the ACATS-Fund/SERV link.

DTC will enter into an agreement with NSCC which will permit ACATS to be sued for the transfer of accounts between two DTC participants or between a DTC participant and an NSCC member. DTC will also enter into an agreement with each DTC participant that wants to use the ACATS interface.[7]

Transactions under the arrangement will be effected under DTC's present rules. Transfers between DTC participants (*e.g.,* bank-to-bank transfers) will be free. Transfers between a DTC participant and an NSCC member (*e.g.,* bank-to-broker transfers) and vice versa will also be free. Transfers of account cash balances associated with account transfers will be part of end of day net settlement.

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will increase efficiency in processing participant transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC 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.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] The program will begin as a pilot involving approximately 16 DTC participants that are not NSCC members. Thereafter, if the program is successful, it will be made generally available to all DTC participants.

[4] ACATS complements New York Stock Exchange (''NYSE'') and National Association of Securities Dealers (''NASD'') rules which require NYSE and NASD members to use automated, clearing agency customer account transfer services and to effect customer account transfers within specified time frames.

[5] Securities Exchange Act Release No. 40657 (November 10, 1998), 63 FR 63952 [File No. SR–NSCC–98–06].

[6] QSD is defined in NSCC Rule 1 as a registered clearing agency which has entered into an agreement with NSCC pursuant to which it will act as a securities depository for NSCC and effect book-entry transfers of securities to and by NSCC with respect to NSCC's CNS system.

[7] A draft agreement between NSCC and DTC and a draft agreement for DTC participants that want to use the ACATS interface are attached as exhibits to DTC's filing, which is available for inspection and copying at the Commission's Public Reference Room and through DTC.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

The ''ACATS for Banks'' proposal appeared in the March 1996 program agenda advisory committee agenda, which is a DTC communication mechanism to present new programs and other issues to DTC customers. The results of comments by DTC participants appeared in the August 1996 program agenda proposals report. Ninety-eight participants responded to the proposal, and more than 70% of those that approved of the proposal through that, of the several possible means of facilitating these account transfers, a link to the NSCC ACATS system was the most desirable approach. Since NSCC had already committed to a wholesale redesign of ACATs, bringing banks into the system was made an integral part of the redesign.

As part of the ACATS redesign, NSCC set up several focus groups, including a group of banks and representatives of bank industry groups, to discuss improvements to ACATS and DTC's role in account transfers. This led to a bank advisory group and, thereafter, to joint NSCC/DTC educational awareness seminars held in various cities around the country during February and March of 1998. All DTC participants were invited, and 16 DTC participants signed up to participate in a pilot. To date, 62 DTC participants have expressed an interest in ACATS.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b) (3) (F).[8] Section 17A(b)(3)(1)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) of the Act. ACATS provides a more efficient method for the transfer of customer assets. The rule change will make the benefits of ACATS available to a number of DTC participants that presently do not have access to ACATS.

DTC has requested that the Commission approve the proposed rule change subsequent to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change rule change prior to the thirtieth day after the publication of notice because such approval will allow DTC's interface the ACATS to become operative with NSCC's implementation of the newly designed ACATS system. The Commission points out that this proposed rule change was discussed in NSCC's rule filing regarding the new ACATs system to which no written comments were received.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SSR–DTC–98–26 and should be submitted by April 15, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–98–26) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7281 Filed 3–24–99; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[9] Securities Exchange Act Release Nos. 40487 (September 28, 1998), 63 FR 53479 and 40657 (November 10, 1998), 63 FR 63952.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–41192; File No. SR–MSRB–99–2)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G–11, on Sales of New Issue Municipal Securities During the Underwriting Period

March 19, 1999.

On March 11, 1999, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–99–2), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith an amendment to Rule G–11, on sales of new issue municipal securities during the underwriting period. The proposed rule change clarifies a previous amendment to Rule G–11(g)(iii) concerning the disclosure of designation information to syndicate members. The following is the text of the proposed rule change, with italics denoting new language and brackets denoting deletions:

I. Rule G–11. Sales of New Issue Municipal Securities During the Underwriting Period

(a)–(f) No change.

(g) Designations and Allocations of Securities. The senior syndicate manager shall:

(i)–(ii) No change.

(iii) disclose, *in writing,* to [the] *each* member[s] of the syndicate [, in writing,] all available *information on designations paid to syndicate and non-syndicate members expressed in total dollar amounts* [designation information] to members within 10 business days following the date of sale and all information *about designations paid to syndicate and non-syndicate members expressed in total dollar amounts* with the sending of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

designation checks pursuant to Rule G–12(k); and

(iv) No change.

(h) No change.

* * * * *

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 Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On November 27, 1998, the Commission approved amendments to the Board's syndicate practices rules.[3] The amendments revised several areas involving syndicate practices, including: issuer syndicate requirements, allocation of securities, designation information, take-down information and payment of designations.

After the amendments were approved, the Board received several inquiries from dealers concerning the amendment to Rule G–11(g)(iii) that requires the managing underwriter to disclose to syndicate members, in writing, all available designation information to members within 10 business days following the date of sale and all information with the sending of the designation checks pursuant to Rule G–12(k).

Most of the inquiries concerned whether the requirement was to disclose to each syndicate member its own designation information or whether all members were to receive information about all the designations. On December 11, 1998, the Board published a notice on its Web site to clarify that the requirement is that all designation information be disclosed to each syndicate member.

There also have been a number of questions raised about the kind of designation information that managers are required to disclose. Callers asked whether managers should disclose designations by total dollar amounts, bond amounts or both total dollar amounts and bond amounts. The Board believes the designation information that will be most useful to syndicate members is the total dollar amounts of the designations.

Another question raised by some callers was whether the disclosure of designation information to syndicate members would require disclosure of designations made to anyone other than syndicate members, *e.g.*, selling group members, since it is not uncommon for selling group members to receive designations. These callers were concerned that, without disclosure to syndicate members of the designations made to non-syndicate members, it is obvious when the dollar amounts designated are totaled that the information is not complete. Since the intent of the Board in adopting the amendment to Rule G–11(g)(iii) was to increase the disclosure of designation information, the Board believes the information disclosed should include all designations.

The proposed rule change addresses the questions that have been raised about Rule G–11(g)(iii) by amending the rule language to make clear that all information about designations paid to syndicate and non-syndicate members is to be provided to each syndicate member and that the designation information must be expressed in total dollar amounts.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C)[4] of the Act, which provides that the Board's rules shall ''be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.''

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549–0609. 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. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–99–2 and should be submitted by April 15, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7280 Filed 3–24–99; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 40717 (November 27, 1998), 63 FR 67157 (December 4, 1998).

[4] 15 U.S.C. 78o–4(b)(2)(C).

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3013]

Notice of Proposed Revisions to Guidelines for the Implementation of Section 609 of Public Law 101–162 Relating to the Protection of Sea Turtles in Shrimp Trawl Fishing Operations

SUMMARY: Section 609 of Public Law 101–162 (''Section 609'') provides that shrimp harvested with technology that may adversely affect certain species of sea turtles may not be imported into the United States. This import prohibition does not apply if the Department of State certifies to Congress that the harvesting nation has a regulatory program and an incidental take rate comparable to that of the United States, or, alternatively, that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. In response to recommendations of the Dispute Settlement Body of the World Trade Organization, the Department of State is proposing several revisions to the guidelines issued by the Department on August 28, 1998 for use in making such certifications. In order to comply with provisions of the Uruguay Round Trade Agreements Act, 16 U.S.C. 3533, the Department of State is requesting public comment on Sections II and III of this notice. Section I provides background information. Comments should be forwarded to the Office of Marine Conservation at the address listed below no later than 30 days after publication of this notice.

The August 28, 1998 guidelines contained additional information on the Department's policy with respect to certain aspects of the implementation of Section 609 for which no revisions are currently being proposed. The Department's policy with respect to those aspects, as set forth in the August 28, 1998 guidelines, remains unchanged.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Gibbons-Fly or Mr. David Hogan, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington D.C., telephone number (202) 647–2335. Comments should be submitted to the Department of State, Office of Marine Conservation, Room 5806, 2201 C Street NW., Washington, D.C. 20520.

I. Supplementary Information

A. Section 609

Section 609 provides that shrimp or products from shrimp harvested with commercial fishing technology that may adversely affect certain species of sea turtles protected under U.S. law and regulations may not be imported into the United States. This import prohibition does not apply if the President certifies to Congress by May 1, 1991, and annually thereafter, that:

a. The government of the harvesting nation has provided documentary evidence of the adoption of a regulatory program governing the incidental taking of such sea turtles in the course of such harvesting that is comparable to that of the United States; and

b. The average rate of that incidental taking by vessels of the harvesting nation is comparable to the average rate of incidental taking of sea turtles by United States vessels in the course of such harvesting; or

c. The particular fishing environment of the harvesting nation does not pose a threat of the incidental taking of such sea turtles in the course of such harvesting.

The President has delegated to the Secretary of State the authority to make certifications pursuant to Section 609 (Memorandum of December 19, 1990; 56 FR 357; January 4, 1991).

The relevant species of sea turtles are: loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempi*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*) and hawksbill (*Eretmochelys imbricata*).

B. Summary of WTO Recommendations and Measures Taken To Implement Those Recommendations

On November 6, 1998, the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) adopted a report of the WTO Appellate Body in a case brought by India, Malaysia, Pakistan and Thailand challenging the import prohibitions of Section 609. The Appellate Body report found that Section 609 itself was not inconsistent with U.S. obligations under the WTO Agreement and was, in fact, covered by the WTO provision relating to the conservation of exhaustible natural resources. At the same time, however, the Appellate Body report found that certain aspects of the manner in which Section 609 was being implemented, in their cumulative effect, were inconsistent with U.S. obligations under the WTO Agreement. The Appellate Body report recommended that the United States revise its implementation of Section 609 accordingly.

On November 25, 1998, the United States announced its intention to implement the recommendations and rulings of the DSB in a manner which is consistent not only with U.S. WTO obligations, but also with the firm commitment of the United States to the protection of threatened and endangered species, including sea turtles.

The following paragraphs summarize the findings of the WTO Appellate Body report to which the revisions to the Guidelines proposed in this notice respond:

(1) *WTO Finding:* While Section 609 requires as a condition of certification that foreign programs for the protection of sea turtles in the course of shrimp trawl fishing be *comparable* to the U.S. program, the practice of the Department of State in making certification decisions was to require foreign programs to be *essentially the same* as the U.S. program. In assessing foreign programs, the Department of State should be more flexible in making such determinations and, in particular, should take into consideration different conditions that may exist in the territories of those other nations.

Analysis: In response to this recommendation, the proposed revisions to the guidelines make clear that the Department of State will fully consider any evidence that another nation may present that its program to protect sea turtles in the course of shrimp trawl fishing is comparable to the U.S. program. In reviewing such evidence, the Department will take into account any demonstrated differences in foreign shrimp fishing conditions, to the extent that such differences may affect the extent to which sea turtles are subject to capture and drowning in the commercial shrimp trawl fisheries. The Department will also take such differences into account in making related determinations under Section 609.

(2) *WTO Finding:* The certification process under Section 609 is neither transparent nor predictable and denies to exporting nations basic fairness and due process. There is no formal opportunity for an applicant nation to be heard or to respond to arguments against it. There is no formal written, reasoned decision. But for notice in the **Federal Register**, nations are not notified of decisions specifically. There is no procedure for review of, or appeal from, a denial of certification.

Analysis: In response to this finding, the proposed revisions to the guidelines institute a broad range of procedural changes in the manner in which the Department of State will make certification decisions under Section 609. The intention is to create a more transparent and predictable process for reviewing foreign programs and for making decisions on certifications and other related matters. The proposed

revisions ensure that the governments of harvesting nations will be notified on a timely basis of all pending and final decisions and are provided a meaningful opportunity to be heard and to present any additional information relevant to the certification decision. The governments of harvesting nations that are not granted a certification shall receive a full explanation of the reasons that the certification was denied. Steps that the government must take to receive a certification in the future shall be clearly identified. The following paragraphs summarize certain other findings of the WTO Appellate Body report to which the United States Government is responding, or has responded.

(3) *WTO Finding:* At the time the WTO complaint arose, the United States did not permit imports of shrimp harvested by vessels using TEDs comparable in effectiveness to those used in the United States, unless the harvesting nation was certified pursuant to Section 609. In other words, shrimp caught using methods identical to those employed in the United States had been excluded from the United States market solely because they had been caught in waters of uncertified nations.

Analysis: For reasons unrelated to the WTO case, the Department of State modified its implementing Guidelines on August 28, 1998 to allow the importation of shrimp harvested by vessels using TEDs, even if the exporting nation is not certified pursuant to Section 609. This policy had, in fact, been in place as of April 19, 1996, but had been overturned by a domestic court ruling that was subsequently vacated. The provisions of the August 28, 1998 Guidelines pertaining to the importation of such shrimp remain in effect.

(4) *WTO Finding:* The United States failed to engage the nations that brought the complaint, as well as other WTO Members exporting shrimp to the United States, in serious across-the-board negotiations, apart from negotiations on the Inter-American Convention for the Protection and Conservation of Sea Turtles, for the purpose of concluding agreements to conserve sea turtles before enforcing the import prohibition on those other Members.

Analysis: As early as 1996, the United States proposed to governments in the Indian Ocean region the negotiation of an agreement to protect sea turtles in that region, but received no positive response. In 1998, even before the WTO Appellate Body issued its report, the United States reiterated its desire to enter into such negotiations with affected governments, including those that had brought the WTO complaint. During the summer of 1998, the United States informally approached several governments in the Indian Ocean region, as well as numerous non-governmental organizations, in an effort to get such negotiations underway. On October 14, 1998, following the issuance of the Appellate Body report, but before its adoption by the DSB, the Department of State formally renewed this proposal to high-level representatives of the embassies of the four complainants in Washington, D.C., and delivered the same message to a wide range of nations in the Indian Ocean region through our embassies abroad. In each case, the United States presented a list of ''elements'' that we believe could form the basis of such an agreement. We also made clear the willingness of the United States to support the negotiating process in a number of ways. We are continuing to pursue this initiative.

(5) *WTO Finding:* As compared to the 14 nations of the Caribbean and western Atlantic that were initially affected by Section 609, the United States provided less technical assistance to those nations that first became affected by the law at the end of 1995 as a result of the decision of the U.S. Court of International Trade.

Analysis: The United States has renewed, and hereby reiterates, its offer of technical training in the design, construction, installation and operation of TEDs to any government that requests it. Any government that wants to receive such training need only make such a request to the United States in writing, through diplomatic channels. The United States will make every effort to meet such requests. Training programs will be scheduled on a first come, first served basis, although special efforts will be made to accommodate nations whose governments are making good faith efforts to adopt and maintain nation-wide TEDs programs and who have not previously received such training. In this way, the United States hopes to create an additional incentive in favor of such programs.

C. The U.S. Program

Since certification decisions under Section 609(b)(2) (A) and (B) are based on comparability with the U.S. program governing the incidental taking of sea turtles in the course of shrimp harvesting, an explanation of the components of that program follows. The U.S. program requires that commercial shrimp trawl vessels use TEDs approved in accordance with standards established by the U.S. National Marine Fisheries Service (NMFS), in areas and at times when there is a likelihood of intercepting sea turtles. The goal of this program is to protect sea turtle populations from further decline by reducing the incidental mortality of sea turtles in commercial shrimp trawl operations.

The commercial shrimp trawl fisheries in the United States in which there is a likelihood of intercepting sea turtles occur in the temperate waters of the Gulf of Mexico and the Atlantic Ocean from North Carolina to Texas. With very limited exceptions, all U.S. commercial shrimp trawl vessels operating in these waters must use approved TEDs at all times and in all areas. The only exceptions to this requirement are as follows:

a. Vessels equipped exclusively with wing nets, skimmer trawls, and pusher-head trawls when used in conjunction with certain restricted tow times are not required to use TEDs because their operations do not pose a threat to sea turtles. Vessels equipped with barred beam trawls and/or barred roller trawls are not required to use TEDs. Single try nets (with less than a twelve foot headrope and fifteen foot rope) are not required to use TEDs.

b. Vessels whose nets are retrieved exclusively by manual rather than mechanical means are not required to use TEDs because the lack of a mechanical retrieval system necessarily limits tow times to a short duration so as not to pose a threat of the incidental drowning of sea turtles. This exemption applies only to vessels that have no power or mechanical-advantage trawl retrieval system.

c. In exceptional circumstances, where NMFS determines that the use of TEDs would be impracticable because of special environmental conditions such as the presence of algae, seaweed, or debris, or that TEDs would be ineffective in protecting sea turtles in particular areas, vessels are permitted to restrict tow times instead of using TEDs. Such exceptions are generally limited to two periods of 30 days each. In practice, NMFS has permitted such exceptions only rarely.

With these limited exceptions, all other commercial shrimp trawl vessels operating in waters subject to U.S. jurisdiction in which there is a likelihood of intercepting sea turtles must use TEDs at all times. For more information on the U.S. program governing the incidental taking of sea turtles in the course of commercial shrimp trawl harvesting, see 50 CFR 227.17 and 50 CFR 227.72(e).

II. Section 609

A. Shrimp Harvested in a Manner Not Harmful to Sea Turtles

The Department of State has determined that the import prohibitions imposed pursuant to Section 609 do not apply to shrimp or products of shrimp harvested under the following conditions, since such harvesting does not adversely affect sea turtles:

a. Shrimp harvested in an aquaculture facility in which the shrimp spend at least 30 days in pond prior to being harvested.

b. Shrimp harvested by commercial shrimp trawl vessels using TEDs comparable in effectiveness to those required in the United States.

c. Shrimp harvested exclusively by means that do not involve the retrieval of fishing nets by mechanical devices or by vessels using gear that, in accordance with the U.S. program described above, would not required TEDs.

d. Shrimp harvested in any other manner or under any other circumstances that the Department of State may determine, following consultation with the NMFS, does not pose a threat of the incidental taking of sea turtles. The Department of State shall publish any such determinations in the **Federal Register** and shall notify affected foreign governments and other interested parties directly.

B. Shrimp Exporter's/Importer's Declaration

The requirement that all shipments of shrimp and products of shrimp imported into the United States must be accompanied by a declaration (DSP–121, revised) became effective as of May 1, 1996 and remains effective. The DSP–121 attests that the shrimp accompanying the declaration was harvested either under conditions that do not adversely affect sea turtles (as defined above) or in waters subject to the jurisdiction of a nation currently certified pursuant to Section 609. All declarations must be signed by the exporter. The declaration must accompany the shipment through all stages of the export process, including any transformation of the original product and any shipment through any intermediary nation. As before, the Department of State will make copies of the declaration readily available. Local reproduction of the declarations is fully acceptable.

The requirement that a government official of the harvesting nation not currently certified pursuant to Section 609 must also sign the DSP–121 asserting that the accompanying shrimp was harvested under conditions that do not adversely affect sea turtles species remains effective. In order to protect against fraud, the Department will continue to conduct periodic reviews of the systems that such foreign governments have put in place to verify the statements made on the DSP–121 form.

Date of Export. Import prohibitions shall not apply to shipments of shrimp and products of shrimp with a date of export falling at a time in which the harvesting nation is currently certified pursuant to Section 609.

Country of Origin. For purposes of implementing Section 609, the country of origin shall be deemed to be the nation in whose waters the shrimp is harvested, whether or not the harvesting vessel is flying the flag of another nation.

C. Review of Information

The government of any harvesting nation may request that the Department of State review any information regarding the particular shrimp fishing environment and conditions in that nation, or within a distinct geographic region of that nation, in making decisions pursuant to Section 609. Such information may be presented to demonstrate, *inter alia:*

(1) That some portion of the shrimp intended to be exported from that nation to the United States is harvested under one of the conditions identified above as not adversely affecting species of sea turtles;

(2) That the government of that nation has adopted a regulatory program governing the incidental taking of sea turtles in the course of commercial shrimp trawl fishing that is comparable to the U.S. program and, therefore, that the nation is eligible for certification under Section 609(b)(2)(A) and (B); or

(3) That the fishing environment in that nation does not pose a threat of the incidental taking of sea turtles and, therefore, that the nation is eligible for certification under Section 609(b)(2)(C).

Such information should be based on empirical data supported by objective scientific studies of sufficient duration and scope to provide the information necessary for a reliable determination. In addition, information submitted to support a request for any such determination should include available biological and commercial data that are relevant to determining whether or not the fishing environment of the harvesting nation is likely to pose a threat to sea turtles. Studies intended to show the rate of incidental taking of sea turtles in a given shrimp fishery should, at a minimum, contain data for an entire fishing season. Upon request, the United States will review and provide comments on a planned or existing study with respect to sample size, scientific methodology and other factors that affect whether such a study provides a sufficient basis for making a reliable determination.

The Department will fully review and take into consideration all such information and, in consultation with the NMFS, respond in writing to the government of the harvesting nation within 120 days from the date on which the information is received.

The Department, in consultation with the NMFS, will also take into consideration information on the same subjects that may be available from other sources, including but not limited to academic and scientific organizations, intergovernmental organizations and non-governmental organizations with recognized expertise in the subject matter.

III. Guidelines for Making Certification Decisions

A. Certification Pursuant to Section 609(b)(2)(C)

Section 609(b)(2)(C) authorizes the Department of State to certify a harvesting nation if the particular fishing environment of the harvesting nation does not pose a threat of incidental taking of sea turtles in the course of commercial shrimp trawl harvesting. Accordingly, the Department shall certify any harvesting nation meeting the following criteria without the need for action on the part of the government of the harvesting nation:

a. Any harvesting nation without any of the relevant species of sea turtles occurring in waters subject to its jurisdiction;

b. Any harvesting nation that harvests shrimp exclusively by means that do not pose a threat to sea turtles, e.g., any nation that harvests shrimp exclusively by artisanal means;

c. Any nation whose commercial shrimp trawling operations take place exclusively in waters subject to its jurisdiction in which sea turtles do not occur.

B. Certification Pursuant to Section 609(b)(2) (A) and (B)

Under Section 609(b)(2), the Department of State shall certify any other harvesting nation by May 1st of each year if ''the government of [that] nation has provided documentary evidence of the adoption of a regulatory program governing the incidental taking of such sea turtles in the course of such harvesting that is comparable to that of the United States'' and if ''the average

rate of that incidental taking by vessels of the harvesting nation is comparable to the average rate of incidental taking of sea turtles by United States vessels in the course of such harvesting.''

a. *Regulatory Program*. The Department of State shall assess regulatory programs, as described in any documentary evidence provided by the governments of harvesting nations, for comparability with the U.S. program.

Where standard otter trawl nets are used in shrimp fisheries in waters where sea turtles are present, sea turtles will inevitably be captured and drowned. The Department of State is presently aware of no measure or series of measures that can minimize the capture and drowning of sea turtles in such nets that is comparable in effectiveness to the required use of TEDs.

1. If the government of the harvesting nation seeks certification on the basis of having adopted a TEDs program, certification shall be made if a program includes the following:

(i) *Required Use of TEDs*—a requirement that all commercial shrimp trawl vessels operating in waters in which there is a likelihood of intercepting sea turtles use TEDs at all times. TEDs must be comparable in effectiveness to those used in the United States. Any exceptions to this requirement must be comparable to those of the U.S. program described above; and

(ii) *Enforcement*—a credible enforcement effort that includes monitoring for compliance and appropriate sanctions.

2. If the government of a harvesting nation demonstrates that it has implemented and is enforcing a comparably effective regulatory program to protect sea turtles in the course of shrimp trawl fishing without the use of TEDs, that nation will also be eligible for certification. As described above, such a demonstration would need to be based on empirical data supported by objective scientific studies of sufficient duration and scope to provide the information necessary for a reliable determination. In reviewing any such information, the Department of State will take fully into account any demonstrated differences between the shrimp fishing conditions in the United States and those in other nations, as well as information available from other sources.

b. *Incidental Take.* Average incidental take rates will be deemed comparable if the harvesting nation requires the use of TEDs in a manner comparable to that of the U.S. program or, as described above, otherwise demonstrates that it has implemented a comparably effective program to protect sea turtles in the course of shrimp trawl fishing without the use of TEDs.

c. *Additional Considerations.* 1. *Form*—A regulatory program may be in the form of regulations promulgated by the government of the harvesting nation and having the force of law. If the legal system and industry structure of the harvesting nation permit voluntary arrangements between government and the fishing industry, such an arrangement may be acceptable so long as there is a governmental mechanism to monitor compliance with the arrangement and to impose penalties for non-compliance, and reliable confirmation that the fishing industry is complying with the arrangement.

2. *Documentary Evidence*—Documentary evidence may be in the form of copies of the relevant laws, regulations or decrees. If the regulatory program is in the form of a government-industry arrangement, then a copy of the arrangement is required. Harvesting nations are encouraged to provide, to the extent practicable, information relating to the extent of shrimp harvested by means of aquaculture.

3. Additional Sea Turtle Protection Measures—The Department of State recognizes that sea turtles require protection throughout their life cycle, not only when they are threatened during the course of commercial shrimp trawl harvesting. In making certification determinations, the Department shall also take fully into account other measures the harvesting nation undertakes to protect sea turtles, including national programs to protect nesting beaches and other habitat, prohibitions on the directed take of sea turtles, national enforcement and compliance programs, and participation in any international agreement for the protection and conservation of sea turtles. In assessing any information provided by the governments of harvesting nations in this respect, the Department of State will rely on the technical expertise of NMFS and, where appropriate, the US Fish and Wildlife Service to evaluate threats to sea turtles and the effectiveness of sea turtle protection programs.

4. Consultations—The Department of State will engage in ongoing consultations with the governments of harvesting nations. The Department recognizes that, as sea turtle protection programs develop, additional information will be gained about the interaction between sea turtle populations and shrimp fisheries.

These Guidelines may be revised in the future to take into consideration that and other information, as well as to take into account changes in the U.S. program. These Guidelines may also be revised as a result of pending domestic litigation. In addition, the Department will continue to welcome public input on the best ways to implement both these Guidelines and Section 609 as a whole and may revise these guidelines in the future accordingly.

C. Timetable and Procedures for Certification Decisions

Each year the Department will consider for certification: (a) Any nation that is currently certified, and (b) any other shrimp harvesting nation whose government requests such certification in a written communication to the Department of State through diplomatic channels prior to September 1 of the preceding year. Any such communication should include any information not previously provided that would support the request for certification, including the information specified above under Review of Information.

Between September 1 and March 1, U.S. officials will seek to visit those nations requesting certifications pursuant to Section 609(b)(2)(A) and (B). Each visit will conclude with a meeting between the U.S. officials and government officials of the harvesting nation to discuss the results of the visit and to review any identified deficiencies regarding the harvesting nation's program to protect sea turtles in the course of shrimp trawl fishing.

By March 15, the Department of State will notify in writing through diplomatic channels the government of each nation that, on the basis of available information, including information gathered during such visits, does not appear to qualify for certification. Such notification will explain the reasons for this preliminary assessment, suggest steps that the government of the harvesting nation can take in order to receive a certification and invite the government of the harvesting nation to provide, by April 15, any further information. If the government of the harvesting nation so requests, the Department of State will schedule face-to-face meetings between relevant U.S. officials and officials of the harvesting nation to discuss the situation.

Between March 15 and May 1, the Department of State will actively consider any additional information that the government of the harvesting nation believes should be considered by the Department in making its determination concerning certification.

By May 1 of each year the Department of State will make formal decisions on certification. The governments of all nations that have requested certification will be notified in writing of the decision promptly through diplomatic channels. In the case of those nations for which certification is denied, such notification will again state the reasons for such denial and the steps necessary to receive a certification in the future.

The government of any nation that is denied a certification by May 1 may, at any time thereafter, request reconsideration of that decision. When the United States receives information from that government demonstrating that the circumstances that led to the denial of the certification have been corrected, U.S. officials will visit the exporting nation as early as a visit can be arranged. If the visit demonstrates that the circumstances that led to the denial of the certification have indeed been corrected, the United States will certify that nation immediately thereafter.

D. Special Timetable for 1999

The United States and the four nations that brought the WTO complaint have agreed that the United States would implement the recommendations and rulings of the DSB within 13 months of the adoption of the WTO Appellate Body report by the DSB, i.e., by December 6, 1999.

Accordingly, the Department of State hereby establishes the following timetable to apply in 1999 only:

After the date of publication of the revised guidelines, the government of any harvesting nation that was denied certification by May 1, 1999, may request to be certified in accordance with these guidelines in a written communication to the Department of State through diplomatic channels prior to August 15, 1999.

Not later than October 15, 1999, U.S. officials will seek to visit to those nations requesting such certifications. Each visit will conclude with a meeting between the U.S. officials and government officials of the harvesting nation to discuss the results of the visit and to review any identified deficiencies regarding the harvesting nation's program to protect sea turtles in the course of shrimp trawl fishing.

By November 1, 1999, the Department of State will notify in writing through diplomatic channels the government of any nation that, on the basis of available information, including information gathered during such visits, does not appear to qualify for certification. Such notification will explain the reasons for this preliminary assessment, suggest steps that the government of the harvesting nation can take in order to receive a certification and invite the government of the harvesting nation to provide, by November 15, 1999, any further information.

Between November 15 and December 6, 1999, the Department of State will actively consider any additional information that the government of the harvesting nation believes should be considered by the Department in making its determination concerning certification.

By December 6, 1999, the Department of State will make formal decisions on certification. The governments of all nations that have requested certification under the special 1999 timetable will be notified in writing of the decision promptly through diplomatic channels. In the case of those nations for which certification is denied, such notification will again state the reasons for such denial and the steps necessary to receive a certification in the future.

The government of any nation that is denied a certification by December 6, 1999, may, at any time thereafter, request reconsideration of that decision. When the United States receives information from that government demonstrating that the circumstances that led to the denial of the certification have been corrected, U.S. officials will visit the exporting nation as early as a visit can be arranged. If the visit demonstrates that the circumstances that led to the denial of the certification have indeed been corrected, the United States will certify that nation immediately thereafter.

E. Related Determinations

As noted above, any harvesting nation that is not certified on May 1 of any year may be certified prior to the following May 1 at such time as the harvesting nation meets the criteria necessary for certification. Conversely, any harvesting nation that is certified on May 1 of any year may have its certification revoked prior to the following May 1 at such time as the harvesting nation no longer meets those criteria.

* * * * *

As a matter relating to the foreign affairs function, these guidelines are exempt from the notice, comment, and delayed effectiveness provisions of the Administrative Procedures Act. This action is exempt from Executive Order 12866, and is not subject to the requirements of the Regulatory Flexibility Act.

March 19, 1999.

R. Tucker Scully,

Acting Deputy Assistant Secretary for Oceans, Fisheries and Space.

[FR Doc. 99–7342 Filed 3–24–99; 8:45 am]

BILLING CODE 4710–09–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, As amended by Pubic Law 104–13; Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Submission for OMB review; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority no later than April 26, 1999.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission.

Title of Information Collection: Section 26a Permit Application.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, state or local governments, farms, businesses, or other for-profit Federal agencies or employees, non-profit institutions, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 2,600.

Estimated Total Annual Burden Hours: 3,900.

Estimated Average Burden Hours Per Response: 1.5.

Need For and Use of Information: Section 26a of the Tennessee Valley Authority Act of 1933, as amended, requires that TVA review and approve plans for the construction, operation, and maintenance of any dam,

appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. The information collected is used to assess the impact of the proposed project on the statutory TVA programs and determine if the project can be approved. Rules on the application for review and approval of such plans are published in 18 CFR part 1304.

Wilma H. McCauley,

Manager, Information Access.

[FR Doc. 99–7295 Filed 3–24–99; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–62a]

Implementation of WTO Recommendations Concerning EC—Measures Concerning Meat and Meat Products (Hormones)

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comment; notice of public hearing.

SUMMARY: May 13, 1999 is the deadline for the European Communities' (EC) implementation of the recommendations and rulings of the World Trade Organization (WTO) Dispute Settlement Body (DSB) concerning the EC's ban on imports of U.S. meat from animals treated with hormones. EC representatives have indicated that the EC is unlikely to meet this deadline. The United States Trade Representative (USTR) is seeking written comments on the action that the USTR should take to exercise U.S. rights under Article 22 of the WTO Dispute Settlement Understanding (DSU) if the EC fails to implement the DSB recommendations by May 13, 1999.

DATES: Requests to testify at the public hearing and written testimony for the public hearing are due by noon on Wednesday, April 14, 1999; the public hearing will be held beginning at 8:00 a.m. on Monday, April 19, 1999; written comments, in lieu of written and oral testimony, are due by noon on Friday, April 23, 1999; and rebuttal briefs, if needed, are due by 5:00 p.m. on Monday, April 26, 1999.

ADDRESSES: Room 100, 600 17th Street, NW, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Sybia Harrison, Staff Assistant to the Section 301 Committee, (202) 395–3419, for questions concerning Section 301 procedures and submissions filed in response to this notice; Demetrios Marantis, Assistant General Counsel, (202) 395–2581, or Ralph Ives, Deputy Assistant U.S. Trade Representative, (202) 395–4620, for questions concerning the EC hormone ban or WTO procedures; or Joanna McIntosh, Associate General Counsel (202) 395–7203, for questions concerning Section 301, this notice, or WTO procedures.

SUPPLEMENTARY INFORMATION: In December 1985, the EC adopted a directive on livestock production restricting the use of natural hormones to therapeutic purposes, banning the use of synthetic hormones, and prohibiting imports of animals, and meat from animals, to which hormones had been administered. That directive was later declared invalid by the European Court of Justice on procedural grounds and had to be re-adopted by the Council, unchanged, in 1988 (''the Hormone Directive''). These measures became effective January 1, 1989, notwithstanding U.S. attempts to resolve this issue bilaterally and multilaterally, including through dispute settlement under the General Agreement on Tariffs and Trade (GATT).

On December 24, 1987, the President of the United States announced an increase in duties on selected European products in response to the Hormone Directive and related measures, but immediately suspended this action to promote a negotiated solution of the issue. [52 Fed. Reg. 49139]. The USTR terminated the suspension of the increase in duties in January 1989 when the EC began implementing the hormone ban against imports from the United States. [53 Fed. Reg. 53115]. The USTR subsequently modified the application of increased duties on a number of occasions.

Following entry into force of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (''SPS Agreement'') on January 1, 1995, the United States and, later, Canada, proceeded with formal WTO dispute settlement procedures against the hormone ban. Prior to the establishment of the WTO panel, the EC replaced the Hormone Directive with another directive that re-codified and expanded the hormone ban. On May 20, 1996, the DSB established a dispute settlement panel (''the WTO panel'') to examine the consistency of the hormone ban with the EC's WTO obligations. The members of the WTO Panel were selected as of July 2, 1996. On July 15, 1996, the USTR terminated the increase in duties on certain products of the EC that had been imposed in response to the hormone ban. [61 Fed. Reg. 37309].

On August 18, 1997, the WTO panel issued its report finding that the hormone ban is not based on scientific evidence, a risk assessment, or relevant international standards in contradiction of the EC's obligations under the SPS Agreement. The Appellate Body issued its report on January 16, 1998 affirming that the hormone ban is not consistent with the EC's obligations under the SPS Agreement. Specifically, the Appellate Body concluded that the EC's hormone ban failed to satisfy the requirements of Articles 3.3 and 5.1 of the SPS Agreement because the risk assessments that had been performed did not support the ban on imports. In addition, the Appellate Body found that there was no risk assessment, as required by Article 5.1 of the SPS Agreement, for one of the hormones. At its February 13, 1998 meeting, the DSB adopted the Panel and Appellate Body reports on hormones.

The EC subsequently requested four years to implement the DSB recommendations, two years to conduct additional risk assessments and two years to revise its measures to reflect the results of those risk assessments. A WTO Arbitrator appointed to determine the reasonable period of time observed that the reasonable period should not be provided to ''demonstrate the consistency of a measure already judged to be inconsistent,'' in response to the EC's arguments that it would need a substantial period to conduct additional risk assessments. [Para. 39 of the Award of the Arbitrator, WT/DS26/15]. The Arbitrator determined that the reasonable period of time for implementation was fifteen months and would expire on May 13, 1999.

To date, the EC has taken no action to implement the DSB recommendations and rulings. The EC has made no modifications to the hormone ban, but rather has initiated seventeen new risk assessments. In its status report for the March meeting of the DSB, the EC indicated that it does not expect to be in compliance by the May 13, 1999 WTO-mandated deadline.

On March 3–4, 1999, U.S. and EC officials held discussions in Washington to explore options to resolve this dispute. The United States presented a proposal for labeling U.S. beef as a way to address European consumers' concerns. However, the EC indicated that a resolution of this matter would be conditional on the completion of the additional risk assessments, which may not be completed until sometime in late 1999 or 2000, and other regulatory procedures.

Process for Suspending Concessions

If the EC fails to implement the DSB recommendations concerning the hormone ban by May 13, 1999, Article 22 of the WTO Dispute Settlement Understanding (DSU) permits the United States to suspend the application of concessions or other obligations accruing to the EC under the WTO Agreement. Article 22.2 of the DSU provides that the United States must seek authorization from the DSB prior to suspending concessions. Article 22.6 of the DSU provides that the DSB shall grant the requested authorization not later than thirty days after the expiration of the reasonable period, or by June 12 in this dispute, unless the EC objects to the level of suspension proposed.

If the EC objects to the level of suspension proposed, it may request that the assessment of that level be referred to arbitration. The DSU requires that such arbitration proceedings be completed within sixty days after the expiration of the reasonable period of time, or by July 12 in this dispute.

Following the completion of arbitration proceedings and upon request, the DSB must grant authorization to suspend concessions or other obligations consistent with the Arbitrator's decision. The United States may not suspend concessions or other obligations during the course of the arbitration proceedings.

Given the likelihood that the EC will not implement the DSB recommendations concerning the hormone ban by May 13, the USTR is taking steps, under the authority of Section 306 of the Trade Act, to prepare for the exercise of the United States's right to suspend concessions under Article 22 of the DSU. These steps include: (1) this request for comments on the concessions that the United States intends to suspend if the EC does not implement the DSB recommendations; and (2) the subsequent U.S. request to the DSB for suspension of concessions.

The U.S. request to the DSB will be submitted some time after May 13, when the EC's reasonable period of time for implementation expires, but before June 12, the latest date by which either the DSB must grant the requested authorization or the EC must request arbitration to review the level of the requested suspension. The U.S. request to the DSB will include the concessions which the U.S. intends to suspend (e.g., a list of products of the EC on which the United States intends to suspend tariff concessions). The United States would begin suspending these concessions in accordance with the time frames provided in Article 22 of the DSU and Section 306 of the Trade Act.

Request for Comments

The USTR requests comments on the types of concessions that may be appropriate for suspension pursuant to Article 22 of the DSU if the EC does not implement the DSB recommendations concerning the hormone ban within the prescribed reasonable period of time. The USTR proposes that the imposition of 100 percent *ad valorem* duties on selected products of the EC is an appropriate action and that the products to be affected by the duty increase will be drawn from the list of products set forth in the Annex to this notice. The imposition of increased duties may be applied to imported articles that are both: (1) classified in the headings and the subheadings of the Harmonized Tariff Schedule of the United States (HTS) listed in the Annex to this notice; and (2) the product of a member State of the European Union. In the instances where a 4-digit HTS heading appears in the left column of this list, products classified in any of the 8-digit subheadings appearing in the HTS indented under those 4-digit headings may be subject to increased duties.

Public Comment on Proposed Suspension of Concessions; Hearing Participation

Section 306(c) of the Trade Act provides that the USTR shall allow an opportunity for the presentation of views by interested persons prior to the issuance of a determination pursuant to section 306(b). The USTR invites interested persons to: (1) provide written comments on the proposed suspension of concessions; and (2) to present written and oral testimony and rebuttal briefs in the context of a public hearing. Written comments and written and oral testimony may address: the appropriateness of imposing increased duties on the products listed in the Annex to this notice; the levels at which U.S. customs duties should be set for particular items; the degree to which increased duties might have an adverse effect upon U.S. consumers of the products listed in the Annex; and any other matter relating to the EC hormone ban and the proposed increase in duties.

Written comments: Interested persons wishing to submit written comments must do so by noon on Friday, April 23, 1999. Persons submitting written comments may, but do not need to, present written and oral testimony as well.

Requests to Testify and Written Testimony: Interested persons wishing to present testimony at the hearing must submit a written request to do so by noon on Wednesday, April 14, 1999, together with twenty copies of their complete written testimony. Requests to testify must conform to the requirements of 15 CFR § 2006.9 and include the following information: (1) name, address, telephone number, fax number, firm or affiliation of the applicant, and interest of the applicant; and (2) a brief summary of the comments to be presented. After considering the request to present oral testimony, the Staff Assistant to the Section 301 Committee will notify the applicant of the time of his or her testimony.

Public Hearing: The public hearing will be held beginning at 8:00 a.m. on Monday, April 19, 1999 in the Main Hearing Room at the U. S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436. Testimony at the public hearing should be limited to no more than five minutes.

Rebuttal Briefs: To assure interested persons an opportunity to contest the information provided by other persons, the USTR will entertain rebuttal briefs filed by any party by 5:00 p.m. on Monday, April 26, 1999. In accordance with 15 CFR § 2006.8(c), rebuttal briefs should be strictly limited to demonstrating errors of fact or analysis not pointed out in written or oral testimony and should be as concise as possible.

Requirements for Submissions: Written comments on the proposed determination, written testimony, and rebuttal briefs must be filed in accordance with the requirements set forth in 15 CFR § 2006.8(b). Submission must include on the first page a clear reference in bold and/or underlining to the HTS number(s) and product(s) which are the subject of the submission. Submissions must state clearly the position taken and describe with particularity the supporting rationale, be in English, and be provided in twenty copies to: Chairman, Section 301 Committee, Attn: EC—Hormone Ban, Implementation of WTO Recommendations, Room 100.

Written comments, written testimony, and rebuttal briefs will be placed in a file (Docket 301–62a) open to public inspection pursuant to 15 CFR § 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR § 2006.15. Persons wishing to submit business confidential information must certify in writing that such information is confidential in accordance with 15 CFR § 2006.15(b), and such information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color

ink at the top of each page on each of twenty copies and must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary will be placed in the docket that is open to public inspection.

An appointment to review Docket No. 301–62a may be made by calling Brenda Webb at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101 of the Office of the United States Trade Representative.

Joanna K. McIntosh,

Chairman, Section 301 Committee.

BILLING CODE 3190–01–P

Annex

[The bracketed language in this Annex has been included only to clarify the scope of the numbered headings or subheadings of the Harmonized Tariff Schedule of the United States (HTS) which are being considered, and such language is not itself intended to describe articles which are under consideration. In the instances where a 4-digit HTS heading number appears in the left column of this annex, articles classified in any of the 8-digit subheadings indented thereunder in the HTS may be subject to increased duties.]

HTS Heading/ Subheading	Article Description
0201	Meat of bovine animals, fresh or chilled
0202	Meat of bovine animals, frozen
0203	Meat of swine, fresh, chilled, or frozen
0206	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled or frozen
0207	Meat and edible offal, of the poultry of heading 0105, fresh, chilled or frozen
	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal:
	Meat of swine:
0210.11.00	Hams, shoulders and cuts thereof, with bone in
0210.12.00	Bellies (streaky) and cuts thereof
0210.20.00	Meat of bovine animals
	Other, including edible flours and meals of meat or meat offal:
0210.90.20	Meat of poultry of heading 0105
0210.90.40	Other
	Cheese and curd:
	Blue-veined cheese:
	Roquefort:
0406.40.20	In original loaves
0406.40.40	Other
0504.00.00	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof, fresh, chilled, frozen, salted, in brine, dried or smoked
	Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared:
	[Fresh]
0603.90.00	Other
	Foliage, branches and other parts of plants, without flowers or flower buds, and grasses, mosses and lichens, being goods of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared:
	[Mosses and lichens]
	Other:
0604.91.00	Fresh
	Other:
0604.99.30	Dried or bleached
0702	Tomatoes, fresh or chilled
	Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled:
	Onions and shallots:
	[Onion sets]
	Other:
	[Pearl onions not over 16 mm in diameter]
0703.10.40	Other
	Other vegetables, fresh or chilled:
	Mushrooms and truffles:
0709.52.00	Truffle

Annex (con.)
2 of 4

HTS Heading/ Subheading	Article Description
	Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared:
	Other vegetables; mixtures of vegetables:
0712.90.10	Carrots
	Tomatoes:
0712.90.74	In powder
0712.90.78	Other
	Other nuts, fresh or dried, whether or not shelled or peeled:
0802.40.00	Chestnuts (Castanea spp.)
	Pepper of the genus Piper; dried or crushed or ground fruits of the genus Capsicum (peppers) or of the genus Pimenta (e.g., allspice):
	Fruits of the genus Capsicum or of the genus Pimenta (including allspice), dried or crushed or ground:
	Of the genus Capsicum (including cayenne pepper, paprika and red pepper):
0904.20.20	Paprika
1004.00.00	Oats
	Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced or kibbled), except rice of heading 1006; germ of cereals, whole, rolled, flaked or ground:
	Rolled or flaked grains:
1104.12.00	Of oats
	Other worked grains (for example, hulled, pearled, sliced or kibbled):
1104.22.00	Of oats
	Wool grease and fatty substances derived therefrom (including lanolin):
	[Wool grease, crude]
1505.90.00	Other
1601	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products
	Other prepared or preserved meat, meat offal or blood:
1602.10.00	Homogenized preparations
	Of liver of any animal:
1602.20.20	Of goose
1602.20.40	Other
	Of poultry of heading 0105:
1602.31.00	Of turkeys
1602.32.00	Of chickens
1602.39.00	Other
	Of swine:
	Hams and cuts thereof:
1602.41.10	Containing cereals or vegetables
	Other:
1602.41.20	Boned and cooked and packed in airtight containers
1602.41.90	Other
	Shoulders and cuts thereof:
1602.42.20	Boned and cooked and packed in airtight containers
1602.42.40	Other
	Other, including mixtures:
1602.49.10	Offal
	Other:
	Not containing cereals or vegetables:
1602.49.20	Boned and cooked and packed in airtight containers
1602.49.40	Other
	Other:
1602.49.60	Mixtures of pork and beef
1602.49.90	Other

Annex (con.)
3 of 4

HTS Heading/ Subheading	Article Description
	Other prepared or preserved meat, meat offal or blood:
	Of bovine animals:
1602.50.05	Offal
	Other:
	Not containing cereals or vegetables:
1602.50.09	Cured or pickled
	Other:
	In airtight containers:
1602.50.10	Corned beef
1602.50.20	Other
1602.50.60	Other
1602.50.90	Other
	Sugar confectionery (including white chocolate), not containing cocoa:
1704.10.00	Chewing gum, whether or not sugar-coated
	Other:
	Confections or sweetmeats ready for consumption:
	Other:
1704.90.25	Cough drops
	Chocolate and other food preparations containing cocoa:
	[Cocoa powder, containing added sugar or other sweetening matter; other preparations in blocks, slabs or bars, weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg]
	Other, in blocks, slabs or bars:
1806.31.00	Filled
	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:
1905.40.00	Rusks, toasted bread and similar toasted products
	Tomatoes prepared or preserved otherwise than by vinegar or acetic acid:
2002.10.00	Tomatoes, whole or in pieces
	Other:
2002.90.40	In powder
2002.90.80	Other
	Jams, fruit jellies, marmalades, fruit or nut pureé and fruit or nut pastes, being cooked preparations, whether or not containing added sugar or other sweetening matter:
	[Homogenized preparations]
	Other:
	Other:
	Jams:
2007.99.05	Lingonberry and raspberry
	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:
	Citrus fruit:
	[Peel; pulp]
	Other:
	Mandarins (including tangerines and satsumas); clementines, wilkings and similar citrus hybrids:
	Mandarins:
	Satsumas, in airtight containers:
2008.30.42	For an aggregate quantity entered in any calendar year not to exceed 40,000 metric tons
2008.30.46	Other
2008.40.00	Pears
2008.70.00	Peaches

Annex (con.)
4 of 4

HTS Heading/ Subheading	Article Description
	Fruit juices (including grape must) and vegetable juices, not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter:
2009.60.00	Grape juice (including grape must)
	Juice of any other single fruit or vegetable:
	Fruit juice:
	[Pear juice; prune juice]
2009.80.60	Other
	Mixtures of juices:
	[Vegetable]
2009.90.40	Other
	Extracts, essences and concentrates, of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof:
2101.30.00	Roasted chicory and other roasted coffee substitutes and extracts, essences and concentrates thereof
	Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard:
	Mustard flour and meal and prepared mustard:
	[Mustard flour and meal]
2103.30.40	Prepared mustard
	Soups and broths and preparations therefor; homogenized composite food preparations:
2104.10.00	Soups and broths and preparations therefor
	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored; ice and snow:
2201.10.00	Mineral waters and aerated waters
	Preparations of a kind used in animal feeding:
	[Dog or cat food, put up for retail sale]
	Other:
2309.90.10	Mixed feeds or mixed feed ingredients
	Prepared glues and other prepared adhesives, not elsewhere specified or included; products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg:
	Products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg:
	[Animal glue, including casein glue, but not including fish glue]
3506.10.50	Other
	Artificial staple fibers, not carded, combed or otherwise processed for spinning:
5504.10.00	Of viscose rayon
	Yarn (other than sewing thread) of artificial staple fibers, not put up for retail sale:
	Containing 85 percent or more by weight of artificial staple fibers:
5510.11.00	Single yarn
	Shavers and hair clippers, with self-contained electric motor; parts thereof:
8510.20.00	Hair clippers
	Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars:
8711.20.00	With reciprocating internal combustion piston engine of a cylinder capacity exceeding 50 cc but not exceeding 250 cc
8711.30.00	With reciprocating internal combustion piston engine of a cylinder capacity exceeding 250 cc but not exceeding 500 cc

[FR Doc. 99–7409 Filed 3–23–99; 1:01 pm]
BILLING CODE 3190–01–C

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5380]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its subcommittees on boat occupant protection, navigation lights, and personal flotation device-life saving index will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAC will meet on Monday, April 26, 1999, from 8:30 a.m. to 5 p.m. and Tuesday, April 27 from 8:30 a.m. to noon. The Personal Flotation Device-Life Saving Index and Navigation Light Subcommittees will meet on Saturday, April 24, 1999, from 1:30 p.m. to 5 p.m. The Boat Occupant Protection Subcommittee will meet on Sunday, April 25, 1999, from 9:00 a.m. to noon. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 15, 1999. Requests to have a copy of your material distributed to each member of the committee or subcommittees should reach the Coast Guard on or before April 9, 1999.

ADDRESSES: NBSAC will meet at the Doubletree Hotel Columbia River, 1401 N. Hayden Island Drive, Portland, Oregon. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Albert J. Marmo, Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001. You may obtain a copy of this notice by calling the U.S. Coast guard Infoline at 1–800–368–5647. This notice is available on the Internet at http://dms.dot.gov or at the Web Site for the Office of Boating Safety at URL address www.uscgboating.org/.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Albert J. Marmo, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285. For questions on viewing the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

National Boating Safety Advisory Council (NBSAC). The agenda includes the following:

(1) Executive Director's report.
(2) Chairman's session.
(3) Personal Flotation Device-Life Saving Index Subcommittee report.
(4) Navigation Light Subcommittee report.
(5) Boat Occupant Protection Subcommittee report.
(6) Recreational Boating Safety Program report.
(7) Report on an evaluation of commercially available propeller injury protection devices.
(8) Presentation on the results of personal flotation device (PFD) wear rate study.
(9) Inflatable personal flotation device update.
(10) Report on the Canadian experience in mandatory operator competency.
(11) National Association of State Boating Law Administrators report.
(12) Vessel Identification System demonstration and discussion.
(13) Report on canoe and kayak safety issues.
(14) Report on fire extinguisher carton labeling.

Boat Occupant Protection Subcommittee. The agenda includes the following:

(1) Review and discuss results of test and evaluation of propeller safety devices.
(2) Discuss risk management and human factors initiatives.
(3) Discuss personal watercraft off-throttle steering test and evaluation.
(4) Discussion manufacturer compliance seminars.

Navigation Light Subcommittee. The agenda includes the following:

(1) Review and discussion rulemaking to replace navigation lights under regulatory control, including certification implementation strategy.
(2) Discussion International Organization for Standardization navigation light standard development.
(3) Discuss status of navigation light lens size study.

Personal Flotation Device-Life Saving Index Subcommittee. The agenda includes the following:

(1) Discuss status of development of the life saving index.
(2) Discuss the status of inflatable PFD inflation systems, and approval of automatic inflating PFDs.
(3) Discuss the ''Standards Technical Panel'' process.
(4) Discuss strategies for improving public awareness of the capabilities of the different types of personal flotation devices.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than April 15, 1999. Written material for distribution at a meeting should reach the Coast Guard no later than April 15, 1999. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than April 9, 1999.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: March 17, 1999.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 99–7321 Filed 3–24–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice and Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Salt Lake City International Airport under the provisions of 49 U.S.C. Sec. 47503(a) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing the proposed noise compatibility program that was submitted for Salt Lake City International Airport under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before September 6, 1999.

EFFECTIVE DATE: The effective date of the FAA's determination on the Salt Lake City International Airport noise

exposure maps and the start of the its review of the associated noise compatibility program is March 10, 1999. The public comment period ends May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM–611, 1601 Lind Avenue, S.W., Renton, Washington, 98055–4056. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps for Salt Lake City International Airport are in compliance with applicable requirements of Part 150, effective March 10, 1999. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approve or disapproved on or before September 6, 1999. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C. Sec. 47503(a), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. 49 U.S.C. Sec. 47503(a)(1) requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to 49 U.S.C. Sec. 47503(a) may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Executive Director of the Salt Lake International Airport submitted the FAA noise exposure maps, descriptions and other documentation which were produced during an airport Noise Compatibility Study. It was requested that the FAA review the noise exposure maps, as described in 49 U.S.C. Sec. 47503. It was also requested that the noise mitigation measures be approved as a noise compatibility program under 49 U.S.C. Sec. 47504.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Salt Lake City International Airport. The specific maps under consideration are Figures 5–1 and 5–2 in the submission. The FAA has determined that these maps for Salt Lake City International Airport are in compliance with applicable requirements. This determination is effective on March 10, 1999. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under 49 U.S.C. Sec. 47503, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of 49 U.S.C. Sec. 47507. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under 49 U.S.C. Sec. 47503(a)(1). The FAA has relied on the certification by the airport operator, under Section 150.21 of the FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Salt Lake City International Airport, also effective on March 10, 1999. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before September 6, 1999.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, paragraph 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to the local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration 800 Independence Avenue, SW, Room 615 Washington, D.C.

Federal Aviation Administration Airports Division 1601 Lind Avenue, S.W. Renton, Washington

Federal Aviation Administration Denver Airports District Office 26805 E. 68th Ave. Suite 224 Denver, Colorado

Salt Lake City International Airport Salt Lake City, Utah

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Renton, Washington, March 10, 1999.

Lowell H. Johnson,

Manager, Airports Division, ANM–600, Northwest Mountain Region.

[FR Doc. 99–7261 Filed 3–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Privatizing Remaining Level I VFR Towers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of privatizing VFR towers.

SUMMARY: This notice announces that pursuant to the memorandum and order of Judge Aldrich of the U.S. District Court for the Northern District of Ohio, the agency has completed a new A–76 analysis concerning the contracting out of Level I VFR towers. The FAA intends

to continue privatizing the remaining Level I VFR towers.

Issued in Washington, DC on March 18, 1999.

Willie F. Card,

Manager, Federal Contract, Tower Program.

[FR Doc. 99–7259 Filed 3–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

The Federal Aviation Administration (FAA) Communications/Surveillance Operational Implementation Team (C/SOIT) Hosted Forum on the Operational Implementation of Satellite Communications, Surface Movement Surveillance Systems, and Data Link Technologies for Aviation Applications in the National Airspace System (NAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA C/SOIT will be hosting a public forum to discuss the FAA's data link and surface movement surveillance systems. This meeting will be held in response to aviation industry requests to the FAA Administrator. Formal presentations will be provided followed by a question and answer session. In subsequent days, working group sessions will be held to discuss such topics as Controller-Pilot Data Link Communications, High Frequency Data Link, Human Factors, Flight Information Services and Satellite Communications. Those who plan to attend are invited to submit proposed discussion topics. Requests to make presentations to the assembled forum should be made to the **FOR FURTHER INFORMATION CONTACT** listed.

DATES: June 1–4, 1999, 9:00 a.m.–5:00 p.m.

ADDRESS: Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Registration and submission of suggested discussion topics may be made to Ms. Dottie Wilkins, telephone (202) 484–2535, fax (202) 484–1510 or email at *dottie.ctr.wilkins@faa.gov*.

SUPPLEMENTARY INFORMATION: Open to the aviation industry with attendance limited to space available. Participants are requested to register their intent to attend this meeting by May 10, 1999. Names, affiliations, addresses, telephone and facsimile numbers should be sent to the **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on March 19, 1999.

Donald W. Streeter,

CSOIT Co-Chairman.

[FR Doc. 99–7318 Filed 3–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Program Management Committee (PMC) meeting to be held April 6, 1999, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Welcome and Introductions; (2) Review and Approval of Summary of the Previous Meeting; (3) Action Item Review: a. PMC Action Items 99–01 and 99–02, Revised Terms of Reference for Special Committee 192 (proposed change to new terms of reference); b. PMC Action Item 99–06, Flight Information Services Special Committee (status of FAA coordination and draft terms of reference; FAA's proposed use of committee products; report on user interest/requirement and chairman nominations); c. PMC Action Item 99–07, Data Link Special Committee (present the proposed terms of reference; consideration/approval of committee co-chairs); d. PMC Action Item 99–04, Cost Benefit Considerations in RTCA Documents; (4) Discussion: a. Revised Template for Special Committee Terms of Reference; b. New Chairman for Special Committee 190; c. Nominations for 1999 RTCA Awards; (5) Other Business; (6) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 17, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–7260 Filed 3–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Special Committee 193/RTCA Eurocae Working Group 44 Terrain and Airport Databases

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44 meeting to be held April 12–16, 1999, starting at 9:00 a.m. The meeting will be held at EUROCONTROL, Rue de la Fusee, 96, B–1130, Brussels, Belgium.

The agenda will be as follows: Monday, April 12, Opening Plenary Session: (1) Chairmen's Introductory Remarks; (2) Review/Approval of Meeting Agenda; (3) Review of Summary of the Previous Meeting. (4) Subgroup 2, Terrain and Obstacle Databases: (a) Review of Summary of the Previous Meeting; (b) Review of Actions Taken during the Previous Meeting; (c) Presentations; (d) Review of the Draft Document. Tuesday, April 13: (5) Subgroup 2, continuation of Previous day's discussions. Wednesday, April 14: (6) Subgroup 3, Airport Databases. Thursday, April 15: (7) Subgroup 3, continuation of previous day's discussions. Friday, April 16: Closing Plenary Session: (8) Summary of Subgroups 2 and 3 Meetings; (9) Assign Tasks; (10) Other Business; (11) Dates and Locations of Next Meetings; (12) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC 20036; (202) 833–9339 (phone), (202) 833–9434 (fax), or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on March 19, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–7320 Filed 3–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on PFC Application 99–07–C–00–PDX To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Portland International Airport; Submitted by the Port of Portland, Portland, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use, and use only the revenue from a PFC at Portland International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 26, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Steve Schreiber, Senior Manager, Aviation Finance, at the following address; 7000 NE Airport Way, Portland, OR 97218.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Portland International Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Vargas, (425) 227–2660; Seattle Airports District Office, Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 99–07–C–00–PDX to impose and use the revenue from a PFC at Portland International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 16, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Port of Portland, Portland, Oregon, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 14, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 2008.

Proposed charge expiration date: February 1, 2019.

Total estimated net PFC revenue: $146,483,000 (revised per 1/29/99 Plan of Finance from Port of Portland).

Brief description of proposed project(s): Airport Max Light Rail Transit (LRT) Extension.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators and is defined as ''the carriage in air commerce of persons for compensation or hire as a commercial operator, but not an air carrier, of aircraft having a maximum seating capacity of less than twenty passengers or a maximum payload capacity of less than 6,000 pounds. 'Air taxi/commercial operators' shall also include, without regard to number of passengers or payload capacity, revenue passengers transported for student instruction, nonstop sightseeing flights that begin and end at the same airport and are conducted within a 25 statute mile radius of the airport, ferry or training flights, aerial photography or survey charters, and fire fighting charters.''

Any person may inspect the application, including additional information pertaining to project justification and financing recently submitted by the Port of Portland to supplement the application, in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Regional Office, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Portland International Airport, Portland, Oregon.

Issued in Renton, Washington on March 16, 1999.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–7258 Filed 3–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Dade, Broward, Palm Beach, Martin, Okeechobee, Saint Lucie, Indian River, Brevard, Oceola, Orange, Polk, and Hillsborough Counties in Florida

AGENCIES: Federal Highway Administration (FHWA) and Federal Railroad Administration (FRA), DOT.

ACTION: Notice of rescission of the Notice of Intent.

SUMMARY: The FHWA and FRA are issuing this notice of rescission to advise the public that preparation of an environmental impact statement (EIS) for a proposed Florida High Speed Rail project between Miami, Orlando, and Tampa, Florida has been terminated. This is a formal rescission of the Notice of Intent that was published in the **Federal Register** on April 8, 1998 (63 FR 17254).

FOR INFORMATION CONTACT: George Hadley, Environmental Coordinator, Federal Highway Administration, 227 North Bronough Street, Tallahassee, Florida 32301, (850) 942–9594 and/or Mark Yachmetz, RDV–13, Chief of Passenger Programs, Federal Railroad Administration, 400 Seventh Street, SW., MS–20, Washington, DC 20590, (202) 632–6389.

SUPPLEMENTARY INFORMATION: The FHWA and FRA in cooperation with the Florida Department of Transportation, will not prepare an EIS for a proposal to construct a high speed rail project between Miami, Orlando, and Tampa, Florida. The State of Florida has withdrawn the proposal to construct the proposed 320 mile long project that would allow trains to operate at speeds up to 200 miles per hour.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: March 11, 1999.

James E. St. John,

Division Administrator, Tallahassee, Florida.

[FR Doc. 99–7298 Filed 3–24–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–5143 (Notice No. 99–1)]

International Standards on the Transport of Dangerous Goods: Request for Comments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Request for comments.

SUMMARY: RSPA invites comments on certain environmental substances issues that will be considered by the United Nations Committee of Experts on the Transport of Dangerous Goods (UN Committee of Experts) at a subcommittee meeting to be held in July 1999. These issues concern the development of requirements for substances that are dangerous to the environment and the criteria that will be used to define such substances, including RSPA's recommendation of criteria for substances transported in bulk quantities. The purpose of this notice is to afford the public an opportunity to submit comments on these important issues.

DATES: Comments must be submitted by May 7, 1999.

ADDRESSES: Address comments to the Dockets Unit, U.S. Department of Transportation, Room PL 401, 400 Seventh St., SW, Washington, D.C. 20590–0001. Comments should identify the docket and notice numbers (Docket No. RSPA–99–5143; Notice No. 99–1) and be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Alternatively, comments may be submitted by E-mail to *rules@rspa.dot.gov*. The Dockets Unit is located on the Plaza Level of the Nassif Building at the U.S. Department of Transportation at the above address. Public dockets may be reviewed between the hours of 10 a.m. and 5 p.m. Monday through Friday, except on Federal holidays. Internet users may access all comments received by the U.S. Department of Transportation by using the Universal Resource Locator (URL) at *http://dms.dot.gov/*. An electronic copy of the document may be downloaded using modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator for Hazardous Materials Safety, RSPA, U.S. Department of Transportation, Washington, DC 20590–0001; telephone (202) 366–0656.

SUPPLEMENTARY INFORMATION:

Introduction

Subject to guidance and direction from the Department of State (49 U.S.C. 5120), the RSPA Associate Administrator for Hazardous Materials Safety represents the U.S. at meetings of the UN Committee of Experts in Geneva, Switzerland. The UN Committee of Experts is responsible for the UN Recommendations on the Transport of Dangerous Goods (UN Recommendations) which forms the basis for the International Civil Aviation Organization Technical Instructions on the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the International Maritime Organization (IMO) International Maritime Dangerous Goods Code (IMDG Code). Since 1990, through amendments to the Hazardous Materials Regulations (HMR; 49 CFR parts 100 through 180), U.S. regulations have been substantially aligned with the UN Recommendations. Although the UN Committee of Experts will consider many issues affecting the UN Recommendations in its 1999—2000 biennium, RSPA believes that the importance of developing requirements and criteria for substances that are dangerous to the environment is of such significance as to warrant special consideration and public involvement.

Background

In the absence of internationally harmonized criteria for substances that are dangerous to the environment in the UN Recommendations, varying environmental criteria and requirements applicable to these substances have been included in national and international transport regulations. The UN Committee of Experts seeks to achieve international harmonization of these differing regulations. Although discussion on the development of requirements and criteria for these substances has been on the agenda of the UN Committee for a number of years, RSPA believes that significant progress will be made by the UN Committee of Experts in its 1999—2000 biennium as a result of agreements by the Organization for Economic Cooperation and Development (OECD) on internationally harmonized environmental criteria.

UN Conference on Environment and Development (UNCED) and OECD

In 1992, UNCED endorsed the development of a standardized system for the classification and labeling of hazardous chemicals commonly referred to as the Globally Harmonized System (GHS). The goal of the GHS is to promote common, consistent criteria for classifying chemicals according to their health, physical and environmental hazards, and to develop compatible labeling, material safety data sheets for workers, and other information based on the resulting classifications. In developing the GHS, it was agreed that OECD would coordinate the development of health and environmental hazard classification criteria. In November 1998, OECD endorsed the Harmonized Integrated Hazard Classification System for Human Health and Environmental Effects of Chemical Substances. The document is available on the internet at ''*http://www.epa.gov/oppfead1/harmonization*'' and may also be accessed through RSPA's website (http://www.hazmat.dot.gov) under ''International Standards.'' The document includes internationally harmonized criteria for classification of chemicals which are ''hazardous for the aquatic environment,'' a discussion of how OECD arrived at the criteria, and an explanation of the application of the criteria. It is the UN Committee of Expert's intent to use the criteria in this document as the basis for its dangerous-to-the-environment criteria.

OECD is currently developing a guidance document on how the ''hazardous-for-the-aquatic-environment'' criteria should be applied to substances that are difficult to test and a standardized procedure for classifying mixtures. Completion of both tasks is necessary in order for the UN Committee of Experts to include criteria in its Model Regulations on the Transport of Dangerous Goods.

U.S. Domestic Activities Relative to the Development of Criteria

The U.S. HMR have long included requirements for substances that are hazardous to the environment, but do not include criteria for the classification of such substances. As required by law (42 U.S.C. 9601(14)), substances designated by the Environmental Protection Agency (EPA) as hazardous substances are regulated as hazardous materials and are listed in the HMR (Appendix A to § 172.101). Substances that are listed as marine pollutants in the HMR (Appendix B to § 172.101) are also regulated as hazardous materials. RSPA considers a criteria-based system for regulating substances that are hazardous to the environment to be more appropriate than the current list approach. Virtually all other substances

subject to the HMR are regulated on the basis of their meeting hazard classification criteria.

During congressional hearings following a July 14, 1991 train derailment in Dunsmuir, California that resulted in the release of 20,000 gallons of metam sodium into the Sacramento River, RSPA and EPA agreed to collaborate in developing criteria for substances that are dangerous to the environment. In an October 1992 letter, the EPA, pursuant to that agreement, provided RSPA with recommended criteria. On the basis of an analysis, the EPA letter noted that for ''ecological effects, * * * the most vulnerable endpoint is aquatic ecosystems.'' EPA recommended four possible options for aquatic toxicity criteria for RSPA to consider for inclusion in the HMR. The ''hazardous-for-aquatic-environment'' criteria subsequently developed by OECD are compatible with the EPA recommended criteria. EPA also stated in their letter that substances with an aquatic toxicity of up to 100 mg/L should not be exempted. Pending the outcome of the ongoing work to develop internationally harmonized criteria, RSPA delayed proposing the EPA recommended criteria for inclusion in the HMR. Instead, U.S. delegations led by EPA used the recommended criteria as a basis for U.S. positions at the OECD meetings.

Following a June 30, 1992 train derailment in Superior, Wisconsin that resulted in the release of 21,850 gallons of aromatic concentrates into the Nemadji River, the National Transportation Safety Board recommended (Safety Recommendation I–94–1) that EPA and DOT work together to establish criteria to identify materials that are harmful to the environment and evaluate the ''* * * severity of harm posed by the release of these materials from bulk containers, including tank cars, in transportation * * *'' The inclusion of criteria in the HMR would be responsive to this recommendation.

United Kingdom (UK) Proposal

At the 20th Session of the UN Committee of Experts in December 1999, the UK provided an information paper proposing dangerous-to-the-environment requirements for inclusion in the UN Recommendations. It is anticipated that the UK proposal will provide the basis for the discussion on dangerous-to-the-environment criteria at the 16th Session of the UN Subcommittee of Experts on the Transport of Dangerous Goods to be held in July 1999. The paper is available through DOT's website (*http://dms.dot.gov/*) by first accessing the Docket number of this document and then the Notice number.

Under the UK proposal, substances which are not subject to regulation under Classes 1 through 8 in the UN Recommendations, and which meet the dangerous-to-the-environment criteria, would be subject to regulation as miscellaneous dangerous goods under Class 9 and offered for transportation in packaging tested at the Packing Group III level of performance. Under the proposal, an offeror would be responsible for determining whether a substance offered for transportation meets the dangerous-to-the-environment criteria. The paper proposes that substances meeting any one of several sets of acute and chronic toxicity categories be regarded as dangerous to the environment. The sets of criteria proposed by the UK for inclusion in the UN Recommendations are from the OECD ''hazardous-for-the-aquatic-environment'' criteria. They are as follows:

Acute Category I	
Acute toxicity:	
96 hr LC50 (for fish)	≤1mg/L and/or
48 hr EC50 (for crustacea)	≤1mg/L and/or
72 or 96hr ErC50 (for algae or other aquatic plants)	≤1mg/L
Category: Chronic I	
Acute toxicity:	
96 hr LC50 (for fish)	≤1 mg/L and/or
48 hr EC50 (for crustacea)	≤1mg/L and/or
72 or 96hr ErC50 (for algae or other aquatic plants) and the substance is not rapidly degradable and/or the log Kow ≥4 (unless the experimentally determined BCF <500).	≤1mg/L
Category: Chronic II	
Acute toxicity:	
96 hr LC50 (for fish)	>1 to ≤10 mg/L and/or
48 hr EC50 (for crustacea)	>1 to ≤10 mg/L and/or
72 or 96hr ErC50 (for algae or other aquatic plants) and the substance is not rapidly degradable and/or the log Kow ≥4 (unless the experimentally determined BCF <500), unless the chronic toxicity NOECs are >1mg/L.	>1 to ≤10 mg/L

(The above abbreviations are defined in the OECD paper.)

RSPA believes that these criteria will be widely supported by participants at the UN Subcommittee meeting because they are similar to criteria already used by the IMO in identifying substances as Marine Pollutants under the IMDG Code and are similar to criteria used in European rail and highway transport regulations.

RSPA's Position and Request for Comments

As the U.S. representative at the UN Committee of Experts meeting, RSPA is developing positions it will take on proposals that will be considered at the July 1999 Subcommittee meeting. Consistent with past practice, RSPA reviews all the positions it intends to take at public meetings prior to participation in the upcoming UN meetings. RSPA believes that the issues set forth in this notice are of such significance as to merit a request for written comments prior to the public meeting which will be held in June on a date to be announced later in the **Federal Register**. RSPA currently plans to support the UK proposed criteria and, in addition, consistent with the statement in the October 1992 EPA letter, recommend that an acute toxicity level of less than 100 mg/L be used for defining substances as dangerous to the environment when being transported in bulk packagings having a capacity exceeding 3000 liters. Commenters are requested to address the development of requirements for substances that are dangerous to the environment and the proposed criteria to define such substances, including RSPA's proposed additional acute toxicity level recommendation for bulk packagings with a capacity exceeding 3000 liters.

Issued in Washington, DC on March 19, 1999.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–7257 Filed 3–24–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on International Child Labor Enforcement

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date and time for the first meeting and the provisional agenda for consideration by the Committee.

DATES: The first meeting of the Treasury Advisory Committee on International Child Labor Enforcement will be held on Friday, April 9, 1999, at 9:15 a.m. in the Secretary's large conference room, Room 3327, U.S. Treasury Department, 1500 Pennsylvania Avenue, N.W., Washington, DC. The duration of the meeting will be approximately three hours.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, DC 20220. Tel. (202) 622–0220. Final meeting details, including the final agenda, can be confirmed by contacting the above number.

SUPPLEMENTARY INFORMATION:

Agenda

At the April 9, session, the Committee is expected to pursue the following agenda. It is expected that additional topics will be added to the agenda prior to the meeting.

1. Welcome and introductions: Chairperson Elizabeth A. Bresee, Assistant Secretary (Enforcement).
2. Remarks. Secretary of the Treasury Robert E. Rubin.
3. Committee charter, objectives, and operations.
4. U.S. Customs Service: Trip reports, budget and staffing projections, and goals.
5. Other business.

Members: The Secretary of the Treasury has appointed the following private sector members to the Committee for the current two-year term:

Mr. Erik O. Autor, National Retail Federation
Mr. Claude Brown, International Brotherhood of Teamsters
Mr. Douglas Cahn, Reebok International Ltd.
Mr. Terry Collingsworth, Rugmark Foundation—USA
Mr. Thomas J. Cove, Sporting Goods Manufacturers Association
Ms. Linda F. Golodner, National Consumers League
Mr. Pharis J. Harvey, International Labor Rights Fund
Mr. Robin W. Lanier, International Mass Retail Association
Ms. Lucille J. Laufer, Oriental Rug Importers Association, Inc.
Ms. L. Diane Mull, Executive Director, Association of Farmworker Opportunity Programs
Mr. Jeffrey F. Newman, National Child Labor Committee
Mr. Elliott J. Schrage, Clark & Weinstock, Inc.
Dr. Sandy Vogelgesang, Everest Associates
Steven S. Weiser, Esq., Graham & James LLP
Ms. Lisa M. Woll, Convention on the Rights of the Child Impact Study

Representatives of the following entities of the Federal Government will participate as *ex officio* members: Department of Labor, Department of State, Department of Commerce, U.S. Trade Representative, National Economic Council, staffs of the U.S. Senate and U.S. House of Representatives.

The meeting is open to the public; however, participation in the Committee's deliberations is limited to private sector and *ex officio* Committee members and Customs and Treasury Department staff. In order to be cleared for admission to the Treasury Building, a person other than an Advisory Committee member who wishes to attend the meeting, should give advance notice by contacting Theresa Manning (202) 622–0220 no later than April 2, 1999.

Dated: March 19, 1999.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade), Enforcement.

[FR Doc. 99–7245 Filed 3–24–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

Extension of General Program Test: Quota Preprocessing

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice announces that the testing period for the quota preprocessing program, which allows for the electronic processing of quota-class apparel merchandise, is being extended through the remainder of 1999. The test is being extended so that Customs can further evaluate the program's effectiveness and determine whether the program should be extended to other ports in addition to the ports located at New York/Newark and Los Angeles where the test is currently being run. Public comments concerning any aspect of the test are solicited.

DATES: The test is extended from March 15, 1999, until December 31, 1999, with evaluations of the test occurring periodically. Applications to participate in the test and comments concerning the test will be accepted throughout the testing period.

ADDRESSES: Written comments regarding this notice or any aspect of this test should be addressed to Lori Bowers, U.S. Customs Service, QWG Team Leader, 1000 Second Ave., Suite 2100, Seattle, WA 98104–1020 or may be sent via e-mail to pre-processing@quota.customs.sprint.com. Applications should be sent to the prototype coordinator at any of the four following port(s) where the applicant wishes to submit quota entries for processing:

(1) Julian Velasquez, Port of Los Angeles, 300 S. Ferry St., Terminal Island, CA 90731;

(2) Tony Piscitelli, Los Angeles International Airport, 11099 S. La Cienaga Blvd., Los Angeles, CA 90045;

(3) Barry Goldberg, JFK Airport, JFK Building 77, Jamaica, NY 11430; and

(4) John Lava, Ports of New York/Newark, 6 World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Lori Bowers (206) 553–0452 or Bob Abels (202) 927–0001.

SUPPLEMENTARY INFORMATION: On July 24, 1998, Customs published a general notice in the **Federal Register** (63 FR 39929) announcing the limited testing, pursuant to the provisions of § 101.9(a) of the Customs Regulations (19 CFR 101.9(a)), of a new operational procedure regarding quota preprocessing which allows the electronic processing of quota-class apparel merchandise. The new procedure was designed to allow certain quota entries to be processed prior to carrier arrival, thus, reducing the quota processing time. The test was to be conducted at only four ports located in New York/Newark and Los Angeles and was to commence no earlier than August 24, 1998, and run for approximately six months. The notice

informed the public of the new procedure and eligibility requirements for participation in the test. The goals of the quota preprocessing prototype being tested, as set forth in the July 24, 1998 **Federal Register** notice are:

(1) To reduce the processing time of quota entries;

(2) To process quota entries submitted as part of the preprocessing program in the same amount of time as non-quota entries;

(3) To increase the quantity of quota entries released within one calendar day of the arrival of the carrier; and

(4) To equalize the submission of quota entries over the five-day work week.

The quota preprocessing test began on September 15, 1998; the six-month time period of the original test expires on March 14, 1999. Approximately 400 brokers and importers have participated in the test so far, and Customs has received 84 evaluations: 22 from brokers and 62 from importers. The initial test evaluations were positive, showing general acceptance of the program. However, Customs would have liked greater participation. In fact, the biggest complaint contained in the evaluations received to date is that the preprocessing test occurred at the end of the year when many of the quotas were filled 85% or more. Many participants felt that had the test been conducted at the beginning of the year, it would have received greater participation.

Because of this complaint that conducting the test so near to the end of the year was an unfair measure of the prototype, Customs is extending the prototype testing period through the end of this calendar year. This will enable the importing community to more fully participate in the quota preprocessing test and allow Customs to more fully explore the benefits and drawbacks of the program.

Accordingly, this document announces that Customs is extending the test of the quota preprocessing prototype at the ports where testing is already underway until the end of 1999. Those ports are: the port of Los Angeles; the port of New York/Newark; JFK Airport; and Los Angeles International Airport. Anyone interested in participating in the test should refer to the test notice published in the July 24, 1998 **Federal Register** for eligibility and application information. Any expansion of the test to other ports will be the subject of another **Federal Register** notice.

Dated: March 19, 1999.

Charles W. Winwood,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 99–7238 Filed 3–24–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Customs Service, Treasury.

ACTION: Notice of altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Customs Service gives notice of an altered Privacy Act system of records, Treasury/Customs .244—Treasury Enforcement Communications System.

DATES: Comments must be received no later than April 26, 1999. The proposed alteration to the system of records will be effective May 4, 1999, unless comments are received which would result in a contrary determination.

ADDRESSES: Comments should be sent to the Disclosure Law Staff, Office of Regulations and Rulings, Room 3.4C, Ronald Reagan guiding, 1300 Pennsylvania Ave., NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Frederica H. Gries. Disclosure Law Staff, U.S. Customs Service, Room 3.4C, Ronald Reagan Building, 1300 Pennsylvania Ave., NW, Washington, DC 20229, (202) 927–2333.

SUPPLEMENTARY INFORMATION: This report is to give notice of an altered U.S. Customs Service system of records entitled, ''Treasury/Customs .244—Treasury Enforcement Communications System'' which is subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a. The Privacy Act notice for Treasury/Customs .244 was last published in its entirety on December 17, 1998, at 63 FR 69809. The Customs Service is altering its present system of records regarding routine uses by adding another routine use which would permit Treasury law enforcement officers to release TECS information directly to the National Center for Missing and Exploited Children (NCMEC). The addition of this routine use reflects Customs' desire to assist NCMEC in its work coordinating information on the investigation and recovery of missing children.

The altered system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated February 8, 1996. The proposed additional routine use to Treasury/Customs .244 Treasury Enforcement Communications System is published below.

Dated: March 17, 1999.

Shelia Y. McCann,

Deputy Assistant Secretary (Administration).

TREASURY/CUSTOMS .244

SYSTEM NAME:

Treasury Enforcement Communications System (TECS)-Treasury/Customs.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

* * * * *

Description of change: The period at the end of routine use (5) is replaced with a semicolon '';'', and the following routine use is added: (6) Provide certain information through Department of the Treasury law enforcement officers to personnel of the National Center for Missing and Exploited Children (NCMEC) who are employed by a law enforcement agency when it is consistent with the purposes of the NCMEC.

* * * * *

[FR Doc. 99–7244 Filed 3–24–99; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

English Language Enrichment Program; Notice: Request for Proposals

SUMMARY This NIS Secondary School Initiative division, Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an English Language Enrichment Program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to conduct a four-week homestay-based, English language enrichment and cultural orientation program in July 1999 for 25 students from the New Independent States (NIS) of the former

Soviet Union selected for the Freedom Support Act Future Leaders Exchange (FLEX) program. Approximately 15 of the participants will be students with physical disabilities who were specially recruited and selected. The other 10 will be students from more isolated regions of the NIS. The purpose is to raise the English capability of these students to the level where they are able to attend regular classes when their academic program starts in the fall. Funds requested for this project may not exceed $50,000.

Program Information

OBJECTIVES: To prepare a select group of students with special needs to attend school in the fall and perform at a level closer to that of these FSA FLEX students that make up the majority of the program finalists.

BACKGROUND: Academic year 1999/2000 will be the seventh year of the FSA/FLEX program, which now includes over 7000 alumni. This component of the NIS Secondary School Initiative was originally authorized under the FREEDOM Support Act of 1992 and is funded by annual allocations from the Foreign Operations and USIA appropriations. The goals of the program are to promote mutual understanding and foster a relationship between the people of the NIS and the U.S.; assist the successor generation of the NIS to develop the qualities it will need to lead in the transformation of those countries in the 21st Century; and to promote democratic values and civil responsibility by giving NIS youth the opportunity to live in American society for an academic year. During the program's early year, there was concern that students from the more remote regions of the NIS might be underrepresented because the lack of English competence in those regions could prevent applicants from meeting the rigorous English language requirements of the FLEX recruitment process (including attaining a reasonable score on the Secondary Level English Proficiency—or SLEP—examination). To address this concern, a pre-academic year English language enrichment program was developed so that some students from the remote areas could be selected whose SLEP score was slightly lower than average. In subsequent years, lack of English competence in the remote regions of the NIS has become less of a problem. However, USIA has added a component focusing on students with disabilities, who do have a need for some special training before initiating their academic year program. The enrichment program for which proposals are being solicited here are in support of both groups of students. The essential components of the enrichment program are:

1. A four-week course of study in English, approximately 5.5 hours per day.
2. Lodging with volunteer host families.
3. Orientation programming that addresses the special needs of the students with disabilities and their unique adjustment issues.
4. Programming that builds on adjustment issues that will have been introduced at the pre-departure orientation for all FSA FLEX students.
5. The student's transition to their year-long host family and community.

OTHER COMPONENTS: Two organizations have already been awarded grants to perform the following functions: Recruitment and selection of students; targeted recruitment for students with disabilities; assistance in documentation and preparation of IAP–66 forms; preparation of cross-cultural materials; pre-departure orientation; international travel from home to host community and return; facilitation of ongoing communication between the natural parents and placement organizations, as needed; maintenance of a student database and provision of data to USIA; and ongoing follow-up with alumni following their return to the NIS. Additionally, 12 organizations have been selected through a grants competition to place the 930 1999–2000 FSA FLEX students in schools and homestays for the academic year, to monitor their progress, and to conduct cultural enrichment activities. The organization selected for the English Enrichment Program will be asked to interact with the organizations described above to ensure a smooth transition from the pre-academic training to their permanent placements.

GUIDELINES: Applicants should consult the Project Objectives Goals and Implementation (POGI) guidelines for a detailed statement of work. (See ''For Further Information'' below.) The program must take place from mid-July to mid–August, 1999. The venue for the program should be one that enables the students to focus on the coursework, experience life in a typical American family and community, and is conducive to a smooth transition into their permanent placement. An optimal site will have resources that can be drawn upon for cultural enrichment but will have minimal distractions.

Participants will travel on J–1 visas issued by USIA using a government program number.

The students will be covered by the health and accident insurance policies used by their placement organizations. The grantee organization will acknowledge its responsibility to coordinate with the appropriate organization(s) any time treatment is needed for the duration of the students' participation in the Enrichment Program.

Applicants may assume that grant activity may begin by June 1, 1999. Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines: Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program costs. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. See POGI for allowable costs for the program. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with USIA concerning this RFP should reference the above title and number *E/PY–99–44*.

FOR FURTHER INFORMATION, CONTACT: The Office of Youth Program, E/PY, Rm 568, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, tel. (202) 619–6299, fax (202) 619–5311, e-mail daronson@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Program Officer Diana Aronson on all other inquiries and correspondence.

Please 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 with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://e.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 requested from the Bureau's ''Grants Information Fax on Demand System,'' which is accessed by calling 202/401–7616. The ''Table of Contents'' listing

available documents and order numbers should be the first order when entering the system.

Deadline for Proposals

All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Monday, April 26, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and six copies of the application should be sent to:

U.S. Information Agency, Ref.: *E/PY–99–44*, Office of Grants Management, E/XE, Room 568, 301 4th Street, SW, Washington, DC 20547.

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.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA's Office of East European and NIS Affairs. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's 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 exhibit originality, substance, precision, and relevance to the Agency's mission and the stated objective of this project.
2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.
3. Ability to achieve program objectives: Objectives should be concrete, feasible, and measurable. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan and correlate with USIA's goals.
4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information.
5. 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 speakers, program renue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, and resource materials).
6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.
7. Institution's Record/Ability: 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.
8. 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, tests, or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.
9. Cost-effectiveness; 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.
10. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

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 this project is provided through legislation appropriating funds annually for USIA's exchange programs.

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; March 18, 1999.

Judith S. Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–7269 Filed 3–24–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Legislature Development Program for Nigeria

ACTION: Request for proposals.

SUMMARY: The Africa/Near East/South Asia Division of 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. U.S. public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to develop training programs. Grants are subject to the availability of funds.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 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 above is provided through the Fulbright-Hays Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package.

Announcement Title and Number: All correspondence with USIA concerning this RFP should reference the above title and number *E/P–99–42.*

Deadline for Proposals: All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on April 26, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will *not* be accepted.

FOR FURTHER INFORMATION CONTACT: The Africa/Near East/South Asia Division, Office of Citizen Exchanges, (E/PS), Room 216, U.S. Information Agency, 301 Fourth Street, SW, Washington, DC 20547, attn: Carol Jean Locke, tel: 202–205–0535; fax 202–619–4350 or Internet address: clocke@usia.gov, to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions and standard guidelines for proposal preparation.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://e/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 requested from the Bureau's ''Grants Information Fax on Demand System,'' which is accessed by calling 202/401–7616. The ''Table of Contents'' listing available documents and order numbers should be the first order when entering the system.

Please specify USIA Program Officer Carol Jean Locke on all inquiries and correspondence. Please 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 with applicants until the proposal review process has been completed.

Submissions: Applicants must follow all instructions in the Solicitation Package. The original and ten (10) copies of the application should be sent to: U.S. Information Agency, Ref.: T3E/P–99–42, Office of Grants Management, E/XE, Room 326, 301 Fourth Street, SW., Washington, DC 20547.

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 of 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 reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Program Information

Overview: USIA is interested in proposals which will assist in the development of staff and their services in the National Legislature of Nigeria. Exchanges and training programs supported by Office of Citizen Exchanges institutional grants should operate at two levels: they should promote institutional relationships; and they should offer practical information to individuals to assist them with their professional responsibilities. Strong proposals usually have the following characteristics: an existing or likely partner relationship between an American organization and a counterpart institution overseas; a proven track record of conducting program activity; cost-sharing from American and/or in-country sources, including donations of air fares, hotel and/or housing costs, experienced staff with language facility, or other resources valuable to the program; and a clear, convincing plan showing how permanent results and continuing activity will be implemented 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 American and grantee institutions, as well as funding from third-party sources.

Unless otherwise specified below, project activity may include: Study tours; short-term training; consultations; and extended, intensive workshops taking place as elements in a two-way exchange in the United States and in Nigeria. Proposals should reflect the applicant's understanding of the political, economic, and social

environment in which the program activity will take place.

Applicants should design programs for English speakers. Programs can take place in the United States and in Nigeria. USIA is interested in proposals whose designs take into account the need for ongoing sharing of information, training and concrete plans for self-sustainability. Examples include: Support for course syllabi and training venues in Nigeria; plans to create professional networks or professional associations to share information; establishing ongoing Internet communication; and/or train-the-trainers models.

USIA will consider proposals that respond to the following specific objectives.

Nigerian Legislature Staff Development

Nigeria's recent open national elections have signaled a change in the political climate. The time has come to assist democratic institutions in the development of their capabilities and with attention to the following influences on transparent and effective government: checks and balances through the separation of powers; development of effective executive-legislative relations as well as a clear and fair legislative process; respect for cultural and ethnic diversity; ethics; the role of staff; constituent services; and media relations.

USIA is looking for proposals for a progressive set of activities in legislative staff development that will follow a separate USIA-sponsored International Visitor program, scheduled for June 1999, for elected leaders in the new Nigerian national legislature. The proposal should lay out a multi-phase program that would establish links between U.S. and Nigerian legislative staffs and that would build expertise and momentum in a network that would take on a life of its own. USIA recommends that major program phases include Americans travelling to Nigeria in July–August 1999 and Nigerians travelling to the U.S. in the fall of 1999.

After initial get-acquainted activities, each follow-on phase would focus on one or more distinct elements of staff responsibility, such as fiscal analysis, legislative drafting, staff administration, constituent relations, research methods, and information resources and technology. These purposes would be achieved through exposure to and work with U.S. Congressional and state legislative staffers to see how their offices are organized, how staff supports the member, how staff keeps members informed of constituent views, and how all this facilities the work of Congress or state legislatures. It is important that the cooperation of staffers, who work together in a spirit of compromise to create meaningful legislation, be demonstrated. The U.S. phase might include 2–3 weeks in Congress and 1–2 weeks in State Legislatures, for a maximum total of 4 weeks, made up of briefings, shadowing and collaborative activities which stimulate learning and sharing.

Participants are envisioned to be ten or twelve newly appointed staff who will be responsible for the establishment and administration of the new National Assembly of Nigeria. The participants must be emerging leaders in staff development, be influential, have assignment authority, and be able to hire and fire subordinate staff. It is anticipated that relationships would be established that would lead to continued contact. Selection of Nigerian participants in the program should be made in consultation with USIS-Lagos, which retains the right to accept or deny nominations from other sources. First phase implementation should begin in the summer of 1999.

Visa Regulations

Foreign participants on programs sponsored by the Office of Citizen Exchanges are granted J–1 Exchange Visitor visas by the U.S. Embassy in the sending country. All programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Project Funding

Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other sources of financial and in-kind support. Proposals with substantial private sector support from foundations, corporations and other institutions will be considered highly competitive.

Applicants Are Requested To Submit Proposals Not To Exceed $130,000 in Funding From USIA

Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location or activity in order to facilitate USIA decisions on funding. While a comprehensive line item budget based on the model in the Solicitation Package must be submitted, separate component budgets are optional.

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the US program, organizations have the option of using a flat $160/day for program participants or the published US Federal per diem rates for individual US cities. For activities outside of the US, the published Federal per diem rates must be used. NOTE: US escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at http://www.policyworks.gov/.

3. Book and cultural allowance. Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not receive these benefits.

4. Consultants. 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. Room rental 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. A return travel allowance of $70 may be provided to each participant to be used for incidental expenditures during international travel.

10. All USIA-funded delegates will be covered under the terms of USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

11. Administrative Costs. Other costs necessary for the effective administration of the program including salaries for grant organization employees, benefits and other direct and indirect costs are described in the detailed instructions in application package. While this announcement does not prescribe a rigid ratio of administrative to program costs, in general priority will be given to proposals whose administrative costs are less than twenty-five (25) percent of the total requested from USIA. Proposals should show cost-sharing, including both contributions from the applicant and from other sources.

Please refer to the Application Package for complete budget guidelines.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Office of African Affairs and the USIA/USIS posts in Nigeria. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly. USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered.

1. 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. Objectives should respond to the priority topics in this announcement and should relate to the current conditions in the included countries. Objectives should be reasonable and attainable. A detailed work plan should explain step by step how objectives will be achieved, including a timetable for completion of major tasks and activities and an outline of the selection process. The substance of the seminars, presentations, workshops, consulting, internships and itineraries should be spelled out in detail. Responsibilities of in-country partners should be clearly described.

2. 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.

3. Support of Diversity: Proposals should demonstrate substantive support for 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. Institutional Capability: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The narrative should demonstrate proven ability to handle logistics. Proposals should reflect the institution's expertise in the subject area and knowledge of the conditions in the targeted region(s).

5. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) ensuring that USIA-supported programs are not isolated events.

6. Project Evaluation: Proposals should include a plan and methodology to evaluate the program's successes, both as activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description and/or plan for use of another measurement technique (such as a focus group) to link outcomes to original project objectives.

7. Cost-effectiveness and Cost Sharing: Overhead and administrative costs in the proposal, including salaries, subcontracts for services and honoraria, should be kept low. 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. Organizations will be expected to cooperate with USIA in evaluating their programs under the principles of the Government Performance and Results Act of 1993, which requires federal agencies to measure and report on the results of their programs and activities.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: March 16, 1999.

Judith S. Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–7001 Filed 3–24–99; 8:45 am]

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Thursday
March 25, 1999

Part II

Department of Commerce

50 CFR Part 223

Endangered and Threatened Species: Threatened Status for Two ESUs of Chum Salmon in Washington and Oregon, for Two ESUs of Steelhead in Washington and Oregon, and for Ozette Lake Sockeye Salmon in Washington; Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 980219042–9069–02; I.D. 011498B]

RIN 0648–AK53

Endangered and Threatened Species: Threatened Status for Two ESUs of Chum Salmon in Washington and Oregon

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

ACTION: Final rule; notice of determination.

SUMMARY: The National Marine Fisheries Service (NMFS) is issuing a final determination that the Hood Canal summer-run chum salmon (Oncorhynchus *keta*) and Columbia River chum salmon Evolutionarily Significant Units (ESUs) are threatened species under the Endangered Species Act (ESA) of 1973, as amended. Fish in the Hood Canal summer-run chum salmon ESU spawn in several tributaries to Hood Canal and Discovery, Sequim, and Dungeness Bays, Washington, while those in the Columbia River chum salmon ESU spawn in tributaries to the lower Columbia River in Washington and Oregon.

In both ESUs only naturally spawned chum salmon residing below impassable natural barriers (e.g., long-standing, natural waterfalls) are listed. NMFS has examined the relationship between hatchery and natural populations of chum salmon in each ESU and determined that none of the hatchery populations are currently essential for recovery and, therefore, the hatchery populations (and their progeny) are not listed.

NMFS will issue any protective regulations deemed necessary under section 4(d) of the ESA for the listed ESUs in a separate rulemaking. Even though NMFS does not now issue protective regulations for these ESUs, Federal agencies are required under section 7 of the ESA to consult with NMFS if any activity they authorize, fund, or carry out may affect listed chum salmon.

DATES: Effective May 24, 1999.

ADDRESSES: Branch Chief, Protected Resources Division, NMFS, 525 NE Oregon St., Suite 500, Portland, OR 97232–2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin (503) 231–2005, or Chris Mobley (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Reference materials regarding this listing determination can also be obtained from the internet at www.nwr.noaa.gov.

Species Background

Biological information for chum salmon can be found in recent species status assessments by NMFS (Johnson *et al*., 1997; NMFS, 1999a and 1999b), Oregon Department of Fish and Wildlife (ODFW) (Kostow, 1995), and Washington Department of Fisheries (WDF), Washington Department of Wildlife, and Western Washington Treaty Tribes (WDF *et al*., 1993), in species life history summaries (Pauley *et al*., 1988; Emmett *et al*., 1991; and Salo, 1991), and in the **Federal Register** document announcing the listing proposal (63 FR 11774, March 10, 1998).

Previous Federal ESA Actions Related to West Coast Chum Salmon

On March 14, 1994, NMFS was petitioned by the Professional Resources Organization-Salmon (PRO-Salmon) to list Washington's Hood Canal, Discovery Bay, and Sequim Bay summer-run chum salmon (*O. keta*) as threatened or endangered species under the ESA (PRO-Salmon, 1994). A second petition, received April 4, 1994, from the Save Allison Springs Citizens Committee (Save Allison Springs Citizens Committee, 1994), requested listing of fall chum salmon found in the following southern Puget Sound streams or bays: Allison Springs, McLane Creek, tributaries of McLane Creek (Swift Creek and Beatty Creek), Perry Creek, and the southern section of Mud Bay/Eld Inlet. A third petition, received by NMFS on May 20, 1994, was submitted by Trout Unlimited (Trout Unlimited, 1994). This petition requested listing for summer-run chum salmon that spawn in 12 tributaries of Hood Canal.

In response to these petitions and to the more general concerns about the status of Pacific salmon throughout the region, NMFS published a notification in the **Federal Register** (59 FR 46808, September 12, 1994) announcing that the petitions presented substantial scientific information indicating that a listing may be warranted and that the agency would initiate ESA status reviews for chum salmon and other species of anadromous salmonids in the Pacific Northwest. These comprehensive reviews considered all populations in the States of Washington, Idaho, Oregon, and California. Hence, the status review for chum salmon encompassed, but was not restricted to, the populations identified in the petitions described.

During the coastwide chum salmon status review, NMFS requested public comment and assessed the best available scientific and commercial data, including technical information from Pacific Salmon Biological Technical Committees (PSBTCs) and other interested parties. The PSBTCs consisted primarily of scientists (from Federal, state, and local resource agencies, Indian tribes, industries, universities, professional societies, and public interest groups) possessing technical expertise relevant to chum salmon and their habitats. The NMFS Biological Review Team (BRT), composed of staff from NMFS' Northwest Fisheries Science Center, reviewed and evaluated scientific information provided by the PSBTCs and other sources and completed a coastwide status review for chum salmon (Johnson *et al*., 1997). Early drafts of the BRT review were distributed to state and tribal fisheries managers and peer reviewers who are experts in the field to ensure that NMFS' evaluation was accurate and complete.

Based on the results of the BRT report, and after considering other information and existing conservation measures, NMFS published a proposed listing determination (63 FR 11774, March 10, 1998) which identified four ESUs of chum salmon in Washington, Oregon, and California. The Hood Canal summer-run and Columbia River ESUs were proposed for listing as threatened species, while the Puget Sound/Strait of Georgia ESU and Pacific Coast ESU did not warrant listing.

During the year between the proposed rule and this final determination, NMFS solicited peer and comanager review of the agency's proposal and received comments and new scientific information concerning the status of the ESUs proposed for listing. NMFS also received information regarding the relationship of existing hatchery stocks to naturally spawned populations in each ESU. This new information was evaluated by NMFS' BRT and published in updated status review memoranda that draw conclusions about ESU delineation and risk assessments for the Hood Canal summer-run and Columbia River ESUs (NMFS, 1999a and 1999b). Based on the updated NMFS status review and other information, NMFS now issues its final listing determinations for the two proposed ESUs. Copies of the NMFS status review

and related documents are available upon request (see ADDRESSES).

Summary of Comments and Information Received in Response to the Proposed Rule

NMFS held 21 public hearings in California, Oregon, Idaho, and Washington to solicit comments on this and other salmonid listing proposals (63 FR 16955, April 7, 1998; 63 FR 30455, June 4, 1998). During the 112-day public comment period, NMFS received 10 written comments regarding the chum salmon proposed rule. NMFS also sought new data and analyses from tribal and state comanagers and met with them to formally discuss technical issues associated with the chum salmon status review. Technical information was considered by NMFS' BRT in its re-evaluation of ESU boundaries and risk assessments; this information is discussed in the updated status review memoranda for chum salmon (NMFS, 1999a and 1999b).

The new information focused on the Hood Canal summer-run ESU and included data regarding an extension of the ESU's boundaries, updated final 1997 (and preliminary 1998) spawning escapement estimates, and revised run reconstruction data for the ESU. No new information bearing on the risk assessment for the Columbia River ESU was provided for the BRT's consideration.

A number of comments addressed issues pertaining to the proposed critical habitat designation for chum salmon. NMFS will address these comments in a forthcoming **Federal Register** document announcing the agency's conclusions about critical habitat for the listed ESUs.

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service (FWS), published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). In accordance with this policy, NMFS solicited 7 individuals to take part in a peer review of its west coast chum salmon status review and proposed rule. All individuals solicited are recognized experts in the field of chum salmon biology, and represent a broad range of interests, including Federal, state, and tribal resource managers, and academia. Four of the seven individuals took part in the peer review of this action; comments from peer reviewers were considered by NMFS' BRT and are summarized in the updated status review document (NMFS, 1999a).

A summary of comments received in response to the proposed rule is presented here.

Issue 1: Sufficiency and Accuracy of Scientific Information and Analysis

Comment: Some commenters questioned the sufficiency and accuracy of data which NMFS employed in the listing proposal. In contrast, peer reviewers commented that the agency's status review was both credible and comprehensive.

Response: Section 4(b)(1)(A) of the ESA requires that NMFS make its listing determinations solely on the basis of the best available scientific and commercial data after reviewing the status of the species. NMFS believes that information contained in the agency's status review (Johnson *et al*., 1997), together with more recent information obtained in response to the proposed rule (NMFS, 1999a and 1999b), represent the best scientific information presently available for the chum salmon ESUs addressed in this final rule. NMFS has made every effort to conduct an exhaustive review of all available information and has solicited information and opinion from all interested parties, including peer reviewers. If, in the future, new data become available to change these conclusions, NMFS will act accordingly.

Issue 2: Delineation of Chum Salmon ESUs

Comment: The majority of responses generally supported the BRT's findings on ESU boundaries. An exception was one commenter who suggested the BRT did not present sufficiently strong scientific evidence to support the identification of multiple ESUs in the Pacific Northwest. This commenter believed that all the ESUs identified by the BRT are likely segments of a general north-south cline of chum salmon and not distinct ESUs. Comments solicited from peer reviewers with specific expertise on chum salmon biology were supportive of the BRT's delineations. One peer reviewer supported separation of the lower Columbia River from coastal regions based upon a combination of the genetic data developed by the BRT and data from other species. However, he pointed out that only two genetic samples from the Columbia River were evaluated by the BRT, and that this was inadequate to support an accurate description of the ESU.

Response: As described in Issue 1, NMFS believes that the available information is sufficiently accurate to support the proposed ESU boundaries. NMFS has published a policy describing how it will apply the ESA definition of ''species'' to anadromous salmonid species (56 FR 58612, November 20, 1991). More recently, NMFS and FWS published a joint policy, which is consistent with NMFS' policy, regarding the definition of ''distinct population segments'' (61 FR 4722, February 7, 1996). The earlier policy is more detailed and applies specifically to Pacific salmonids and, therefore, was used for this determination. This policy indicates that one or more naturally reproducing salmonid populations will be considered to be distinct and, hence, species under the ESA, if they represent an ESU of the biological species. To be considered an ESU, a population must satisfy two criteria: (1) It must be reproductively isolated from other population units of the same species, and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute but must have been strong enough to permit evolutionarily important differences to occur in different population units. The second criterion is met if the population contributes substantially to the ecological or genetic diversity of the species as a whole. Guidance on applying this policy is contained in a NOAA Technical Memorandum entitled ''Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon'' (Waples, 1991) and in a recent scientific paper by Waples (1995).

The National Research Council (NRC) has recently addressed the issue of defining species under the ESA (NRC, 1995). Their report found that protecting distinct population segments (DPS) is soundly based on scientific evidence, and recommends applying an ''Evolutionary Unit'' (EU) approach in describing these segments. The NRC report describes the high degree of similarity between the EU and ESU approaches (differences being largely a matter of application between salmon and other vertebrates), and concluded that either approach would lead to similar DPS descriptions most of the time.

NMFS believes there is evidence to support the identification of distinct population segments for chum salmon, and that the extant populations do not merely represent a north-south cline within the species. The chum salmon status review describes a variety of characteristics that support the ESU delineations for this species. For example, the review noted that run-timing data from as early as 1913 indicate differences between Hood Canal summer-run (mid-September to mid-October) and fall-run (November to December/January) populations. In addition, the summer-run populations

spawn during peak periods of high water temperature, suggesting a unique adaptation that allows this ESU to persist in an otherwise inhospitable environment. For the Columbia River ESU, the BRT concluded that there was historically at least one ESU of chum salmon in this major west coast river basin. The BRT also assessed available allozyme data for the proposed ESUs and concluded that sufficient genetic differences existed between these and adjacent ESUs to support separate delineations. Finally, other researchers have reported similar findings of distinctness for this species in Washington (Busack and Shaklee, 1995; and Phelps *et al.*, 1995).

Comment: One commenter presented data to support extending the boundary of the Hood Canal summer-run chum salmon ESU approximately 10 miles (16 kilometers) westward along the Strait of Juan de Fuca to include early-returning chum salmon in the Dungeness River.

Response: During the original BRT meetings in 1994 for the coastwide status review of chum salmon, the BRT considered including the Dungeness River early returning fish in the Hood Canal summer-run ESU, but at that time, the only data available on summer-run fish in the river were anecdotal. The new data provided by the Washington Department of Fish and Wildlife (WDFW) (and described in detail in the updated status review) clearly shows that in almost every year since extensive salmon surveys were begun in 1971, early-returning chum salmon were observed in the mainstem Dungeness River. Further, because the data are all incidental counts collected during pink or chinook salmon spawning surveys, the actual numbers of early-returning summer-run chum salmon might be significantly greater than these incidental counts. Also, the Dungeness River is geographically and environmentally similar to rivers in the Hood Canal summer-run ESU. The Dungeness River drains from the Olympic Mountains (like other rivers in the ESU), the mouth of the Dungeness River is less than 10 kilometers (6 miles) from the western boundary of the proposed Hood Canal summer-run ESU, and its tributaries intermingle with tributaries of Sequim Bay which was identified as within the proposed ESU. Based on this information, the BRT agreed with the commenter and concluded the Hood Canal summer-run ESU should be extended westward to include summer-run chum salmon in the Dungeness River.

Comment: Another peer reviewer said that chum salmon in the Lower Columbia River do appear to select spawning sites with upwelling groundwater, contrary to observations of WDFW biologists reported in NMFS' status review. He reported that the three populations of chum salmon monitored by WDFW in the Columbia River spawn in upwellings and seeps (two in spring fed systems and one in seeps and springs, all with upwellings). This commenter also noted that there is a population of chum salmon of undetermined size spawning below Bonneville Dam between Hamilton and Ives Islands in the Columbia River and that a few chum salmon are documented to migrate above Bonneville Dam to an unknown stream or streams.

Response: The NMFS status review presented the available information regarding spawning ground and redd characteristics for this species (Johnson *et al.*, 1997). Several studies on Asian chum salmon populations corroborate the reviewer's contention that the species may prefer to spawn in areas with upwelling groundwater (Sano, 1966; Salo, 1991; and Smirnov, 1975). Unfortunately, similar published studies are lacking for North American populations. Continued monitoring of Columbia River populations should shed more light on this issue and whether conservation efforts aimed at restoring subgravel flow could accrue benefits to this ESU.

NMFS reviewed the information documenting chum salmon passage at Bonneville Dam (ODFW and WDFW, 1995) and cited these data as one source for estimating the population size for the Columbia River ESU (Johnson *et al.*, 1997). Unfortunately, the final spawning destination for these fish is not known. However, these fish would still be considered part of the listed ESU since NMFS has described the ESU to include all naturally spawned populations of chum salmon in the Columbia River and its tributaries in Washington and Oregon. Although data are limited, NMFS has also reviewed WDFW surveys (dating back to at least 1976) which indicate that chum salmon are known to spawn in the area below Bonneville Dam (WDFW, 1997). NMFS has recently worked with the Bonneville Power Administration and other Columbia River comanagers to assess the effects of hydropower operations on these fish and has recommended that monitoring be initiated to evaluate impacts resulting from changes in operational flows (NMFS, 1998b).

Issue 3: Risk Analyses for Chum Salmon ESUs

Comment: Most commenters, including peer reviewers, generally supported the BRT's findings on ESU risk designations. An exception was one commenter who believed that NMFS had not shown with statistical data that any chum salmon ESUs are at high risk of extinction. Two commenters suggested that more data should be collected on chum salmon from the Oregon coast and southern Puget Sound, because they believed the data would demonstrate that these fish are at greater risk than presently believed. Similarly, two peer reviewers expressed concern about the paucity of data for making the determination that listing is not warranted for the Pacific Coast ESU.

Response: For nearly a decade, NMFS scientists have been conducting salmonid status reviews under the ESA using a risk assessment approach that includes an evaluation of: (1) absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU. In determining whether an ESU is threatened or endangered, BRT scientists must make judgements about the overall risk to the ESU based on likely interactions among, and cumulative effects of, these various status indicators.

During the chum salmon status review, NMFS evaluated both quantitative and qualitative information regarding the various indicators described above. The types and quality of information used in these assessments vary considerably (both within and between ESUs) and not all indicators lend themselves to rigorous statistical analyses. When possible, NMFS used computed statistics to determine overall trends in chum salmon populations (Johnson *et al.*, 1997). Except in the case of Puget Sound stocks, these statistics were either not available or considered unreliable. However, statistical analyses are not the only means by which to make risk assessments. For example, while escapement data clearly demonstrated a steady decline in Hood Canal summer-run chum salmon over the past 30 years, the BRT was equally concerned about the ESU's low productivity, low current abundance relative to historic abundance, and the loss of several of the historically smaller populations on the Kitsap Peninsula (NMFS, 1999a). Other

concerns identified included genetic risks from artificial propagation, the increasing urbanization of the Kitsap Peninsula, and recent increases in pinniped populations in Hood Canal. The BRT had similar concerns for the remaining Columbia River populations, which currently persist at less than 1 percent of historical run sizes (Johnson *et al.*, 1997; and NMFS, 1999a).

With respect to the ESA status of the Pacific Coast ESU, NMFS acknowledges that the available data sets are far from exhaustive. However, the agency did not receive new information indicating that the Pacific Coast ESU is at risk of extinction, nor did NMFS obtain complete updated information for these or other populations not proposed for listing. Still, justifiable concerns exist for specific populations in both the Puget Sound and Pacific Coast ESUs. The NMFS status review details some of these concerns. For example, populations in the Tillamook District (the major chum salmon-producing area on the Oregon coast) are at much lower abundance than they were historically, with no apparent increase in abundance since the closure of commercial fisheries in 1962. In the Puget Sound ESU, the BRT expressed concern that the summer-run populations in this ESU spawn in relatively small, localized areas and, therefore, are intrinsically vulnerable to habitat degradation and demographic or environmental fluctuations. Concern was also expressed about effects on natural populations of the high level of hatchery production of fall chum salmon in the southern part of Puget Sound and Hood Canal and about the high representation of non-native stocks in the ancestry of hatchery stocks throughout this ESU. If new information indicates that either of these ESUs warrant further consideration for listing, NMFS will announce a re-opening of the status review for the species.

Comment: Comments and new information on the risk analysis of the Hood Canal summer-run ESU all supported the analysis conducted by the BRT, although commenters pointed out some specific concerns. Among these concerns were: (1) numbers of returning adults to the Union River were depressed in 1996, but the decrease was not statistically significant, and may have no biological significance; (2) in estimating strength of Hood Canal summer-run chum salmon, the BRT should use the number of returning adults compared to the number of parents creating those adults. Estimates of these ratios (spawner-to-spawner) suggest a trend toward increasing populations over the last 8 years in those Hood Canal runs that still exist; and (3) fishery co-managers have greatly reduced harvest impacts on summer-run chum salmon by limiting fisheries on other co-mingled species (even when these species have been plentiful) and this should be taken into account in risk analyses. One commenter stated that there are actually two streams (not one, as stated in the proposed rule) in the Strait of Juan de Fuca portion of the Hood Canal summer-run chum salmon ESU showing increases in adult returns in 1996.

Response: With respect to one commenter's concerns about NMFS' characterization of Union River returns in 1996, NMFS did not intend to imply that this downturn was statistically significant. In contrast, NMFS noted in the proposed rule that the Union River was classified as a healthy stock (WDF *et al.*, 1993). NMFS was merely expressing concern that 1996 returns, while substantially improved for other populations, were not uniformly distributed throughout the ESU. Based on suggestions from this commenter, NMFS has considered the spawner-to-spawner ratios for this ESU. The results may suggest a trend toward increasing populations over the last 8 years in some Hood Canal streams. However, these trends must be balanced against a variety of other risk factors facing the ESU, including a steady decline in abundance over the past 30 years and the extinction of several populations in the ESU.

NMFS recognizes that Washington tribal and state fishery co-managers have made significant strides in reducing harvest impacts on summer-run chum salmon and the agency has taken these efforts into account in this final listing determination. It was this recognition, combined with increased returns in 1995 and 1996, that led NMFS to propose this ESU as threatened instead of endangered. While some of NMFS' concerns were mitigated by these harvest impact reductions, it is clear that other risk factors (including Canadian fisheries in the Northern Strait of Juan de Fuca) still bear upon this ESU. NMFS also acknowledges that the proposed rule was in error and that two populations (Snow and Salmon Creeks) in the Strait of Juan de Fuca portion of the Hood Canal summer-run chum salmon ESU showed increases in adult returns in 1996. The third (Jimmycomelately Creek) continued to demonstrate a long-term decline.

The new information received by NMFS did not substantially affect the agency's previous conclusions about the status of the Hood Canal summer-run ESU. The Western Washington Treaty Tribes and WDFW submitted a revision of run reconstructions for Hood Canal summer-run chum salmon. The revision has been comprehensive and thorough, including recalculation of escapement from historic survey data using consistent methods, an earlier cutoff date for distinguishing summer-run from fall-run chum salmon in catches (i.e., substantial numbers of fall-run chum salmon had been classified as summer-run chum salmon), and incorporation of summer-run chum salmon catches in Canadian Area 20 fisheries (N. Lampsakis, Point No Point Treaty Council, pers. comm., November 1998). These changes in the run reconstruction database have resulted in a substantial improvement in the quality of data available for summer-run chum salmon. However, the revisions result in mostly minor changes in escapement estimates for individual streams, with little change in the overall pattern of historic spawning escapements.

In addition, WDFW (J. Ames, pers. comm., November 1998) provided updated final 1997 and preliminary 1998 spawning escapement estimates for summer-run chum salmon in Hood Canal and Strait of Juan de Fuca tributaries. Spawning escapement to the ESU in 1997 was estimated to be 10,013 fish and preliminarily estimated in 1998 to be 5,290 fish. Of these totals, 8,734 spawners in 1997 and 3,959 spawners in 1998 returned to streams with supplementation programs. These spawning escapements in 1997 and 1998 represent 46 percent and 25 percent, respectively, of the recent high escapement of 21,594 fish in 1996.

Comment: One peer reviewer concurred that the Columbia River ESU is threatened (due to small population size with limited buffering capacity) but he was not compelled to believe that this ESU faces a high short term risk of extinction. Another peer reviewer stated concerns about using hatchery fish from an out-of-basin stock (Willapa Bay) in assessing extinction risk for the Columbia River ESU.

Response: NMFS did not receive new information bearing on the risk assessment for the Columbia River ESU. During the original NMFS status review, the BRT evaluated various indices of chum salmon abundance in the Columbia River ESU, including historical commercial landings, recent recreational harvests, spawner escapements in Washington tributaries, Bonneville dam counts, and returns to the Sea Resources Hatchery on the Chinook River, Washington (Johnson *et al.*, 1997). In addition, the BRT constructed a minimal run size estimate based on a composite of these indices.

Including the Sea Resources Hatchery return data was considered appropriate at the time of the proposed listing because the BRT had not drawn conclusions about whether any hatchery population was part of the ESU. However, NMFS has recently completed an assessment of hatchery populations associated with this ESU (NMFS, 1999b), and the agency agrees that the hatchery return data have likely inflated the minimal run size estimates. The BRT took this information into account when it re-assessed the status of the ESU for this final determination.

Issue 4: Factors Contributing to the Decline of West Coast Chum Salmon

Comment: A few comments addressed specific factors believed to have contributed to the decline of west coast chum salmon. Factors identified include overharvest in commercial and recreational fisheries, climate change, reduced ocean productivity, changes in the Columbia River estuary food base, stress and disease, reduced body size and fecundity, increased abundance of predators (e.g., marine mammals, seabirds and exotic fishes), pollution from pesticide and herbicide applications, urbanization, blocked habitats, decreased beaver-related habitat, reductions in anadromous fish carcasses, removal of large woody debris, and the general deterioration and loss of freshwater and marine habitats throughout the region. A peer reviewer suggested that NMFS evaluate potential negative impacts from hatchery releases of chum salmon derived from stocks outside the ESU. One commenter noted that NMFS failed to fully investigate and evaluate the impact of adverse marine conditions and climate change on chum salmon abundance, and further contended that degradation of freshwater habitat is not likely the major cause of recent declines.

Response: NMFS agrees that a multitude of factors, past and present, have contributed to the decline of west coast chum salmon. Many of the identified factors were specifically cited as risk agents in the NMFS status review (Johnson *et al.*, 1997) and listing proposal (63 FR 11774, March 10, 1998). NMFS recognizes that natural environmental fluctuations have likely played a role in the species' recent declines. However, NMFS believes other human-induced impacts (e.g., harvest in certain fisheries and widespread habitat modification) have played an equally significant role in this species' decline.

The NMFS status review briefly addressed the impact of adverse marine conditions and climate change, but concluded that there is considerable uncertainty regarding the role of these factors in controlling chum salmon abundance. At this time, we do not know whether these climate conditions represent a long-term shift in conditions that will continue into the future or short-term environmental fluctuations that can be expected to reverse soon. A recent review by Hare *et al.* (1999) suggests that these conditions could be part of an alternating 20– to 30-year long regime pattern. These authors concluded that, while at-risk salmon stocks may benefit from a reversal in the current climate/ocean regime, fisheries management should continue to focus on reducing impacts from harvest and artificial propagation and improving freshwater and estuarine habitats.

NMFS believes there is ample evidence to suggest that degradation of freshwater habitats has contributed to the decline of Hood Canal and Columbia River chum salmon. The past destruction, modification, and curtailment of freshwater habitat was reviewed in a recent NMFS assessment for steelhead (NMFS, 1996), and many of the identified risks and conclusions also apply to chum salmon. Examples of habitat alterations affecting chum salmon include water withdrawal, conveyance, storage, and flood control (resulting in insufficient flows, stranding, juvenile entrainment, and increased stream temperatures); logging and agriculture (resulting in loss of large woody debris, sedimentation, loss of riparian vegetation, and habitat simplification)(Johnson *et al.*, 1997). At a more population-specific level, Washington state and tribal comanagers have completed an assessment which concludes that a variety of habitat- and land-use practices have had a detrimental impact on chum salmon (WDF *et al.*, 1993). For example, they identified gravel aggradation (due to logging in some areas), channel shifting, and diking as habitat risk agents in Hood Canal. In the Columbia River, habitat ''limiters'' associated with chum salmon included gravel quality and stability, availability of good quality nearshore mainstem freshwater and marine habitat, road building, timber harvest, diking, and industrialization (WDF *et al.*, 1993). These human-induced impacts in freshwater ecosystems have likely reduced the species' resiliency to natural factors for decline such as drought and poor ocean conditions. A critical next step in restoring listed chum salmon will be identifying and ameliorating specific factors for decline at both the ESU and population level.

With respect to predation issues raised by some commenters, it is worth noting that NMFS has recently published reports describing the impacts of California sea lions and Pacific harbor seals upon salmonids and on the coastal ecosystems of Washington, Oregon, and California (NMFS, 1997 and 1999c). These reports conclude that in certain cases where pinniped populations co-occur with depressed salmonid populations, salmon populations may experience severe impacts due to predation. An example of such a situation is Ballard Locks, Washington, where sea lions are known to consume significant numbers of adult winter steelhead. These reports further conclude that data regarding pinniped predation are quite limited, and that substantial additional research is needed to fully address this issue. Existing information on the seriously depressed status of many salmonid stocks is sufficient to warrant actions to remove pinnipeds in areas of co-occurrence where pinnipeds prey on depressed salmonid populations (NMFS, 1997 and 1999c).

The relationship between various hatchery stocks and naturally spawned chum salmon, and their potential role for recovery of specific ESUs, is discussed in the ''Determination'' section later in this document.

Issue 5: Consideration of Existing Conservation Measures

Comment: One peer reviewer expressed concern about NMFS' characterization of the efficacy of the Northwest Forest Plan (NFP), citing significant differences in management practices between various Federal land management agencies.

Response: NMFS has reviewed existing conservation efforts and plans, including the NFP, and concludes that existing conservation efforts have generally helped ameliorate risks facing some chum salmon populations. In the listing proposal, NMFS noted that the NFP requires specific management actions on Federal lands, including actions in key watersheds within the range of both ESUs that comply with special standards and guidelines designed to preserve their refugia functions for at-risk salmonids (i.e., watershed analysis must be completed prior to timber harvests and other management actions, road miles should be reduced, no new roads can be built in roadless areas, and restoration activities are prioritized). In addition, the most significant element of the NFP for anadromous fish is its Aquatic Conservation Strategy (ACS), a regional-scale aquatic ecosystem conservation strategy that includes (1) special land allocations (such as key watersheds,

riparian reserves, and late-successional reserves) to provide aquatic habitat refugia; (2) special requirements for project planning and design in the form of standards and guidelines; and (3) new watershed analysis, watershed restoration, and monitoring processes. These ACS components collectively ensure that Federal land management actions achieve a set of nine ACS objectives that strive to maintain and restore ecosystem health at watershed and landscape scales to protect habitat for fish and other riparian-dependent species and resources and to restore currently degraded habitats. NMFS will continue to support the NFP strategy and address Federal land management issues via ESA section 7 consultations in concert with this strategy.

Comment: One commenter expressed concern over the need to list chum salmon and the effects of these listings on Indian resources, programs, land management, and associated Trust responsibilities. This commenter was particularly concerned about the effects of listing Hood Canal summer-run chum salmon on tribal fishing for this and other species, and further noted that the Tribes had foregone significant harvest opportunities in the interest of protecting summer-run chum salmon stocks.

Response: NMFS believes that the best available scientific information supports listing two ESUs of chum salmon as threatened under the ESA. NMFS acknowledges that these listings may impact Indian resources, programs, land management, and associated Trust responsibilities. As stated previously in this document, NMFS applauds the recent efforts by tribal and state comanagers to reduce specific harvest impacts on at-risk chum salmon populations. NMFS will continue to work closely with affected Indian tribes as harvest and other management issues arise and will continue to support the development of strong and credible tribal and state conservation efforts to restore listed chum salmon and other west coast salmon populations.

Summary of Factors Affecting Chum Salmon

Section 4(a)(1) of the ESA and NMFS listing regulations (50 CFR part 424) set forth procedures for listing species. The Secretary of Commerce must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

The factors threatening naturally spawned chum salmon throughout the species' range are numerous and varied. The present depressed condition of many populations is the result of several long-standing, human-induced factors (e.g., habitat degradation, water diversions, harvest, and artificial propagation) that serve to exacerbate the adverse effects of natural factors (e.g., competition and predation) or environmental variability from such factors as drought and poor ocean conditions.

As noted previously, NMFS received only a few comments regarding the relative importance of various risk factors contributing to the decline of chum salmon. A summary of these factors and their role in the decline of the ESUs proposed for listing is presented in NMFS' March 10, 1998, **Federal Register** notification (63 FR 11774), as well as several documents in the agency's west coast chum salmon administrative record (WDF *et al.*, 1993; Kostow, 1995; Johnson *et al.*, 1997; and NMFS, 1999a).

Efforts Being Made to Protect West Coast Chum Salmon

Under section 4(b)(1)(A) of the ESA, the Secretary of Commerce is required to make listing determinations solely on the basis of the best scientific and commercial data available and after taking into account efforts being made to protect a species. During the status review for west coast chum salmon and for other salmonids, NMFS reviewed protective efforts ranging in scope from regional strategies to local watershed initiatives; some of the major efforts are summarized in the March 10, 1998, proposed rule (63 FR 11774). Since then, NMFS has received little new information regarding these or other efforts being made to protect chum salmon. Notable efforts within the range of the Hood Canal summer-run and Columbia River ESUs continue to be the NFP, Lower Columbia River National Estuary Program, Lower Columbia Steelhead Conservation Initiative, Oregon Plan for Salmon and Watersheds, Washington Wild Stock Restoration Initiative, Washington Wild Salmonid Policy, and Hood Canal/Strait of Juan de Fuca Chum Salmon Conservation Plan (HCSCP).

Of the existing efforts, the HCSCP is currently the most comprehensive chum salmon conservation effort operating at the scale of an ESU. State and tribal fisheries managers involved in the HCSCP have continued to endorse an array of harvest restrictions, including refraining from directed fisheries on summer-run chum salmon in the Hood Canal summer-run ESU. These management restrictions are significant, and are expected to continue based on current management objectives and the HCSCP. In addition, ongoing hatchery supplementation and reintroduction efforts may play a key role in the recovery of this ESU. NMFS will encourage the continued development and implementation of the HCSCP as an important strategy for protecting and restoring Hood Canal summer-run chum salmon.

While NMFS recognizes that many of the ongoing protective efforts are likely to promote the conservation of chum salmon and other salmonids, some are very recent and few address chum salmon conservation at a scale that is adequate to protect and conserve entire ESUs. NMFS concludes that existing protective efforts are inadequate to preclude a listing for the Hood Canal summer-run and Columbia River ESUs. However, NMFS will continue to encourage these and future protective efforts and will work with Federal, state, and tribal fisheries managers to evaluate, promote, and improve efforts to conserve chum salmon populations.

Determinations

Section 3 of the ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that listing determinations be based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

Based on results from its coastwide status review for chum salmon, and after taking into account comments and new information described previously, NMFS determines that the two ESUs proposed for listing on March 10, 1998 (Hood Canal summer-run and Columbia River ESUs) should be classified as threatened under the ESA. In both cases, the majority of the NMFS BRT concluded that the ESUs are likely to become endangered in the foreseeable future if present conditions continue. Furthermore, NMFS concludes that current protective efforts are insufficient to change the BRT's forecast of extinction risk.

In both ESUs, only naturally spawned populations of chum salmon residing

below impassable natural barriers (e.g., long-standing, natural waterfalls) are listed. NMFS' intent in listing only ''naturally spawned'' populations is to protect chum salmon stocks that are indigenous to (i.e., part of) the ESU. In this listing determination, NMFS has identified various non-indigenous populations that co-occur with fish in the listed ESUs. The agency recognizes the difficulty of differentiating between indigenous and non-indigenous fish, especially when the latter are not readily distinguishable with a mark (e.g., fin clip). Also, matings in the wild of either type would generally result in progeny that would be treated as listed fish (i.e., they would have been naturally spawned in the geographic range of the listed ESU and have no distinguishing mark). Therefore, to reduce confusion regarding which chum salmon are considered listed within an ESU, NMFS will treat all naturally spawned fish as listed for purposes of the ESA. Efforts to determine the conservation status of an ESU would focus on the contribution of indigenous fish to the listed ESU. It should be noted that NMFS will take actions necessary to minimize or prevent non-indigenous chum salmon from spawning in the wild unless the fish are specifically part of a recovery effort.

NMFS has evaluated the relationship between hatchery and natural populations of chum salmon in these ESUs (NMFS, 1999b). In examining this relationship, NMFS scientists consulted with hatchery managers to determine whether any hatchery populations are similar enough to native, naturally spawned fish to be considered part of the biological ESU. The evaluation also considered whether any hatchery population should be considered essential for the recovery of a listed ESU. In the Hood Canal summer-run ESU, chum salmon from the following five hatchery programs are considered part of the ESU: Quilcene National Fish Hatchery; Long Live the Kings Enhancement Project (Lilliwaup Creek); Hamma Hamma River Supplementation Project; Big Beef Creek Re-introduction Project; and WDFW/Wild Olympic Salmon Cooperative (Dungeness River). In the Columbia River ESU, chum salmon from the Grays River Hatchery and Cowlitz River Hatchery programs are considered part of the ESU, while chum salmon from the Sea Resources Hatchery program are not considered part of the ESU.

At this time, none of the hatchery populations considered part of the ESUs are being listed because none are deemed essential for the recovery of either ESU. However, the determination that a hatchery stock is not ''essential'' for recovery does not preclude it from playing a role in recovery. Any hatchery population that is part of the ESU is available for use in recovery if conditions warrant. In this context, an ''essential'' hatchery population is one that is vital to incorporate into recovery efforts (for example, if the associated natural population(s) were extinct or at high risk of extinction). Under such circumstances, NMFS would consider taking the administrative action of listing existing hatchery fish.

NMFS' ''Interim Policy on Artificial Propagation of Pacific Salmon Under the Endangered Species Act'' (58 FR 17573, April 5, 1993) provides guidance on the treatment of hatchery stocks in the event of a listing. Under this policy, ''progeny of fish from the listed species that are propagated artificially are considered part of the listed species and are protected under the ESA.'' In the case of hatchery chum salmon populations considered to be part of the Hood Canal summer-run ESU or Columbia River ESU, the protective regulations that NMFS will issue shortly may except take of naturally spawned listed fish for use as broodstock as part of an overall conservation program. According to the interim policy, the progeny of these hatchery-wild or wild-wild crosses would also be listed. Given the requirement for an acceptable conservation plan as a prerequisite for collecting broodstock, NMFS determines that it is not necessary to consider the progeny of intentional hatchery-wild or wild-wild crosses as listed.

In addition, NMFS believes it is desirable to incorporate naturally spawned fish into these hatchery populations to ensure that their genetic and life history characteristics do not diverge significantly from the natural populations. NMFS therefore concludes that it is not inconsistent with NMFS' interim policy, nor with the policy and purposes of the ESA, to consider these progeny as part of the ESU, but not listed.

Prohibitions and Protective Measures

Section 4(d) of the ESA requires NMFS to issue protective regulations that it finds necessary and advisable to provide for the conservation of a threatened species. Section 9(a) of the ESA prohibits violations of protective regulations for threatened species promulgated under section 4(d). The 4(d) protective regulations may prohibit, with respect to the threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. These 9(a) prohibitions and 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. NMFS will publish 4(d) protective regulations for both listed chum salmon ESUs in a separate **Federal Register** document. The process for completing the 4(d) rule will provide the opportunity for public comment on the proposed protective regulations.

In the case of threatened species, NMFS also has flexibility under section 4(d) of the ESA to tailor the protective regulations based on the contents of available conservation measures. Even though existing conservation efforts and plans are not sufficient to preclude the need for listings at this time, they are nevertheless valuable for improving watershed health and restoring salmon populations. In those cases where well-developed and reliable conservation plans exist, NMFS may choose to incorporate them into the protective regulations and recovery plans. NMFS has already adopted 4(d) protective regulations that exempt a limited range of activities from section 9 take prohibitions. For example, the interim 4(d) rule for Southern Oregon/Northern California Coasts coho salmon (62 FR 38479, July 18, 1997) exempts habitat restoration activities conducted in accordance with approved plans and fisheries conducted in accordance with an approved state management plan. In the future, 4(d) rules may contain limited take prohibitions applicable to activities such as forestry, agriculture, and road construction when such activities are conducted in accordance with approved conservation plans.

These are all examples where NMFS may apply modified ESA section 9 prohibitions in light of the protections provided in a conservation plan that is adequately protective. There may be other circumstances as well in which NMFS would use the flexibility of section 4(d). For example, in some cases there may be a healthy population within an overall ESU that is listed. In such a case, it may not be necessary to apply the full range of prohibitions available in section 9. NMFS intends to use the flexibility of the ESA to respond appropriately to the biological condition of each ESU and to the strength of efforts to protect them.

Section 7(a)(4) of the ESA requires that Federal agencies confer with NMFS on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions likely to result in the destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) of the ESA requires Federal agencies to ensure that activities

they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with NMFS.

Examples of Federal actions likely to affect chum salmon in the listed ESUs include authorized land management activities of the U.S. Forest Service (USFS) and U.S. Bureau of Land Management (BLM), as well as operation of hydroelectric and storage projects of the Bureau of Reclamation and U.S. Army Corps of Engineers (COE). Such activities include timber sales and harvest, hydroelectric power generation, and flood control. Federal actions, including the COE section 404 permitting activities under the Clean Water Act, COE permitting activities under the River and Harbors Act, National Pollution Discharge Elimination System permits issued by the Environmental Protection Agency, highway projects authorized by the Federal Highway Administration, Federal Energy Regulatory Commission licenses for non-Federal development and operation of hydropower, and Federal salmon hatcheries, may also require consultation. These actions will likely be subject to ESA section 7 consultation requirements that may result in conditions designed to achieve the intended purpose of the project and avoid or reduce impacts to chum salmon and its habitat within the range of the listed ESUs.

There are likely to be Federal actions ongoing in the range of the listed ESUs at the time these listings become effective. Therefore, NMFS will review all ongoing actions that may affect the listed species with Federal agencies and will complete formal or informal consultations, where requested or necessary, for such actions pursuant to ESA section 7(a)(2).

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's ''taking'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species.

NMFS has issued ESA section 10(a)(1)(A) research or enhancement permits for other listed species (e.g., Snake River chinook salmon and Sacramento River winter-run chinook salmon) for a number of activities, including trapping and tagging, electroshocking to determine population presence and abundance, removal of fish from irrigation ditches, and collection of adult fish for artificial propagation programs. NMFS is aware of several sampling efforts for chum salmon in the listed ESUs, including efforts by Federal and state fishery management agencies. These and other research efforts could provide critical information regarding chum salmon distribution and population abundance.

ESA section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the release of artificially propagated fish by tribal, state or privately operated and funded hatcheries, state or university research on species other than chum salmon not receiving Federal authorization or funding, the implementation of state fishing regulations, and timber harvest activities on non-Federal lands.

Take Guidance

On July 1, 1994, (59 FR 34272) NMFS and FWS published a policy committing the Services to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of a listing on proposed and on-going activities within the species' range. NMFS believes that, based on the best available information, the following actions will not result in a violation of section 9: (1) Possession of chum salmon from the listed ESUs acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA; and (2) federally funded or approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which an ESA section 7 consultation has been completed, and when such an activity is conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanied by a biological opinion pursuant to section 7 of the ESA. As described previously in this document, NMFS may adopt 4(d) protective regulations that except other activities from section 9 take prohibitions for threatened species.

Activities that NMFS believes could potentially harm, injure or kill chum salmon in the listed ESUs and result in a violation of section 9 include, but are not limited to: (1) land-use activities that adversely affect chum salmon habitat in this ESU (e.g., logging, grazing, farming, road construction in riparian areas, and areas susceptible to mass wasting and surface erosion); (2) destruction or alteration of chum salmon habitat in the listed ESUs, such as removal of large woody debris and ''sinker logs'' or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow; (3) discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting listed chum salmon; (4) violation of discharge permits; (5) pesticide and herbicide applications; (6) interstate and foreign commerce of chum salmon from the listed ESUs and import/export of chum salmon from listed ESUs without an ESA permit, unless the fish were harvested pursuant to legal exception; (7) collecting or handling of chum salmon from listed ESUs (permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species); and (8) introduction of non-native species likely to prey on chum salmon in these ESUs or displace them from their habitat. This list is not exhaustive. It is intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a take of listed chum salmon under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of this rule, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Effective Date of Final Listing

Given the cultural, scientific, and recreational importance of this species, and the broad geographic range of these listings, NMFS recognizes that numerous parties may be affected by this listing. Therefore, to permit an orderly implementation of the consultation requirements associated with this action, this final listing will take effect May 24, 1999.

Conservation Measures

Conservation benefits are provided to species listed as endangered or threatened under the ESA through increased recognition, recovery actions, Federal agency consultation requirements, and prohibitions on taking. Increased recognition through listing promotes public awareness and conservation actions by Federal, state,

and local agencies, private organizations, and individuals.

Several conservation efforts are underway that may reverse the decline of west coast chum salmon and other salmonids. NMFS is encouraged by these significant efforts, which could provide all stakeholders with an approach to achieving the purposes of the ESA–protecting and restoring native fish populations and the ecosystems upon which they depend that are less regulatory. NMFS will continue to encourage and support these initiatives as important components of recovery planning for chum salmon and other salmonids.

To succeed, protective regulations and recovery programs for chum salmon will need to focus on conserving aquatic ecosystem health. NMFS intends that Federal lands and Federal activities play a primary role in preserving listed populations and the ecosystems upon which they depend. However, throughout the range of the listed ESUs, chum salmon habitat occurs and can be affected by activities on state, tribal or private land.

Conservation measures that could be implemented to help conserve the species are listed here (the list is generalized and does not constitute NMFS' interpretation of a recovery plan under section 4(f) of the ESA). Progress on some of these is being made to differing degrees in specific areas.

1. Measures could be taken to promote practices that are more protective of (or restore) chum salmon habitat across a variety of land and water management activities. Activities affecting this habitat include timber harvest; agriculture; livestock grazing and operations; pesticide and herbicide applications; construction and urban development; road building and maintenance; sand and gravel mining; stream channelization; dredging and dredged spoil disposal; dock and marina construction; diking and bank stabilization; dam construction/operation; irrigation withdrawal, storage, and management; mineral mining; wastewater/pollutant discharge; wetland and floodplain alteration; habitat restoration projects; and woody debris/structure removal from rivers and estuaries. Each of these activities could be modified to ensure that watersheds and specific river reaches are adequately protected in the short- and long-terms.

2. Fish passage could be restored at barriers to migration through the installation or modification of fish ladders, upgrade of culverts, or removal of barriers.

3. Harvest regulations could be modified to protect listed chum salmon populations affected by both directed harvest and incidental take in other fisheries.

4. Artificial propagation programs could be modified to minimize negative impacts (e.g., genetic introgression, competition, disease, etc.) upon native populations of chum salmon.

5. Predator control/relocation programs could be implemented in areas where predators pose a significant threat to chum salmon.

6. Measures could be taken to improve monitoring of chum salmon populations and their habitat.

7. Federal agencies such as the USFS, BLM, Federal Energy Regulatory Commission, COE, U.S. Department of Transportation, and U.S. Bureau of Reclamation could review their management programs and use their discretionary authorities to formulate conservation plans pursuant to section 7(a)(1) of the ESA.

NMFS encourages non-Federal landowners to assess the impacts of their actions on threatened or endangered salmonids. In particular, NMFS encourages state and local governments to use their existing authorities and programs, and encourages the formation of watershed partnerships to promote conservation in accordance with ecosystem principles. These partnerships will be successful only if state, tribal, and local governments, landowner representatives, and Federal and non-Federal biologists all participate and share the goal of restoring salmon to the watersheds.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. Section 4(b)(6)(C)(ii) provides that, where critical habitat is not determinable at the time of final listing, NMFS may extend the period for designating critical habitat by not more than one additional year.

In the proposed rule (63 FR 11774, March 10, 1998), NMFS described the areas that may constitute critical habitat for the Hood Canal summer-run and Columbia River ESUs. Since then, NMFS has received numerous comments from the public concerning the process and definition of critical habitat for chum salmon and other salmonids. Also, due to statutory time limitations, NMFS has not yet consulted with affected Indian tribes regarding the designation of critical habitat in areas that may affect tribal trust resources, tribal-owned fee lands, or the exercise of tribal rights.

Given these remaining unresolved issues, NMFS determines at this time that a final critical habitat designation is not determinable for these ESUs since additional time is required to complete the needed biological assessments and evaluate special management considerations affecting critical habitat. The agency therefore extends the deadline for designating critical habitat for 1 year until such assessments can be made and after appropriate consultations are completed.

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F.2d 825 (6th Cir. 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of the National Environmental Policy Act (NEPA) under NOAA Administrative Order 216–6.

As noted in Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act (RFA) are not applicable to the listing process. In addition, this final rule is exempt from review under E.O. 12866.

This rule has been determined to be major under the Congressional Review Act (5 U.S.C. 801 *et seq.*)

At this time NMFS is not promulgating protective regulations pursuant to ESA section 4(d). In the future, prior to finalizing its 4(d) regulations for the threatened chum salmon ESUs, NMFS will comply with all relevant NEPA and RFA requirements.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES**) and can also be obtained from the internet at www.nwr.noaa.gov.

Threatened Species Regulations Consolidation

In the proposed rule issued on March 10, 1998 (63 FR 11774), Hood Canal summer-run chum salmon was designated the letter (m) and Columbia River chum salmon the letter (n) in § 227.4. Since March 10, 1998, NMFS issued a final rule consolidating and reorganizing existing regulations regarding implementation of the ESA. In this reorganization, § 227.4 has been redesignated as § 223.102; therefore, Hood Canal summer-run chum salmon

is designated in this final rule as paragraph (a)(12) and Columbia River chum salmon as paragraph (a)(13) of § 223.102. The regulatory text of the proposed rule remains unchanged in this final rule.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: March 15, 1999.

Andrew A. Rosenberg, Ph.D.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 223 is amended as follows:

PART 223–THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq*; 16 U.S.C. 742a *et seq*.; 31 U.S.C. 9701.

2. In § 223.102, paragraphs (a)(12) and (a)(13) are added to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(a) * * *

(12) Hood Canal summer-run chum salmon (*Oncorhynchus keta*). Includes all naturally spawned populations of summer-run chum salmon in Hood Canal and its tributaries as well as populations in Olympic Peninsula rivers between Hood Canal and Dungeness Bay, Washington;

(13) Columbia River chum salmon (*Oncorhynchus keta*). Includes all naturally spawned populations of chum salmon in the Columbia River and its tributaries in Washington and Oregon.

* * * * *

[FR Doc. 99–6814 Filed 3–24–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 980225046–9070–03; I.D. 021098B]

RIN 0648–AK54

Endangered and Threatened Species: Threatened Status for Two ESUs of Steelhead in Washington and Oregon

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

ACTION: Final rule; notice of determination.

SUMMARY: Previously, NMFS completed a comprehensive status review of west coast steelhead (*Oncorhynchus mykiss*) populations in Washington, Oregon, Idaho, and California, and identified 15 Evolutionarily Significant Units (ESUs) within this range. NMFS now issues a final rule to list two ESUs as threatened under the Endangered Species Act (ESA). The listed ESUs include the Middle Columbia River ESU located in Washington and Oregon, and the Upper Willamette River ESU located in Oregon.

In both threatened ESUs, only naturally spawned populations of steelhead residing below impassable natural barriers (e.g., long-standing, natural waterfalls) are listed. NMFS examined the relationship between hatchery and natural populations of steelhead in these ESUs and determines none of the identified hatchery populations are essential for recovery at this time.

At this time, NMFS is listing only anadromous life forms of *O. mykiss*.

NMFS will issue any protective regulations deemed necessary under section 4(d) of the ESA for the listed ESUs in a separate rulemaking. Even though NMFS does not now issue protective regulations for these ESUs, Federal agencies are required under section 7 of the ESA to consult with NMFS if any activity they authorize, fund, or carry out may affect listed steelhead.

DATES: Effective May 24, 1999.

ADDRESSES: Branch Chief, Protected Resources Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, 503–231–2005, or Chris Mobley, 301–713-1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Reference materials regarding this listing determination can also be obtained from the internet at www.nwr.noaa.gov.

Species Background

Biological and life history information for steelhead can be found in NMFS' recent status assessments (Busby *et al*., 1996; NMFS, 1999a and 1999b) and in the **Federal Register** notice announcing the listing proposal (63 FR 11797, March 10, 1998).

Previous Federal ESA Actions Related to West Coast Steelhead

The history of petitions received regarding west coast steelhead is summarized in the proposed rule published on August 9, 1996 (61 FR 41541). The most comprehensive petition was submitted by Oregon Natural Resources Council and 15 co-petitioners on February 16, 1994. In response to this petition, NMFS assessed the best available scientific and commercial data, including technical information from Pacific Salmon Biological Technical Committees (PSBTCs) and interested parties in Washington and Oregon. The PSBTCs consisted primarily of scientists (from Federal, state, and local resource agencies, Indian tribes, industries, universities, professional societies, and public interest groups) possessing technical expertise relevant to steelhead and their habitats. NMFS also established a Biological Review Team (BRT), composed of staff from NMFS' Northwest and Southwest Fisheries Science Centers and Southwest Regional Office, as well as a representative of the U.S. Geological Survey Biological Resources Division (formerly the National Biological Service), which conducted a coastwide status review for west coast steelhead (Busby *et al*., 1996).

Based on the results of the BRT report, and after considering other information and existing conservation measures, NMFS published a proposed listing determination (61 FR 41541, August 9, 1996) that identified 15 ESUs of steelhead in the states of Washington, Oregon, Idaho, and California. Ten of these ESUs were proposed for listing as threatened or endangered species, four were found not warranted for listing, and one was identified as a candidate for listing.

On August 18, 1997, NMFS published a final rule listing five ESUs as threatened or endangered under the ESA (62 FR 43937, August 18, 1997). In a separate notice published on the same day, NMFS determined substantial scientific disagreement remained for five proposed ESUs (62 FR 43974, August 18, 1997). In accordance with section 4(b)(6)(B)(i) of the ESA, NMFS deferred its decision on these remaining steelhead ESUs for 6 months, until February 9, 1998, for the purpose of soliciting additional data. On March 19, 1998, NMFS published a final rule listing two ESUs as threatened (63 FR 13347, March 19, 1998). In this notice NMFS also determined the remaining three ESUs (Oregon Coast, Klamath Mountains Province, and Northern California) did not warrant listing (*Id*.).

On March 10, 1998, NMFS published a proposed listing determination for Middle Columbia River and Upper Willamette River steelhead ESUs (63 FR

11798). This proposed rule was based on an updated status review completed for previously deferred ESUs [Memorandum to William Stelle and William Hogarth from M. Schiewe, December 18, 1997, Status of Deferred and Candidate ESUs of West Coast Steelhead]. In response to the proposed rule, NMFS received comments and scientific information from affected states, tribes, and others which were recently considered by NMFS' BRT. NMFS has now completed an updated status review that analyzes this new information (NMFS, 1999a). Copies of this memorandum are available upon request (see **ADDRESSES**). Based on this updated review and other information, NMFS now lists the Upper Willamette River and Middle Columbia River steelhead ESUs as threatened species under the ESA.

Summary of Comments Received in Response to the Proposed Rule

NMFS held 21 public hearings in California, Oregon, Idaho, and Washington to solicit comments on this and other salmonid listing proposals (63 FR 16955, April 7, 1998; 63 FR 30455, June 4, 1998). During the 112-day public comment period, NMFS received 28 written comments on the proposed rule from Federal, state, and local government agencies, Indian tribes, non-governmental organizations, the scientific community, and other individuals. A number of comments addressed specific technical issues pertaining to a particular geographic region or *O. mykiss* population. These technical comments were considered by NMFS' BRT in its re-evaluation of ESU boundaries and status and are discussed in the updated Status Review document (NMFS, 1999a).

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service (FWS), published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). In accordance with this policy, NMFS solicited a total of 35 individuals to take part in a peer review of the current and previous west coast steelhead proposed rules. All individuals solicited are recognized experts in the field of steelhead biology, and represent a broad range of interests, including Federal, state, and tribal resource managers, private industry consultants, and academia. Eight individuals took part in the peer review of these findings; comments from peer reviewers were considered by NMFS' BRT and are summarized in the relevant Status Review documents (e.g., NMFS 1997a).

A summary of comments received in response to this proposed rule is presented here.

Issue 1: Sufficiency and Accuracy of Scientific Information and Analysis

Comment: Numerous commenters disputed the sufficiency and accuracy of data which NMFS employed in its proposed rule to list two steelhead ESUs as threatened under the ESA. Several commenters urged NMFS to delay any ESA listing decisions for steelhead until additional scientific information is available concerning this species.

Response: Section 4(b)(1)(A) of the ESA requires that NMFS make its listing determinations solely on the basis of the best available scientific and commercial data after reviewing the status of the species. NMFS believes that information contained in the agency's status review (Busby *et al.*, 1996), together with more recent information obtained in response to the proposed rule (NMFS, 1999a), represents the best scientific information presently available for the steelhead ESUs addressed in this final rule. NMFS has conducted an exhaustive review of all available information relevant to the status of this species. NMFS has also solicited information and opinion from all interested parties. If, in the future, new data become available to change these conclusions, NMFS will act accordingly.

Issue 2: Description and Status of Steelhead ESUs

Comment: Several commenters disputed NMFS' conclusions regarding the geographic boundaries for some of the ESUs and questioned NMFS' basis for determining these boundaries.

Response: NMFS has published a policy describing how it applies the ESA definition of ''species'' to anadromous salmonid species (56 FR 58612; November 20, 1991). More recently, NMFS and FWS published a joint policy, which is consistent with NMFS' policy, regarding the definition of ''distinct population segments'' (61 FR 4722, February 7, 1996). The earlier policy is more detailed and applies specifically to Pacific salmonids and, therefore, was used for this determination. This policy indicates that one or more naturally reproducing salmonid populations will be considered to be distinct and, hence, species under the ESA, if they represent an ESU of the biological species. To be considered an ESU, a population must satisfy two criteria: (1) It must be reproductively isolated from other population units of the same species, and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute but must have been strong enough to permit evolutionarily important differences to occur in different population units. The second criterion is met if the population contributes substantially to the ecological or genetic diversity of the species as a whole. Guidance on applying this policy is contained in a NOAA Technical Memorandum entitled ''Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon'' (Waples, 1991) and in a recent scientific paper by Waples (1995).

The National Research Council (NRC) has recently addressed the issue of defining species under the ESA (NRC, 1995). Their report found that protecting distinct population segments (DPS) is soundly based on scientific evidence, and recommends applying an ''Evolutionary Unit'' (EU) approach in describing these segments. The NRC report describes the high degree of similarity between the EU and ESU approaches (differences being largely a matter of application between salmon and other vertebrates), and concluded that either approach would lead to similar DPS descriptions most of the time.

Comment: Several commenters questioned NMFS' methodology for determining whether a given steelhead ESU warranted listing. In most cases, such commenters also expressed opinions regarding whether listing was warranted for a particular steelhead ESU. A few commenters provided substantive new information relevant to making risk assessments.

Response: Section 3 of the ESA defines the term ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' The term ''threatened species'' is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' NMFS has identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, including: (1) absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have

predictable short-term consequences for abundance of the ESU. A more detailed discussion of status of individual ESUs is provided in this document under ''Summary of Conclusions Regarding Listed ESUs.''

Issue 3: Factors Contributing to the Decline of West Coast Steelhead

Comment: Many commenters identified factors they believe have contributed to the decline of west coast steelhead. Factors identified include overharvest by recreational fisheries, predation by pinnipeds and piscivorous fish species, effects of artificial propagation, and the deterioration or loss of freshwater and marine habitats.

Response: NMFS agrees that many factors, past and present, have contributed to the decline of West Coast steelhead. NMFS also recognizes that natural environmental fluctuations have likely played a role in the species' recent declines. However, NMFS believes other human-induced impacts (e.g., incidental catch in certain fisheries, hatchery practices, and habitat modification) have played an equally significant role in this species' decline. Moreover, these human-induced impacts have likely reduced the species' resiliency to natural factors for decline such as drought and poor ocean conditions (NMFS, 1996a).

Since the time of this proposed listing, NMFS has published a report describing the impacts of California sea lions and Pacific harbor seals upon salmonids and on the coastal ecosystems of Washington, Oregon, and California (NMFS, 1999c). This report concludes that in certain cases where pinniped populations co-occur with depressed salmonid populations, salmon populations may experience severe impacts due to predation. An example of such a situation is Ballard Locks, Washington, where sea lions are known to consume significant numbers of adult winter steelhead. This study further concludes that data regarding pinniped predation are quite limited, and that substantial additional research is needed to fully address this issue. Existing information on the seriously depressed status of many salmonid stocks is sufficient to warrant actions to remove pinnipeds in areas of co-occurrence where pinnipeds prey on depressed salmonid populations (NMFS, 1997b). For additional information on this issue see the ''Summary of Factors Affecting Steelhead'' later in this document.

Comment: Several commenters stated that NMFS' assessment underestimated the significant influence of natural environmental fluctuations on salmonid populations. Several commenters stated that ocean conditions are one of the primary factors for decline.

Response: Environmental changes in both marine and freshwater habitats can have important impacts on steelhead abundance. For example, a pattern of relatively high abundance in the mid-1980s followed by (often sharp) declines over the next decade occurred in steelhead populations from most geographic regions of the Pacific Northwest. This result is most plausibly explained by broad-scale changes in ocean productivity. Similarly, 6 to 8 years of drought in the late 1980s and early 1990s adversely affected many freshwater habitats for steelhead throughout the region. These natural phenomena put increasing pressure on natural populations already stressed by anthropogenic factors such as habitat degradation, blockage of migratory routes, and harvest (NMFS, 1996a).

Improvement of cyclic or episodic environmental conditions (for example, increases in ocean productivity or shifts from drought to wetter conditions) may help alleviate extinction risk to steelhead populations. However, NMFS cannot reliably predict future environmental conditions, making it unreasonable to assume improvements in abundance as a result of improvements in such conditions. Furthermore, steelhead and other species of Pacific salmon have evolved over the centuries with such cyclical environmental stresses. This species has persisted through time in the face of these conditions largely due to the presence of freshwater and estuarine refugia. As these refugia are altered and degraded, Pacific salmon species are more vulnerable to such episodic events as shifts in ocean productivity and drought cycles (NMFS, 1996a).

Issue 4: Consideration of Existing Conservation Measures

Comment: Several commenters argued that NMFS had not considered existing conservation programs designed to enhance steelhead stocks within a particular ESU. Some commenters provided specific information on some of these programs to NMFS concerning the efficacy of existing conservation plans.

Response: NMFS has reviewed existing conservation plans and measures relevant to the two ESUs addressed in this final rule and concludes that existing conservation efforts in some cases have helped ameliorate risks facing the species. These conservation efforts are discussed in detail later in this document under ''Existing Conservation Efforts.''

While several of the plans addressed in comments show promise for ameliorating risks facing steelhead, some of the measures described in comments have not been implemented and are only recently proposed. Some of these measures are also geographically limited to individual river basins or political subdivisions, thereby improving conditions for only a small portion of the entire ESU.

Even though existing conservation efforts and plans in the listed ESUs are not sufficient to preclude the need for listings at this time, they are nevertheless valuable for improving watershed health and restoring fishery resources. In those cases where well-developed, reliable conservation plans exist, NMFS may choose to incorporate them into the recovery planning process. In the case of threatened species, NMFS also has flexibility under section 4(d) of the ESA to tailor the protective regulations based on the contents of available conservation measures. NMFS has already adopted 4(d) rules that except a limited range of activities from section 9 take prohibitions. For example, the interim 4(d) rule for Southern Oregon/Northern California coho salmon (62 FR 38479, July 18, 1997) excepts habitat restoration activities conducted in accordance with approved plans and fisheries conducted in accordance with an approved state management plan. In appropriate cases, 4(d) rules could contain limited take prohibitions applicable to such activities as forestry, agriculture, and road construction when such activities are conducted in accordance with NMFS approved state or tribal conservation plans.

These examples show that NMFS may apply modified ESA section 9 prohibitions where NMFS approved state or tribal conservation plans exist. There may be other circumstances as well in which NMFS would use the flexibility of section 4(d). For example, in some cases there may be a healthy population of salmon or steelhead within an overall ESU that is listed. In such a case, it may not be necessary to apply the full range of prohibitions available in section 9. NMFS intends to use the flexibility of the ESA to respond appropriately to the biological condition of each ESU and the populations within it, and to the strength of state and tribal conservation plans in place to protect them.

Issue 5: Steelhead Biology and Ecology

Comment: Several commenters asserted that resident rainbow trout should be included in listed steelhead ESUs. Several commenters also stated that NMFS and FWS should address how the presence of rainbow trout

populations may ameliorate risks facing anadromous populations within listed ESUs.

Response: In its August 9, 1996, proposed rule (61 FR 41541), NMFS stated that based on available genetic information, it was the consensus of NMFS scientists, as well as regional fishery biologists, that resident fish should generally be considered part of the steelhead ESUs. However, NMFS concluded that available data were inconclusive regarding the relationship of resident rainbow trout and steelhead. NMFS requested additional data in the proposed rule to clarify this relationship and determine if resident rainbow trout should be included in listed steelhead ESUs.

In response to this request for additional information, many groups and individuals expressed opinions regarding this issue. In most cases these opinions were not supported by new information that resolves existing uncertainty. Two state fishery management agencies (Washington Department of Fish and Wildlife (WDFW) and Oregon Department of Fish and Wildlife(ODFW)) provided comments and information supporting the inclusion of resident rainbow trout in listed steelhead ESUs. In general, these parties also felt that rainbow trout may serve as an important reservoir of genetic material for at-risk steelhead stocks.

While conclusive evidence does not yet exist regarding the relationship of resident and anadromous *O. mykiss*, NMFS believes available evidence suggests that resident rainbow trout should be included in listed steelhead ESUs in certain cases. Such cases include (1) where resident *O. mykiss* have the opportunity to interbreed with anadromous fish below natural or man-made barriers, or (2) where resident fish of native lineage once had the ability to interbreed with anadromous fish but no longer do because they are currently above human-made barriers, and they are considered essential for recovery of the ESU. Whether resident fish that exist above any particular man-made barrier meet these criteria must be reviewed on a case-by-case basis by NMFS. Resident fish above long-standing natural barriers and those that are derived from the introduction of non-native rainbow trout would not be considered part of any salmonid ESU.

Several lines of evidence exist to support this conclusion. Under certain conditions, anadromous and resident *O. mykiss* are apparently capable not only of interbreeding, but also of having offspring that express the alternate life history form, that is, anadromous fish can produce nonanadromous offspring, and vice versa (Shapovalov and Taft, 1954; Burgner *et al*., 1992). Mullan *et al*. (1992) found evidence that in very cold streams, juvenile steelhead had difficulty attaining ''mean threshold size for smoltification'' and concluded that ''Most fish here [Methow River, Washington] that do not emigrate downstream early in life are thermally-fated to a resident life history regardless of whether they were the progeny of anadromous or resident parents.'' Additionally, Shapovalov and Taft (1954) reported evidence of *O. mykiss* maturing in fresh water and spawning prior to their first ocean migration; this life history variation has also been found in cutthroat trout (*O. clarki*) and Atlantic salmon (*Salmo salar*).

NMFS believes resident fish can help buffer extinction risks to an anadromous population by mitigating depensatory effects in spawning populations, by providing offspring that migrate to the ocean and enter the breeding population of steelhead, and by providing a ''reserve'' gene pool in freshwater that may persist through times of unfavorable conditions for anadromous fish. In spite of these potential benefits, the presence of resident populations is not a substitute for conservation of anadromous populations. A particular concern is isolation of resident populations by human-caused barriers to migration. This interrupts normal population dynamics and population genetic processes and can lead to loss of a genetically based trait (anadromy). As discussed in NMFS' ''species identification'' paper (Waples, 1991), the potential loss of anadromy in distinct population segments may, in and of itself, warrant listing the ESU as a whole.

On February 7, 1996, FWS and NMFS adopted a joint policy to clarify their interpretation of the phrase ''distinct population segment of any species of vertebrate fish or wildlife'' (DPS) for the purposes of listing, delisting, and reclassifying species under the ESA (61 FR 4722). DPSs are ''species'' pursuant to section 3(15) of the ESA. Previously, NMFS had developed a policy for stocks of Pacific salmon where an ESU of a biological species is considered to be a DPS if (1) it is substantially reproductively isolated from other conspecific population units, and (2) it represents an important component in the evolutionary legacy of the species (56 FR 58612, November 20, 1991). NMFS believes available data suggest that resident rainbow trout are, in many cases, part of steelhead ESUs. However, FWS, which has ESA authority for resident fish, maintains that behavioral forms can be regarded as separate DPSs (e.g., as when the agency listed coastal, but not interior, populations of the western snowy plover).

In its review of West Coast steelhead, NMFS' BRT stated that rainbow trout and steelhead in the same area may share a common gene pool, at least over evolutionary time periods (NMFS, 1997a). The importance of any recovery action is measured in terms of its ability to recover the listed species in the foreseeable future. The FWS believes that steelhead recovery will not rely on the intermittent exchange of genetic material between resident and anadromous forms (FWS, 1997). As a result, without a clear demonstration of any risks to resident rainbow trout or the need to protect rainbow trout to recover steelhead in the foreseeable future, the FWS concludes that only the anadromous forms of *O. mykiss* should be included in the listed steelhead ESUs at this time (Department of the Interior, 1997; FWS, 1997).

Comment: Several commenters questioned NMFS' inclusion of both summer- and winter-run steelhead in the same ESU. These commenters suggested that summer- and winter-run steelhead be segregated into individual ESUs based on life history differences.

Response: While NMFS considers both life history forms (summer and winter steelhead) to be important components of diversity within the species, new genetic data reinforces previous conclusions that within a geographic area, summer and winter steelhead typically are more genetically similar to one another than either is to populations with similar run timing in different geographic areas. This indicates that an ESU that included summer-run populations from different geographic areas but excluded winter-run populations (or vice-versa) would be an inappropriate unit. The only biologically meaningful way to have summer and winter steelhead populations in separate ESUs would be to have a very large number of ESUs, most consisting of just one or a very few populations. This would be inconsistent with the approach NMFS has taken in defining ESUs in other anadromous Pacific salmonids. Taking these factors into consideration, NMFS concludes that summer and winter steelhead should be considered part of the same ESU in geographic areas where they co-occur.

Summary of Steelhead ESU Determinations

The following is a summary of NMFS' ESU determinations for the species. A more detailed discussion of ESU determinations is presented in the

''Status Review Update for Deferred and Candidate ESUs of West Coast Steelhead'' (NMFS, 1997a) and ''Updated Review of the Status of the Upper Willamette River and Middle Columbia River ESUs of Steelhead'' (NMFS, 1999a). Copies of these documents are available upon request (see **ADDRESSES**).

NMFS also evaluated the relationship between hatchery and natural populations of steelhead in these ESUs (NMFS, 1999b). In examining this relationship, NMFS scientists consulted with hatchery managers to determine whether any hatchery populations are similar enough to native, naturally spawned fish to be considered part of the biological ESU.

(1) Upper Willamette River ESU

This steelhead ESU occupies the Willamette River and its tributaries, upstream from Willamette Falls to the Calapooia River, inclusive. This is a revision of the proposed ESU boundary in that NMFS now refines the range of this ESU to exclude rivers upstream of the Calapooia River.

The Willamette River Basin is zoogeographically complex. In addition to its connection to the Columbia River, the Willamette River historically has had connections with coastal basins through stream capture and headwater transfer events (Minckley *et al.*, 1986).

Steelhead from the upper Willamette River are genetically distinct from those in the lower river. Reproductive isolation from lower river populations may have been facilitated by Willamette Falls, which is known to be a migration barrier to some anadromous salmonids. For example, winter steelhead and spring chinook salmon (*O. tshawytscha*) occurred historically above the falls, but summer steelhead, fall chinook salmon, and coho salmon did not (PGE, 1994).

The native steelhead of this basin are late-migrating winter steelhead, entering fresh water primarily in March and April (Howell *et al.*, 1985), whereas most other populations of west coast winter steelhead enter fresh water beginning in November or December. As early as 1885, fish ladders were constructed at Willamette Falls to aid the passage of anadromous fish. The ladders have been modified and rebuilt, most recently in 1971, as technology has improved (Bennett, 1987; PGE, 1994). These fishways facilitated successful introduction of Skamania stock summer steelhead and early-migrating Big Creek stock winter steelhead to the upper basin. Another effort to expand the steelhead production in the upper Willamette River was the stocking of native steelhead in tributaries not historically used by that species. Native steelhead primarily used tributaries on the east side of the basin, with cutthroat trout predominating in streams draining the west side of the basin.

Resident *O. mykiss* are known to occupy the Upper Willamette River Basin; however, most of these populations occur above natural and manmade barriers (Kostow, 1995). Historically, spawning by Upper Willamette River steelhead was concentrated in the North and Middle Santiam River Basins (Fulton, 1970). These areas are now largely blocked to fish passage by dams, and steelhead spawning is now distributed throughout more of the Upper Willamette River Basin than in the past (Fulton, 1970). Due to introductions of non-native steelhead stocks and transplantation of native stocks within the basin, it is difficult to formulate a clear picture of the present distribution of native Upper Willamette River steelhead, and their relationship to nonanadromous and possibly residualized *O. mykiss* within the basin.

Substantive comments from ODFW on this ESU addressed the boundaries of the ESU and the relationship between the native steelhead of the middle basin and the resident trout of the upper basin (i.e., McKenzie and Middle Fork Willamette Rivers) (Greer, 1998). Additionally, NMFS was able to evaluate new genetic information pertinent to this ESU.

Recently developed resident trout genetic data from the McKenzie and Middle Fork Willamette River Basins showed no genetic continuity with known hatchery trout (Cape Cod stock) or any Willamette River steelhead population. Additionally, ODFW has been unable to achieve success in their attempts to establish steelhead populations in these subbasins. These factors combine to give credence to the theory that, for some unidentified reason, the upper reaches of the Willamette River Basin are not suitable to support steelhead populations, although resident trout and chinook salmon have been successful there.

NMFS reviewed the steelhead distribution described by Fulton (1970); however, aside from this, little new information was added to that presented by Busby *et al.* (1996). NMFS concludes that this ESU was comprised of the native late-run winter steelhead and that the historic distribution of the ESU did not extend upstream of the Calapooia River. NMFS also concludes that steelhead had some historic distribution in westside tributaries to the Willamette River (e.g., Gales Creek in the Tualatin River Basin) but that current distribution of winter-run steelhead in westside tributaries is somewhat unclear. Based on limited genetic analysis, the recent samples from westside tributaries do not appear to reflect populations derived from this ESU (NMFS, 1999a). However, information provided by the State of Oregon indicates that winter-run steelhead may in fact presently occur in several westside tributaries (Kostow, 1995; NMFS, 1999a).

Based on the best available scientific information, NMFS concludes that westside tributaries to the Willamette River warrant inclusion in this ESU at this time, although some uncertainty remains regarding this conclusion. While westside tributaries are included in the ESU, it is important to note that the listed ESU consists of naturally spawned, winter-run steelhead. Where distinguishable, naturally spawned, summer-run steelhead are not included in the listed ESU.

Hatchery Populations Pertaining to the ESU

NMFS identified three hatchery stocks associated with the Upper Willamette River ESU (NMFS, 1999b). After reviewing the best available information regarding the relationship between hatchery and natural populations in this ESU, NMFS concludes that the North Santiam River (ODFW Stock 21) hatchery stock should be considered part of the ESU. However, the Big Creek (ODFW Stock 13) and Skamania/Foster/McKenzie ODFW stocks are not considered part of the ESU. The listing status of these hatchery stocks is described later in this document under ''Status of Steelhead ESUs.''

(2) Middle Columbia River ESU

This inland steelhead ESU occupies the Columbia River Basin and tributaries from above the Wind River in Washington and the Hood River in Oregon (exclusive), upstream to, and including, the Yakima River, in Washington. Steelhead of the Snake River Basin are excluded. Franklin and Dyrness (1973) placed the Yakima River Basin in the Columbia Basin Physiographic Province, along with the Deschutes, John Day, Walla Walla, and lower Snake River Basins. Geology within this province is dominated by the Columbia River Basalt formation, stemming from lava deposition in the Miocene epoch, overlain by plio-Pleistocene deposits of glaciolacustrine origin (Franklin & Dyrness, 1973). This intermontane region includes some of the driest areas of the Pacific Northwest, generally receiving less than 40 centimeters of rainfall annually (Jackson, 1993). Vegetation is of the

shrub-steppe province, reflecting the dry climate and harsh temperature extremes.

Genetic differences between inland and coastal steelhead are well established, although some uncertainty remains about the exact geographic boundaries of the two forms in the Columbia River. Electrophoretic and meristic data show consistent differences between several middle Columbia River steelhead populations and Snake River steelhead. No recent genetic data exist for natural steelhead populations in the upper Columbia River, but recent WDFW data show that the Wells Hatchery stock from the upper Columbia River does not have a close genetic affinity to sampled populations from the middle Columbia River.

All steelhead in the Columbia River Basin upstream from The Dalles Dam are summer-run, inland steelhead (Schreck *et al.*, 1986; Reisenbichler *et al.*, 1992; and Chapman *et al.*, 1994). Steelhead in Fifteenmile Creek, Oregon, are genetically allied with inland *O. mykiss*, but are winter-run. Winter steelhead are also found in the Klickitat and White Salmon Rivers, Washington.

Life history information for steelhead of this ESU indicates that most middle Columbia River steelhead smolt at 2 years and spend 1 to 2 years in salt water (i.e., 1–ocean and 2–ocean fish, respectively) prior to re-entering fresh water, where they may remain up to a year prior to spawning (Howell *et al.*, 1985; BPA, 1992). Within this ESU, the Klickitat River is unusual in that it produces both summer and winter steelhead, and the summer steelhead are dominated by 2-ocean steelhead, whereas most other rivers in this region produce about equal numbers of both 1– and 2-ocean steelhead.

The proposed listing of the Middle Columbia River ESU generated substantive comments from ODFW (Greer, 1998) and the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO) (Calica, 1998). These comments, while summarized here, are discussed in detail in the status review update (NMFS, 1999a).

NMFS previously concluded that native, resident *O. mykiss* populations that have the opportunity to interbreed with anadromous *O. mykiss* should be included in the steelhead ESUs (Busby *et al.*, 1996). While ODFW and CTWSRO presented anecdotal accounts of spawning interactions between resident trout and steelhead in the Deschutes River (i.e., Zimmerman and Reeves, 1996; 1997; and 1998), such studies did not provide much evidence of this. NMFS concludes that, given the opportunity for reproductive interaction, co-occurring resident trout are included within this steelhead ESU.

In its comments, ODFW recommended that NMFS realign the proposed ESU to exclude winter steelhead from it; however, this recommendation is not supported by any new scientific data. Currently available data indicate that these are inland steelhead populations. An intensive genetic survey of these steelhead populations might provide useful information to further clarify the relationship between coastal and inland steelhead. NMFS concludes that no change in the ESU boundaries are warranted based solely on the presence of a winter-run life history.

Recently obtained genetic data raises some question about the boundaries of the Middle Columbia River ESU. However, NMFS concludes that this new information is too uncertain at this stage to warrant revising the proposed ESU boundaries. NMFS will revise these boundaries in the future when additional data support such a revision.

Hatchery Populations Pertaining to the ESU

NMFS identified two hatchery stocks associated with the Middle Columbia River ESU (NMFS, 1999b). After reviewing the best available information regarding the relationship between hatchery and natural populations in this ESU, NMFS concludes that both the Deschutes River (ODFW Stock 66) and Umatilla River (ODFW Stock 91) hatchery stocks should be considered part of the ESU. The listing status of these hatchery stocks is described later in this document under ''Status of Steelhead ESUs.''

Summary of Factors Affecting Steelhead

Section 4(a)(1) of the ESA and NMFS listing regulations (50 CFR part 424) set forth procedures for listing species. The Secretary of Commerce must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

Several recent documents describe in more detail the impacts of various factors contributing to the decline of steelhead and other salmonids (e.g., 63 FR 11798; NMFS, 1999a). Relative to west coast steelhead, NMFS prepared a supporting document that addresses the factors leading to the decline of this species entitled ''Factors for Decline: A Supplement to the Notice of Determination for West Coast Steelhead'' (NMFS, 1996b). This report, available upon request (see **ADDRESSES**), concludes that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of the species. The report identifies destruction and modification of habitat, overutilization for recreational purposes, and natural and human-made factors as being the primary reasons for the decline of west coast steelhead.

Efforts Being Made to Protect West Coast Steelhead

Under section 4(b)(1)(A) of the ESA, the Secretary of Commerce is required to make listing determinations solely on the basis of the best scientific and commercial data available and after taking into account efforts being made to protect a species. During the status review for west coast steelhead and for other salmonids, NMFS reviewed protective efforts ranging in scope from regional strategies to local watershed initiatives; some of the major efforts are summarized in the March 10, 1998 proposed rule (63 FR 11798) as well as a document entitled ''Steelhead Conservation Efforts: A Supplement to the Notice of Determination for West Coast Steelhead under the Endangered Species Act'' (NMFS, 1996c). During the proposed rule period, NMFS identified additional conservation measures in the States of Washington and Oregon. These additional conservation measures are summarized here.

Two Federal planning efforts affect aquatic habitat on Federal lands within the range of these ESUs. These Federal efforts in some cases provide substantial protection for aquatic communities and are therefore considered in NMFS' listing determination. Federal forest lands in the Upper Willamette River ESU (and some areas of the Middle Columbia River ESU) are managed under U.S. Forest Service (USFS) and Bureau of Land Management (BLM) Land and Resource Management Plans or Land Use Plans which are amended by the Northwest Forest Plan (NFP). The NFP is a Federal interagency cooperative program that was implemented to provide a coordinated management direction for the lands administered by the USFS and BLM. A major part of the Plan, implementation of an Aquatic Conservation Strategy (ACS) on Federal land, is expected to reverse the trend of aquatic ecosystem degradation and contribute toward fish habitat recovery. Coordination among

the Federal land management agencies, NMFS, the U.S. Environmental Protection Agency (EPA), and the FWS should ensure that the ACS objectives are achieved.

Prior to implementing the Record of Decision for the President's Forest Plan, little or no riparian protection was afforded for the fish and their habitat. One of the most important substantive protective measures implemented through the Plan are riparian reserves. These are buffered strips of land that, depending on stream class and type of watershed, range from 300 ft (91m) on perennial streams to 50 ft (15 m) on ephemeral streams.

Some Federal lands in the Middle Columbia River ESU are managed under USFS and BLM Land and Resource Management Plans or Land Use Plans which are amended by PACFISH. PACFISH provides objectives, standards and guidelines that are applied to all Federal land management activities such as timber harvest, road construction, mining, grazing and recreation. The USFS and BLM implemented PACFISH in 1995 and intended it to provide interim protection to anadromous fish habitat while a longer term, basin scale aquatic conservation strategy was developed in the Interior Columbia Basin, Ecosystem Managment Project (ICBEMP). It is intended that ICBEMP will have a Final Environmental Impact Statement and Record of Decision by early 2000.

For other ESUs already listed in the Interior Columbia Basin (Snake River chinook, Snake River steelhead, and Upper Columbia River steelhead), NMFS has required in section 7 consultation, several components that are in addition to the PACFISH strategy (NMFS 1995; NMFS 1998). NMFS, USFS, and BLM intend these additional components to bridge the gap between interim PACFISH direction and the longterm strategy envisioned for ICBEMP. NMFS anticipates that these components will also be carried forward in the ICBEMP direction. These components include (but are not limited to) implementation monitoring and accountability, a system of watersheds that are prioritized for protection and restoration, improved and monitored grazing systems, road system evaluation and planning requirements, mapping and analysis of unroaded areas, multi-year restoration strategies, and batching and analyzing projects at the watershed scale. Given the timeframe for ICBEMP, NMFS will likely conduct similar additional section 7 consultations for the Land and Resource Management plans within the Middle Columbia River ESU and will then consult on ICBEMP when it is complete.

In the range of both the Middle Columbia River and Upper Willamette River ESUs, several notable efforts have recently been initiated. Harvest, hatchery, and habitat protections under state control are evolving under the Oregon Plan for Salmon and Watersheds (OPSW). The OPSW is a long-term effort to protect all at-risk wild salmonids through cooperation between state, local and Federal agencies, tribal governments, industry, private organizations, and individuals. Parts of the OPSW are already providing benefits, including an aggressive program by the Oregon Department of Transportation to inventory, repair, and replace road culverts that block fish from reaching important spawning and rearing areas. The OPSW also encourages efforts to improve conditions for salmon through non-regulatory means, including significant efforts by local watershed councils. An Independent Multi-disciplinary Science Team provides scientific oversight to OPSW components and outcomes. A recent Executive Order from Governor Kitzhaber reinforced his expectation that all state agencies will make improved environmental health and salmon recovery part of their mission.

Protecting and restoring fish and wildlife habitat and population levels in the Willamette River Basin, promoting proper floodplain management, and enhancing water quality is the focus of the recently formed Willamette Restoration Initiative (WRI). The WRI creates a mechanism through which residents of the basin are mounting a concerted, collaborative effort to restore watershed health. In addition, habitat protection and improved water quality in the Portland/Vancouver metropolitan areas are getting unprecedented attention from local jurisdictions. The regional government, Metro, recently adopted an aggressive stream and floodplain protection ordinance designed to protect functions and values of floodplains, and natural stream and adjacent vegetated corridors. All jurisdictions in the region must amend their land use plans and implementing ordinances to comply with the Metro ordinance within 18 months. Metro also has a green spaces acquisition program that addresses regional biodiversity, and is giving protection to significant amounts of land, some of it on the Sandy River or on tributaries to the Willamette River. The City of Portland has identified those activities which impact salmonids and is now using that information to reduce impacts of existing programs and to identify potential enhancement actions. The City will shortly be making significant improvements in its storm water management program, a key to reducing impacts on salmonid habitat.

In the lower Columbia River, salmonid populations were seriously depleted long before increasing predator populations posed any significant threat to their long-term survival. Various development and management actions have interrupted the natural balance between predator and prey populations, and this situation now poses a risk to struggling salmonid populations. For example, steps have already been taken this year by the U.S. Army Corps of Engineers (COE), FWS, ODFW, and NMFS to relocate at least 90 percent of a Caspian tern colony away from areas in the lower Columbia where their primary food is juvenile salmonids.

The State of Washington is currently in the process of developing a statewide strategy to protect and restore wild steelhead and other salmon and trout species. In May of 1997, Governor Gary Locke and other state officials signed a Memorandum of Agreement creating the Joint Natural Resources Cabinet (Joint Cabinet). This body is comprised of state agency directors or their equivalents from a wide variety of agencies whose activities and constituents influence Washington's natural resources. The goal of the Joint Cabinet is to restore salmon, steelhead, and trout populations by improving those habitats on which the fish rely. The Joint Cabinet's current activities include development of the Lower Columbia Steelhead Conservation Initiative (LCSCI), which is intended to comprehensively address protection and recovery of steelhead in the lower Columbia River area.

NMFS intends to continue working with the State of Washington and stakeholders involved in the formulation of the LCSCI. Ultimately, when completed, this conservation effort may help to ameliorate risks facing many salmonid species in this region. In the near term, for steelhead and other listed species, individual components of the conservation effort may be recognized through section 4(d) of the ESA. In this way activities conducted in accordance with full, matured, and implemented conservation efforts may be excepted from take under section 9 of the ESA.

NMFS and FWS are also engaged in an ongoing effort to assist in the development of multiple species Habitat Conservation Plans (HCPs) for state and privately owned lands in Oregon and Washington. While section 7 of the ESA addresses species protection associated

with Federal actions and lands, Habitat Conservation Planning under section 10 of the ESA addresses species protection on private (non-Federal) lands. HCPs are particularly important since significant portions of habitat in the range of both steelhead ESUs is in non-Federal ownership. The intent of the HCP process is to ensure that any incidental taking of listed species will not appreciably reduce the likelihood of survival of the species, reduce conflicts between listed species and economic development activities, and to provide a framework that would encourage ''creative partnerships'' between the public and private sectors and state, municipal, and Federal agencies in the interests of endangered and threatened species and habitat conservation.

NMFS will continue to evaluate state, tribal, and non-Federal efforts to develop and implement measures to protect and begin the recovery of steelhead populations within these ESUs. Because a substantial portion of land in these ESUs is in state or private ownership, conservation measures on these lands will be key to protecting and recovering steelhead populations in these ESUs. NMFS recognizes that strong conservation benefits will accrue from specific components of many non-Federal conservation efforts.

While NMFS acknowledges that many of the ongoing protective efforts are likely to promote the conservation of steelhead and other salmonids, some are very recent and few address steelhead conservation at a scale that is adequate to protect and conserve entire ESUs. NMFS concludes that existing protective efforts are inadequate to preclude a listing for these ESUs. However, NMFS will continue to encourage these and future protective efforts and will work with Federal, state, and tribal fisheries managers to evaluate, promote, and improve efforts to conserve steelhead populations.

Status of Steelhead ESUs

Section 3 of the ESA defines the term ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' The term ''threatened species'' is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Thompson (1991) suggested that conventional rules of thumb, analytical approaches, and simulations may all be useful in making this determination. In previous status reviews (e.g., Weitkamp *et al.*, 1995), NMFS has identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, including: (1) absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU.

During the coastwide status review for steelhead, NMFS evaluated both quantitative and qualitative information to determine whether any proposed ESU is threatened or endangered according to the ESA. The types of information used in these assessments are described in the proposed rule, published August 9, 1996 (61 FR 41541). The assessments also considered whether any of the hatchery populations identified in ''Summary of Steelhead ESU Determinations'' should be considered essential for the recovery of a listed ESU. The following summaries draw on these quantitative and qualitative assessments to describe NMFS' conclusions regarding the status of each steelhead ESU. A more detailed discussion of the status of these steelhead ESUs is presented in the ''Status Review Update for Deferred and Candidate ESUs of West Coast Steelhead'' (NMFS, 1997a) and ''Updated Review of the Status of the Upper Willamette River and Middle Columbia River ESUs of Steelhead'' (NMFS, 1999a). Copies of these documents are available upon request (see **ADDRESSES**).

(1) Upper Willamette River ESU

Steelhead in the Upper Willamette River ESU are distributed in a few, relatively small, natural populations. Over the past several decades, total abundance of natural late-migrating winter steelhead ascending the Willamette Falls fish ladder has fluctuated several times over a range of approximately 5,000 to 20,000 spawners. However, the last peak occurred in 1988, and this peak has been followed by a steep and continuing decline. Abundance in each of the last 5 years has been below 4,300 fish, and the run in 1995 was the lowest in 30 years. Declines also have been observed in almost all natural populations, including those with and without a substantial component of naturally spawning hatchery fish. NMFS notes with concern the results from ODFW's extinction assessment, which estimates that the Molalla River population had a greater than 20 percent extinction probability in the next 60 years, and that the upper South Santiam River population had a greater than 5 percent extinction risk within the next 100 years (Chilcote, 1997).

Steelhead native to the Upper Willamette River ESU are late-run winter steelhead, but introduced hatchery stocks of summer and early-run winter steelhead also occur in the upper Willamette River. Estimates of the proportion of hatchery fish in natural spawning escapements range from 5 to 25 percent. NMFS is concerned about the potential risks associated with interactions between non-native summer and wild winter steelhead, whose spawning areas are sympatric in some rivers (especially in the Molalla and North and South Santiam Rivers). The percentage of hatchery fish in natural spawning escapements is considered relatively low in most rivers in the Upper Willamette River Basin. Declines in winter steelhead runs, regardless of degree of hatchery influence, suggest that causes other than artificial propagation are primarily responsible for reduced abundances.

NMFS remains concerned about the lack of historical abundance estimates for winter steelhead in the Upper Willamette River ESU. It may be possible that population sizes were never large above Willamette Falls, and that the winter steelhead in this ESU are capable of persisting at relatively low abundance. Although not as extreme as is the case for spring chinook salmon, the proportion and total amount of historical steelhead spawning habitat that has been blocked by dams and water diversions is high in the Upper Willamette River ESU. It is possible that several consecutive years of poor ocean conditions and recent harvest pressure in the lower Columbia River have pushed the winter steelhead populations in the Upper Willamette River drainage to the limit of their resiliency.

Listing Determination

Based on new information submitted by ODFW and others, NMFS concludes Upper Willamette River steelhead warrant listing as a threatened species. NMFS is concerned about the universally declining trends in abundance in the relatively small-to-moderate sized runs of winter steelhead in this ESU. Recent abundance trends indicate naturally spawned steelhead have declined to historically low levels in areas above Willamette Falls. This

low abundance, coupled with potential risks associated with interactions between naturally spawned steelhead and hatchery stocks is of great concern to NMFS.

Recent conservation planning efforts by the State of Oregon may reduce risks faced by steelhead in this ESU in the future; however, these efforts are still in their formative stages. Specifically, the OPSW, while substantially implemented and funded on the Oregon Coast, has not yet reached a similar level of development in inland areas. Furthermore, while the NFP has reduced habitat degradation on Federal lands within this ESU, less than 20 percent of land areas in this region are under Federal ownership and hence covered by this management plan.

Status of Hatchery Populations

NMFS concludes that none of the hatchery steelhead stocks identified as part of this ESU (see ''Summary of Steelhead ESU Determinations'') should be listed since they are not currently essential for its recovery (NMFS, 1999b).

(2) Middle Columbia River Basin ESU

Current population sizes are substantially lower than historic levels, especially in the rivers with the largest steelhead runs in the ESU: the John Day, Deschutes, and Yakima Rivers. At least two extinctions of native steelhead runs in the ESU have occurred (the Crooked and Metolius Rivers, both in the Deschutes River Basin). Trends in natural escapement in the Yakima and Umatilla Rivers have been highly variable since the mid-late 1970s, ranging from abundances that indicate relatively healthy runs to those that are cause for concern (i.e., from 2,000 to 3,000 steelhead during peaks to approximately 500 fish during the low points).

One of the most significant sources of risk to steelhead in the Middle Columbia ESU is the recent and dramatic increase in the percentage of hatchery fish in natural escapement in the Deschutes River Basin. ODFW estimates that in recent years, the percentage of hatchery strays in the Deschutes River has exceeded 70 percent, and most of these are believed to be long-distance strays from outside the ESU. Coincident with this increase in the percentage of strays has been a decline in the abundance of native steelhead in the Deschutes River. In combination with the trends in hatchery fish in the Deschutes River, estimates of increased proportions of hatchery fish in the John Day and Umatilla River Basins pose a risk to wild steelhead due to negative effects of genetic and ecological interactions with hatchery fish. For example, in recent years, most of the fish planted in the Touchet River are from out of ESU stocks. As a result, a recent analysis of this stock by WDFW found that it was most similar genetically to Wells Hatchery steelhead from the Upper Columbia River ESU.

NMFS remains concerned about the widespread declines in abundance in the steelhead populations in this ESU. The serious declines in abundance in the John Day River Basin are especially troublesome, because the John Day River has supported the largest populations of naturally spawning summer steelhead in the ESU. Populations in the Yakima River Basin are at a small fraction of historical levels, with the majority of production coming from a single stream (Satus Creek). The number of naturally spawning fish in the Umatilla River has been relatively stable in recent years, but this has been accomplished with substantial supplementation of natural spawning by hatchery-reared fish. Naturally produced steelhead have declined precipitously in the Deschutes River over the past decade. The most optimistic observation that can be made for steelhead in this area is that some populations have shown resiliency to bounce back from even more depressed levels in the past (e.g., the late 1970s).

The continued increase of stray steelhead into the Deschutes River Basin is also a major source of concern to NMFS. ODFW and CTWSRO estimate that 60 to 80 percent of the naturally spawning population is composed of strays, which greatly outnumber naturally produced fish. Although the level of reproductive success of these stray fish has not been evaluated, the levels are so high that major genetic and ecological effects on natural populations are possible. Recent efforts underway by the CTWSRO and ODFW to determine the origin of strays and the proportion of strays that are spawning naturally in the Deschutes River may prove useful in focusing management efforts to address this serious issue.

ODFW argues that resident fish in the Deschutes River play a more substantial role in overall population dynamics and abundance of *O. mykiss* than is the case in other streams within this ESU or in most other steelhead ESUs. Further, they argue that the resident populations in the Deschutes River are robust and provide a substantial buffer against extinction. Evaluating the role of resident fish in extinction risk analysis for steelhead ESUs is very complex. Comprehensive abundance information for resident fish is not available, but if the data presented by ODFW for Nena Creek/North Junction are representative, the overall abundance of resident fish in the Deschutes River may be fairly high. Some spawning between resident and anadromous fish has been observed, but there appears to be substantial microhabitat partitioning of reproduction between the forms based on size, timing, and location. Available information is limited, but it does not provide evidence that resident fish contribute significantly to anadromous returns. A tentative conclusion is that, within the Deschutes River Basin, the two forms are closely linked over evolutionary time frames, but the ability of the resident form to substantially affect demographic/genetic processes in steelhead populations in the short term is doubtful. To the extent that the resident form has been producing steelhead offspring in this ESU, the effect of that production has not been sufficient to stave off continued declines in steelhead populations. Furthermore, if there is substantial and continuing gene flow between resident and anadromous forms, that would suggest that the high stray rates of non-native hatchery steelhead also pose a genetic risk to resident fish in the Deschutes River. Not enough information currently exists to determine whether the relative abundances of the two life history forms should be viewed positively (e.g., the relatively high abundance of the resident form in those streams can act to buffer the anadromous form from declines) or negatively (e.g., the resident form is outcompeting or interbreeding with the anadromous form) in risk evaluations.

Listing Determination

NMFS concludes the Middle Columbia ESU warrants listing as a threatened species. Continued declines in steelhead abundance and increases in the percentage of hatchery fish in natural escapements pose significant threats to this ESU.

Recent conservation planning efforts by the States of Washington and Oregon may reduce risks faced by steelhead in this ESU in the future; however, these efforts are still in their formative stages. Federal management efforts, including the NFP, PACFISH, and forthcoming ICEBMP, address important habitat-related risk factors for this ESU. However, only about 24 percent of the land area within this ESU is under Federal management and subject to these management efforts.

Status of Hatchery Populations

NMFS concludes that none of the hatchery steelhead stocks identified as part of this ESU (see ''Summary of Steelhead ESU Determinations'') should

be listed since they are not currently essential for its recovery (NMFS, 1999b).

Determinations

Based on new information and comments received during the proposed rule, NMFS concludes that Upper Willamette River steelhead and Middle Columbia River steelhead warrant listing as threatened species under the ESA. The geographic boundaries (i.e., the watersheds within which the members of the ESU spend their freshwater residence) for these ESUs are described under ''Summary of Steelhead ESU Determinations.''

In both threatened steelhead ESUs, NMFS is listing only naturally spawned populations residing below impassable natural barriers (e.g., long-standing, natural waterfalls). NMFS' intent in listing only ''naturally spawned'' populations is to protect steelhead stocks that are indigenous to (i.e., part of) the ESU. In this listing determination, NMFS has identified various non-indigenous populations that co-occur with fish in the listed ESUs. The agency recognizes the difficulty of differentiating between indigenous and non-indigenous fish, especially when the latter are not readily distinguishable with a mark (e.g., fin clip). Also, matings in the wild of either type would generally result in progeny that would be treated as listed fish (i.e., they would have been naturally spawned in the geographic range of the listed ESU and have no distinguishing mark). Therefore, to reduce confusion regarding which steelhead are considered listed within an ESU, NMFS will treat all naturally spawned fish as listed for purposes of the ESA. Efforts to determine the conservation status of an ESU would focus on the contribution of indigenous fish to the listed ESU. It should be noted that NMFS will take actions necessary to minimize or prevent non-indigenous steelhead from spawning in the wild unless the fish are specifically part of a recovery effort.

NMFS has also evaluated the relationship between hatchery and natural populations of steelhead in the listed ESUs (described previously in ''Summary of Steelhead ESU Determinations'' and ''Status of Steelhead ESUs''). None of the hatchery populations are being listed because, while some are considered part of the ESUs, none are deemed essential for the recovery of either ESU (NMFS, 1999b).

The determination that a hatchery stock is not ''essential'' for recovery does not preclude it from playing a role in recovery. Any hatchery population that is part of the ESU is available for use in recovery if conditions warrant. In this context, an ''essential'' hatchery population is one that is vital to incorporate into recovery efforts (for example, if the associated natural population(s) were extinct or at high risk of extinction). Under such circumstances, NMFS would consider taking the administrative action of listing existing hatchery fish.

NMFS' ''Interim Policy on Artificial Propagation of Pacific Salmon Under the Endangered Species Act'' (58 FR 17573, April 5, 1993) provides guidance on the treatment of hatchery stocks in the event of a listing. Under this policy, ''progeny of fish from the listed species that are propagated artificially are considered part of the listed species and are protected under the ESA.'' In the case of hatchery steelhead populations considered to be part of the Upper Willamette River ESU or Middle Columbia River ESU, the protective regulations that NMFS will issue shortly may except take of naturally spawned listed fish for use as broodstock as part of an overall conservation program. According to the interim policy, the progeny of these hatchery-wild or wild-wild crosses would also be listed. Given the requirement for an acceptable conservation plan as a prerequisite for collecting broodstock, NMFS determines that it is not necessary to consider the progeny of intentional hatchery-wild or wild-wild crosses as listed.

In addition, NMFS believes it is desirable to incorporate naturally spawned fish into these hatchery populations to ensure that their genetic and life history characteristics do not diverge significantly from the natural populations. NMFS therefore concludes that it is not inconsistent with NMFS' interim policy, nor with the policy and purposes of the ESA, to consider these progeny as part of the ESU but not listed.

At this time, NMFS is listing only anadromous life forms of *O. mykiss*.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. Section 9 prohibitions apply automatically to endangered species, as described in the following discussion, this is not the case for threatened species.

Section 4(d) of the ESA directs the Secretary of Commerce to implement regulations ''to provide for the conservation of [threatened] species,'' that may include extending any or all of the prohibitions of section 9 to threatened species. Section 9(a)(1)(g) also prohibits violations of protective regulations for threatened species implemented under section 4(d). NMFS will issue shortly protective regulations pursuant to section 4(d) for the listed ESUs.

Section 7(a)(4) of the ESA requires that Federal agencies consult with NMFS on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions likely to result in the destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with NMFS.

Examples of Federal actions likely to affect steelhead in the listed ESUs include authorized land management activities of the USFS and BLM, as well as operation of hydroelectric and storage projects of the Bureau of Reclamation and COE. Such activities include timber sales and harvest, hydroelectric power generation, and flood control. Federal actions, including the COE section 404 permitting activities under the Clean Water Act, COE permitting activities under the River and Harbors Act, National Pollution Discharge Elimination System permits issued by EPA, highway projects authorized by the Federal Highway Administration, Federal Energy Regulatory Commission licenses for nonfederal development and operation of hydropower, and Federal salmon hatcheries, may also require consultation. These actions will likely be subject to ESA section 7 consultation requirements that may result in conditions designed to achieve the intended purpose of the project and avoid or reduce impacts to steelhead and its habitat within the range of the listed ESUs. It is important to note that the current listing applies only to the anadromous form of *O. mykiss*; therefore, section 7 consultations will not address resident forms of *O. mykiss* at this time.

There are likely to be Federal actions ongoing in the range of the listed ESUs at the time these listings become effective. Therefore, NMFS will review all ongoing actions that may affect the listed species with Federal agencies and will complete formal or informal consultations, where requested or necessary, for such actions pursuant to ESA section 7(a)(2).

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's ''taking'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species.

NMFS has issued ESA section 10(a)(1)(A) research or enhancement permits for other listed species (e.g., Snake River chinook salmon and Sacramento River winter-run chinook salmon) for a number of activities, including trapping and tagging, electroshocking to determine population presence and abundance, removal of fish from irrigation ditches, and collection of adult fish for artificial propagation programs. NMFS is aware of several sampling efforts for steelhead in the listed ESUs, including efforts by Federal and state fishery management agencies. These and other research efforts could provide critical information regarding steelhead distribution and population abundance.

ESA Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the release of artificially propagated fish by state or privately operated and funded hatcheries, state or university research on species other than steelhead, not receiving Federal authorization or funding, the implementation of state fishing regulations, and timber harvest activities on nonfederal lands.

Take Guidance

On July 1, 1994, (59 FR 34272) NMFS and FWS published a policy committing the agencies to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of a listing on proposed and on-going activities within the species' range. NMFS believes that, based on the best available information, the following actions will not result in a violation of section 9: (1) Possession of steelhead from the listed ESUs acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA; and (2) federally funded or approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which a section 7 consultation has been completed, and when such an activity is conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanied by a biological opinion pursuant to section 7 of the ESA. As described previously in this notice, NMFS may adopt 4(d) protective regulations that except other activities from section 9 take prohibitions for threatened species.

Activities that NMFS believes could potentially harm, injure or kill steelhead in the listed ESUs and result in a violation of section 9 of the ESA include, but are not limited to: (1) land-use activities that adversely affect steelhead habitat in this ESU (e.g., logging, grazing, farming, road construction in riparian areas, and areas susceptible to mass wasting and surface erosion); (2) destruction or alteration of steelhead habitat in the listed ESUs, such as removal of large woody debris and ''sinker logs'' or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow; (3) discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting listed steelhead; (4) violation of discharge permits; (5) pesticide and herbicide applications; (6) interstate and foreign commerce of steelhead from the listed ESUs and import/export of steelhead from listed ESUs without an ESA permit, unless the fish were harvested pursuant to legal exception; (7) collecting or handling of steelhead from listed ESUs (permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species); and (8) introduction of non-native species likely to prey on steelhead in these ESUs or displace them from their habitat. This list is not exhaustive. It is intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a take of listed steelhead under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of this rule, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see ADDRESSES).

Effective Date of Final Listing

Given the cultural, scientific, and recreational importance of this species, and the broad geographic range of these listings, NMFS recognizes that numerous parties may be affected by this listing. Therefore, to permit an orderly implementation of the consultation requirements associated with this action, this final listing will take effect May 24, 1999.

Conservation Measures

Conservation benefits are provided to species listed as endangered or threatened under the ESA through increased recognition, recovery actions, Federal agency consultation requirements, and prohibitions on taking. Increased recognition through listing promotes public awareness and conservation actions by Federal, state, and local agencies, private organizations, and individuals.

Several conservation efforts are underway that may reverse the decline of west coast steelhead and other salmonids. NMFS is encouraged by these significant efforts, which could provide all stakeholders with an approach to achieving the purposes of the ESA–protecting and restoring native fish populations and the ecosystems upon which they depend that are less regulatory. NMFS will continue to encourage and support these initiatives as important components of recovery planning for steelhead and other salmonids.

To succeed, protective regulations and recovery programs for steelhead will need to focus on conserving aquatic ecosystem health. NMFS intends that Federal lands and Federal activities play a primary role in preserving listed populations and the ecosystems upon which they depend. However, throughout the range of the listed ESUs, steelhead habitat occurs and can be affected by activities on state, tribal or private land.

Conservation measures that could be implemented to help conserve the species are listed here (the list is generalized and does not constitute NMFS' interpretation of a recovery plan under section 4(f) of the ESA). Progress on some of these is being made to differing degrees in specific areas.

1. Measures could be taken to promote practices that are more protective of (or restore) steelhead habitat across a variety of land and water management activities. Activities affecting this habitat include timber harvest; agriculture; livestock grazing and operations; pesticide and herbicide applications; construction and urban development; road building and maintenance; sand and gravel mining; stream channelization; dredging and dredged spoil disposal; dock and marina construction; diking and bank stabilization; dam construction/operation; irrigation withdrawal,

storage, and management; mineral mining; wastewater/pollutant discharge; wetland and floodplain alteration; habitat restoration projects; and woody debris/structure removal from rivers and estuaries. Each of these activities could be modified to ensure that watersheds and specific river reaches are adequately protected in the short- and long-terms.

2. Fish passage could be restored at barriers to migration through the installation or modification of fish ladders, upgrade of culverts, or removal of barriers.

3. Harvest regulations could be modified to protect listed steelhead populations affected by both directed harvest and incidental take in other fisheries.

4. Artificial propagation programs could be modified to minimize negative impacts (e.g., genetic introgression, competition, disease, etc.) upon native populations of steelhead.

5. Predator control/relocation programs could be implemented in areas where predators pose a significant threat to steelhead.

6. Measures could be taken to improve monitoring of steelhead populations and their habitat.

7. Federal agencies such as the USFS, BLM, Federal Energy Regulatory Commission, COE, U.S. Department of Transportation, and U.S. Bureau of Reclamation could review their management programs and use their discretionary authorities to formulate conservation plans pursuant to section 7(a)(1) of the ESA.

NMFS encourages non-Federal landowners to assess the impacts of their actions on threatened or endangered salmonids. In particular, NMFS encourages state and local governments to use their existing authorities and programs, and encourages the formation of watershed partnerships to promote conservation in accordance with ecosystem principles. These partnerships will be successful only if state, tribal, and local governments, landowner representatives, and Federal and non-Federal biologists all participate and share the goal of restoring steelhead and salmon to the watersheds.

Critical Habitat

Section 4(b)(6)(C) of the ESA requires that, to the extent prudent, critical habitat be designated concurrently with the listing of a species unless such critical habitat is not determinable at that time. On February 5, 1999, NMFS published a proposed critical habitat rule for all listed and proposed steelhead ESUs (64 FR 5740). Copies of this critical habitat proposed rule are available upon request (see **ADDRESSES**).

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F.2d 825 (6th Cir. 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of the National Environmental Policy Act (NEPA) under NOAA Administrative Order 216–6.

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act (RFA) are not applicable to the listing process. Similarly, this final rule is exempt from review under E.O. 12866.

This rule has been determined to be major under the Congressional Review Act (5 U.S.C. 801 *et seq.*)

At this time NMFS is not promulgating protective regulations pursuant to ESA section 4(d). In the future, prior to finalizing its 4(d) regulations for the threatened steelhead ESUs, NMFS will comply with all relevant NEPA and RFA requirements.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES**) and can also be obtained from the internet at www.nwr.noaa.gov.

Threatened Species Regulations Consolidation

In the proposed rule issued on March 10, 1998 (63 FR 11774), Upper Willamette River steelhead was designated the letter (v) and Middle Columbia River steelhead the letter (w) in § 227.4. Since March 10, 1998, NMFS issued a final rule consolidating and reorganizing existing regulations regarding implementation of the ESA. In this reorganization, § 227.4 has been redesignated as § 223.102; therefore, Upper Willamette River steelhead is designated in this final rule as paragraph (a)(14) and Middle Columbia River steelhead as paragraph (a)(15) of § 223.102. The regulatory text of the proposed rule remains unchanged in this final rule.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: March 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 223 is amended as follows:

PART 223–THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

2. In § 223.102, paragraphs (a)(14) and (a)(15) are added to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(a) * * *

(14) Upper Willamette River steelhead (*Oncorhynchus mykiss*). Includes all naturally spawned populations of winter-run steelhead in the Willamette River, Oregon, and its tributaries upstream from Willamette Falls to the Calapooia River, inclusive;

(15) Middle Columbia River steelhead (*Oncorhynchus mykiss*). Includes all naturally spawned populations of steelhead in streams from above the Wind River, Washington, and the Hood River, Oregon (exclusive), upstream to, and including, the Yakima River, Washington. Excluded are steelhead from the Snake River Basin.

* * * * *

[FR Doc. 99–6817 Filed 3–24–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 980219043–9068–02; I.D. 011498A]

RIN 0648–AK52

Endangered and Threatened Species: Threatened Status for Ozette Lake Sockeye Salmon in Washington

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is issuing a final determination that the Ozette Lake sockeye salmon (*Oncorhynchus nerka*) Evolutionarily Significant Unit (ESU), located on Washington's Olympic Peninsula, is a threatened species under

the Endangered Species Act (ESA) of 1973, as amended.

NMFS also reviewed the status of Baker River sockeye salmon, previously designated as a candidate species. Based on that review, NMFS has determined that Baker River sockeye salmon do not warrant listing under the ESA, nor candidate status at this time. NMFS previously determined that the Okanogan River, Lake Wenatchee, Quinault Lake, and Lake Pleasant (all located in Washington) sockeye salmon ESUs did not warrant listing. However, based on new information, NMFS remains concerned about the status of the Okanogan River and Lake Wenatchee ESUs, and will closely monitor their status.

At this time, NMFS is listing all naturally spawned populations of Ozette Lake sockeye salmon belonging to the species' anadromous life form. NMFS has examined the relationship between hatchery and natural populations of sockeye salmon in this ESU and determined that none of the hatchery populations are currently essential for recovery and, therefore, the hatchery populations (and their progeny) are not listed.

NMFS will issue any protective regulations deemed necessary under section 4(d) of the ESA for the listed ESU in a separate rulemaking. Even though NMFS does not now issue protective regulations for this ESU, Federal agencies are required under section 7 to consult with NMFS if any activity they authorize, fund, or carry out may affect listed sockeye salmon.

DATES: Effective May 24, 1999.

ADDRESSES: Branch Chief, Protected Resources Division, NMFS, 525 NE Oregon St., Suite 500, Portland, OR 97232–2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin (503) 231–2005, or Chris Mobley (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Background

Biological information for sockeye salmon can be found in recent species status assessments by NMFS (Gustafson *et al.*, 1997; NMFS, 1999a), Washington Department of Fisheries (WDF), Washington Department of Wildlife, and Western Washington Treaty Tribes (WDF *et al.*, 1993), in species life history summaries (Pauley *et al.*, 1989; Burgner, 1991; Emmett *et al.*, 1991), and in the **Federal Register** document announcing the listing proposal (63 FR 11750, March 10, 1998).

Previous Federal ESA Actions Related to West Coast Sockeye and Petition Background

The ESA actions on sockeye salmon in the Pacific Northwest are extensive. The history of petitions received regarding this species is summarized in the proposed rule published on March 10, 1998 (63 FR 11750). This final determination was initiated in response to a petition filed by Professional Resource Organization-Salmon (PRO-Salmon) on March 14, 1994. PRO-Salmon petitioned to list Baker River sockeye salmon as well as eight populations of other species of Pacific salmon under the ESA. In response to this petition and to the more general concerns about the status of Pacific salmon throughout the region, NMFS published a document in the **Federal Register** on September 12, 1994 (59 FR 46808) announcing that the petition presented substantial scientific information indicating that a listing may be warranted and that the agency would initiate ESA status reviews for sockeye and other species of anadromous salmonids in the Pacific Northwest. The comprehensive review considered all populations in the States of Washington, Idaho, and Oregon. Hence, the status review for sockeye salmon encompassed, but was not restricted to, the population identified in the PRO-Salmon petition.

During the coastwide sockeye salmon status review, NMFS assessed the best available scientific and commercial data, including technical information from Federal, state, and tribal co-managers and other interested parties. The NMFS Biological Review Team (BRT), composed of staff from NMFS' Northwest Fisheries Science Center, reviewed and evaluated scientific information provided by the co-managers and other sources and completed a coastwide status review for sockeye salmon (Gustafson *et al.*, 1997). Early drafts of the BRT review were distributed to state and tribal fisheries managers and peer reviewers who are experts in the field to ensure that NMFS' evaluation was accurate and complete.

Based on the results of the BRT report, and after considering other information and existing conservation measures, NMFS published a proposed listing determination (63 FR 11750, March 10, 1998) which identified six ESUs of sockeye salmon in Washington. The Ozette Lake ESU was proposed for listing as a threatened species and the Baker River ESU was classified as a candidate species. NMFS concluded that the remaining four ESUs (Okanogan River, Lake Wenatchee, Quinault Lake, and Lake Pleasant ESUs) did not warrant listing proposals.

During the year between the proposed rule and this final determination, NMFS requested public comment and solicited peer and co-manager review of the agency's proposal and received comments and new scientific information concerning the status of the Ozette Lake and Baker River ESUs, as well as the status of other ESUs for which listing was deemed not warranted. NMFS also received information regarding the relationship of existing hatchery stocks to naturally spawned populations in the Ozette Lake ESU. This new information was evaluated by NMFS' BRT and published in an updated status review that draws conclusions about the delineation and risk assessment for the proposed Ozette Lake ESU (NMFS, 1998). Based on the updated NMFS status review and other information, NMFS now issues its final listing determination for the Ozette Lake ESU and conclusions regarding the candidate Baker River ESU. Copies of the NMFS status review and related documents are available upon request (see **ADDRESSES**).

Summary of Comments and Information Received in Response to the Proposed Rule

NMFS held 21 public hearings in California, Oregon, Idaho, and Washington to solicit comments on this and other salmonid listing proposals (63 FR 16955, April 7, 1998; 63 FR 30455, June 4, 1998). During the 112-day public comment period, NMFS received 8 written comments regarding the sockeye salmon proposed rule. NMFS also sought new data and analyses from tribal and state co-managers and met with them to formally discuss technical issues associated with the sockeye salmon status review. Technical information was considered by NMFS' BRT in its re-evaluation of ESU boundaries and risk assessments; this information is discussed in the updated status review of sockeye salmon (NMFS, 1998).

A number of comments addressed issues pertaining to the proposed critical habitat designation for sockeye salmon. NMFS will address these comments in a forthcoming **Federal Register** document announcing the agency's conclusions about critical habitat for the listed ESU.

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service (FWS), published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). In accordance with this policy, NMFS solicited 10 individuals to take part in

a peer review of its west coast sockeye salmon status review and proposed rule. All individuals solicited are recognized experts in the field of sockeye salmon biology, and represent a broad range of interests, including Federal, state, and tribal resource managers, and academia. Three of the 10 individuals took part in the peer review of this action; comments from peer reviewers were considered by NMFS' BRT and are summarized in the updated status review document (NMFS, 1998).

A summary of comments received in response to the proposed rule is presented here.

Issue 1: Sockeye Salmon Biology and Ecology

Comments: Several commenters and peer reviewers asserted that resident sockeye salmon (kokanee) should be included in the listed anadromous sockeye salmon ESU. Several commenters also stated that NMFS should address how the presence of kokanee populations may ameliorate risks facing anadromous populations within the listed ESU. A peer reviewer emphasized his belief that Ozette Lake kokanee should be made part of the Ozette Lake sockeye salmon ESU, despite the very large genetic distance between beach-spawning Ozette Lake sockeye salmon and Ozette Lake kokanee. This reviewer also stated, that given sufficient time and selective pressures, Ozette Lake kokanee will reintroduce the anadromous form of *Oncorhynchus nerka* (*O. nerka*) to Ozette Lake. The reviewer argued that kokanee represent the remaining tributary-spawning gene pool, and that without them, anadromous production will not expand beyond what the limited beach habitat can produce. On the other hand, another peer reviewer agreed with both the separate ESU designation for Ozette Lake sockeye salmon and with the exclusion of kokanee from this ESU, based on information presented in the status review. This reviewer also provided information (unpublished mtDNA data) on genetic relationships between the Ozette Lake ESU and selected *O. nerka* populations in Washington and British Columbia.

Response: While conclusive evidence does not yet exist regarding the relationship of resident and anadromous forms of *O. nerka*, NMFS believes available evidence suggests that resident sockeye and kokanee should not be included in listed sockeye ESUs in cases where the strength and duration of reproductive isolation would provide the opportunity for adaptive divergence in sympatry. This is demonstrated by the very large genetic differences between Ozette Lake sockeye salmon and Ozette Lake kokanee. However, where resident ''kokanee-sized'' *O. nerka* (potential ''residual sockeye salmon'') are observed spawning with, or adjacent to, sockeye salmon on spawning beaches in Ozette Lake, they are to be considered part of the Ozette Lake sockeye salmon ESU.

Several lines of evidence support comments that kokanee may produce anadromous offspring, and thus, represent a valuable life form for anadromous sockeye salmon. Under certain conditions, anadromous and resident *O. nerka* are capable of having offspring that express the alternate life history form; that is, anadromous fish can produce nonanadromous offspring, and vice versa (Ricker, 1938; Fulton and Pearson, 1981; Scott, 1984; Chapman *et al.*, 1995). However, the number of outmigrants that successfully return as adults is typically quite low. In Ozette Lake, where access to and from the ocean is relatively easy and the energetic costs of migration to and from the ocean are negligible, the sockeye salmon morphology has not been reported to occur on the tributary spawning grounds of kokanee (prior to the recent sockeye salmon stocking efforts in these tributaries). If Ozette Lake kokanee were producing anadromous outmigrants that were surviving to adulthood, individuals expressing the sockeye salmon morphology would most likely have been seen on the kokanee spawning grounds.

NMFS believes resident fish can help buffer extinction risks to an anadromous population by mitigating depensatory effects in spawning populations, by providing offspring that migrate to the ocean and enter the breeding population of sockeye salmon, and by providing a ''reserve'' gene pool in fresh water that may persist through times of unfavorable conditions for anadromous fish. In spite of these potential benefits, presence of resident populations is not a substitute for conservation of anadromous populations. A particular concern is isolation of resident populations by human-caused barriers to migration. This interrupts normal population dynamics and population genetic processes and can lead to loss of a genetically based trait (anadromy). As discussed in NMFS' ''species identification'' paper (Waples, 1991), the potential loss of anadromy in distinct population segments may, in and of itself, warrant listing the ESU as a whole.

Issue 2: Description and Status of Sockeye Salmon ESUs

Comment: Several general comments were received about the overall analytical process for delineating sockeye salmon ESUs. One peer reviewer stated that the sockeye salmon status review is incomplete because it is limited to the anadromous form only and does not include designation of kokanee ESUs. One commenter criticized NMFS' ESU concept, arguing that the ESA does not require a Distinct Population Segment (DPS) to be reproductively isolated from other conspecific populations, that it is not possible to determine evolutionary significance of an ESU with genetic data, and that the ESU concept does not properly address the ecological significance of a DPS. Additionally, a peer reviewer stated that his unpublished analysis of mtDNA haplotype data for several populations of sockeye salmon in Washington does not, in general, support the ''decision to define ESUs at the lake level'' although he recognized the observed genetic differentiation of sockeye salmon in Washington, as shown by allozyme data.

Response: Regarding the identification of ESUs, NMFS relies on a policy describing how it will apply the ESA definition of ''species'' to anadromous salmonid species (56 FR 58612, November 20, 1991). More recently, NMFS and FWS published a joint policy defining DPSs (61 FR 4722, February 7, 1996). The earlier policy is more detailed and applies specifically to Pacific salmonids and, therefore, was used for this determination. This policy states that one or more naturally reproducing salmonid populations will be considered to be distinct and, hence, species under the ESA, if they represent an ESU of the biological species. To be considered an ESU, a population must satisfy two criteria: (1) It must be reproductively isolated from other population units of the same species, and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must have been strong enough to permit evolutionarily important differences to occur in different population units. The second criterion is met if the population contributes substantially to the ecological or genetic diversity of the species as a whole. Guidance on applying this policy is contained in a NOAA Technical Memorandum entitled ''Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon'' (Waples, 1991) and in

a recent scientific paper by Waples (1995).

The National Research Council (NRC) has recently addressed the issue of defining species under the ESA (NRC, 1995). Their report found that protecting DPSs is soundly based on scientific evidence, and recommends applying an ''Evolutionary Unit'' (EU) approach in describing these segments. The NRC report describes the high degree of similarity between the EU and ESU approaches (differences being largely a matter of application between salmon and other vertebrates), and concluded that either approach would lead to similar DPS descriptions most of the time.

Comment: One commenter criticized NMFS' risk assessment approach, arguing that NMFS' evaluation of risks from artificial propagation was arbitrary, and that the overall risk assessment is fundamentally flawed due to an absence of references to standard conservation biology literature (particularly that on risk assessment methods), a lack of unambiguous criteria for risk, the lack of quantitative population modeling, and the use of subjective opinion within the risk matrix approach.

Response: For nearly a decade, NMFS scientists have been conducting salmonid status reviews under the ESA using a risk assessment approach that includes an evaluation of: (1) absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU. In determining whether an ESU is threatened or endangered, BRT scientists must make judgements about the overall risk to the ESU based on likely interactions among, and cumulative effects of, these various status indicators. NMFS acknowledges that some elements of the agency's approach are inherently subjective (e.g., forecasting effects of natural risk factors). Still, NMFS believes that its approach to making listing determinations is scientifically credible and invites any constructive suggestions on ways to improve risk assessments under the ESA.

Comment: One commenter disagreed with the BRT's conclusion that the Okanogan River and Lake Wenatchee ESUs are near historic abundance levels. They cited evidence that total Columbia Basin sockeye salmon run size may have exceeded 4,000,000 fish at a time when the Okanogan Basin had 41 percent of the accessible lake rearing area in the Columbia Basin, and suggest that historical Okanogan River escapement was probably in excess of 1,000,000 fish (not the 12,000 fish suggested in the status review). Further, they commented that the status of the Wenatchee stock is of particular concern, with a recent steep decline and very low escapements despite negligible downstream harvest. The Okanogan stock has also exhibited a steep recent decline, and both stocks have poor prospects for 1999 runs.

Response: Despite finding that these populations did not warrant ESA protection at the conclusion of the initial status review for west coast sockeye salmon, NMFS sought additional information regarding the status of Okanogan River and Lake Wenatchee sockeye salmon ESUs in the updated status review (NMFS, 1998). NMFS agrees that the recent trends in abundance are of concern and the agency intends to closely monitor these ESUs.

Comment: One commenter questioned the genetic integrity of the Ozette Lake sockeye salmon ESU and, thus, its designation as a separate species under the ESA. Based on the introduction of non-native sockeye salmon (Quinault Lake sockeye salmon were stocked in 1982) and sockeye salmon/kokanee hybrids (released in 1991 and 1992), this commenter stated that at issue is ''whether the non-native population has bred with the native population to such an extent that the evolutionarily important adaptations that distinguished the original population have been lost.'' He suggested that more research is needed to better determine the proper limits of the Ozette Lake sockeye salmon ESU before determining that the ESU warrants listing.

Response: The history of artificial propagation in the Ozette Lake basin is extensive. All releases prior to 1983 were single, large, plantings of out-of-basin sockeye. It is unlikely that these practices resulted in the loss of genetic fitness and unique adaptations of the historic Ozette Lake sockeye salmon population. NMFS will work with hatchery managers in the Ozette Lake ESU to ensure that current artificial propagation practices are conducted in a manner that will not result in the loss of genetic characteristics or adaptive traits.

Issue 3: Factors Contributing to the Decline of West Coast Sockeye Salmon

Comment: Many commenters identified factors they believe have contributed to the decline of west coast sockeye salmon. Factors identified include overharvest by commercial fisheries, predation by pinnipeds and piscivorous fish species, effects of artificial propagation, and the deterioration or loss of freshwater and marine habitats. Despite concurrence with NMFS' assessment of the risk factors facing Ozette Lake sockeye salmon, one peer reviewer questioned the consistency of statements regarding siltation in tributaries as a cause of sockeye salmon decline compared to statements regarding abundance of kokanee, which would also presumably be affected by such siltation. Another peer reviewer argued that listing was not warranted for this ESU because the dominant brood years in the four-year abundance cycle (1984, 1988, 1992 and 1996) are stable, not declining. He also commented that risk was decreasing, not increasing, so becoming endangered in the future is not likely. As evidence of decreasing risk, he noted that the lake is protected within Olympic National Park, the watershed is recovering from logging in the 1960s and 1970s, lake rearing habitat is not limiting, and there is no longer any tribal harvest. In addition, a review panel was unable to determine which factors were responsible for any decline in Ozette Lake sockeye salmon. This reviewer also commented that the genetic effects of hatchery production are misrepresented in the status review.

Response: NMFS agrees that a multitude of factors, past and present, have contributed to the decline of west coast sockeye salmon. NMFS also recognizes that natural environmental fluctuations have likely played a role in the species' recent decline in abundance. However, NMFS believes other human-induced impacts (e.g., incidental catch in certain fisheries, hatchery practices, and habitat modification) have played an equally significant role in this species' decline. Moreover, these human-induced impacts have likely reduced the species' resiliency to such natural factors for decline as drought and poor ocean conditions (NMFS 1996a).

For the Ozette Lake ESU, risks perceived by the BRT were focused on low current abundance and trends and variability in abundance; current escapements average below 1,000 adults per year, implying a moderate degree of risk from small-population genetic and demographic variability with little room for further declines before abundances

reach critically low levels. Other concerns include siltation of beach spawning habitat, very low abundance now compared to harvests in the 1950s, and potential genetic effects of past interbreeding with genetically dissimilar kokanee.

With respect to predation issues raised by some commenters, it is worth noting that NMFS published reports recently describing the impacts of California sea lions and Pacific harbor seals upon salmonids on the coastal ecosystems of Washington, Oregon, and California (NMFS, 1997 and 1999). These reports conclude that in certain cases where pinniped populations co-occur with depressed salmonid populations, salmon populations may experience severe impacts due to predation. An example of such a situation is Ballard Locks, Washington, where sea lions are known to consume significant numbers of adult winter steelhead. These reports further conclude that data regarding pinniped predation are quite limited, and that substantial additional research is needed to fully address this issue. Existing information on the seriously depressed status of many salmonid stocks is sufficient to warrant actions to remove pinnipeds in areas of co-occurrence where pinnipeds prey on depressed salmonid populations (NMFS, 1997 and 1999).

Comment: Two commenters questioned NMFS' interpretation of population trends, arguing that the main decline in abundance occurred between 1948 and 1958, and that populations have not declined substantially since then. They noted that declines cited by NMFS were not statistically significant, and that an analysis of the four individual brood cycles (4-year lags) shows two increasing and two declining. They argue that there is a consistent strong run every 4 years indicating that the population is no longer declining significantly. They also provided new information on the history of logging in the Ozette Lake Basin, noting that the main population declines occurred before there was substantial logging in the basin. They argue that overharvest at sea could be a major limiting factor, and that sockeye salmon tributary spawning may have been eliminated by harvest practices focusing on the early part of the run. Finally, they contended that re-establishment of tributary spawning by anadromous fish is limited by the genetic capacity of remaining lake-spawning fish.

Response: Although Ozette Lake sockeye salmon populations were heavily harvested in fisheries prior to the most extensive timber harvest activities in the watershed, the impacts of intense and frequent timber harvest and associated road building (conducted prior to state regulation of forest practices) in the watershed in the years following the high fishery harvest events have been extensively documented; these forest practice activities have no doubt contributed to the widespread sedimentation of key portions of lake tributaries, lakeshore spawning beaches, and outwash fans. Timber harvest and road building may not have caused the declining sockeye salmon abundance, but have contributed to the failure of Ozette Lake sockeye populations to rebuild since the cessation of commercial sockeye salmon harvests in 1974 (there has been no direct sockeye harvest of any kind since 1982). Additionally, although there is a single strong brood-year, the ESU as a whole faces significant risks due to the weakness of the other brood-year returns.

Issue 4: Designation of Baker River Sockeye Salmon as a Candidate Species

Comment: One peer reviewer and a commenter contended that the Baker River ESU should not be a candidate for listing, although their arguments were based on different considerations. The peer reviewer argued that because the Baker Lake spawning beaches are essentially a hatchery, this is not a natural stock, and, therefore, is not subject to the ESA. He also argued that although human intervention may pose a risk to long-term evolution of the population, it will be required for the run to continue. Alternatively, both the peer reviewer and commenter believed that abundance and trends do not demonstrate high risk, and that the artificial spawning beaches are highly productive, producing very high numbers of fry per female. Finally, they commented that water quality and disease are not serious concerns.

Response: Concerns over these issues prompted NMFS to conduct a renewed evaluation of Baker River sockeye salmon status in the year since publication of the proposed rule. As a result of this review, NMFS determined that continued significant increases in abundance since the status review eased concerns over the risks facing this population. NMFS acknowledges that significant human intervention is required to maintain the productivity of this ESU. Although changes in the suite of activities could pose risks to this population, NMFS concludes that Baker River sockeye salmon are increasing substantially and that listing is not warranted.

Issue 5: Consideration of Existing Conservation Measures

Comment: Several commenters argued that NMFS had not considered existing conservation programs designed to enhance sockeye salmon stocks within particular ESUs. Some commenters provided specific information on some of these programs to NMFS concerning the efficacy of existing conservation plans.

Response: NMFS has reviewed existing conservation plans and measures relevant to the ESUs addressed in this final rule and concludes that existing conservation efforts in some cases have helped ameliorate risks facing the species. Some of these conservation efforts are discussed here in ''Existing Conservation Efforts.''

While several of the conservation plans addressed in the comments received show promise for ameliorating risks facing sockeye salmon, some of the measures described in comments have not been implemented. Some of these measures are also geographically limited to individual river basins or political subdivisions, thereby improving conditions for only a small portion of the entire ESU. Some of these measures are not mature enough to accurately measure their efficacy in protecting or restoring the sockeye salmon populations that are the subject of this determination.

Summary of Factors Affecting Sockeye Salmon

Section 4(a)(1) of the ESA and NMFS listing regulations (50 CFR part 424) set forth procedures for listing species. The Secretary of Commerce must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

The factors threatening naturally spawned sockeye salmon throughout the species' range are numerous and varied. The present depressed condition of many populations is the result of human-induced factors (e.g., incidental harvest in certain fisheries, hatchery practices, and habitat modification) that serve to exacerbate the adverse effects of natural factors (e.g., competition and predation) or environmental variability

from such factors as drought and poor ocean conditions.

As noted previously, the comments received regarding the relative importance of various risk factors contributing to the decline of sockeye salmon essentially reinforce NMFS' description of factors in the listing proposal. A summary of these factors and their role in the decline of the Ozette Lake ESU is presented in NMFS' March 10, 1998, **Federal Register** document (63 FR 11750), as well as several documents in the agency's west coast sockeye salmon administrative record (WDF *et al.*, 1993; Gustafson *et al.*, 1997; NMFS, 1999).

Efforts Being Made to Protect West Coast Sockeye Salmon

Under section 4(b)(1)(A) of the ESA, the Secretary of Commerce is required to make listing determinations solely on the basis of the best scientific and commercial data available and after taking into account efforts being made to protect a species. During the status review for west coast sockeye salmon and for other salmonids, NMFS reviewed protective efforts ranging in scope from regional strategies to local watershed initiatives; some of the major efforts are summarized in the March 10, 1998, proposed rule (63 FR 11774). Since then, NMFS has received little new information regarding these or other efforts being made to protect sockeye salmon. Notable efforts within the range of the Ozette Lake ESU continue to be the Northwest Forest Plan (NFP), Washington Wild Stock Restoration Initiative, and Washington Wild Salmonid Policy.

In addition, a recovery planning group composed of the Makah and Quileute Indian Tribes, the National Parks Service, and Washington Department of Fish and Wildlife has recently initiated a collaborative planning effort to determine how to increase the abundance of naturally spawning Ozette Lake sockeye salmon to historic and self-sustaining population levels. NMFS and FWS will assist this effort, and other state agencies and interested parties will be invited to participate. The Makah tribe, which has operated a supplementation program in Ozette Lake since the early 1980's, is contributing a draft supplementation plan as a starting point for the planning group.

While NMFS recognizes that many of the ongoing protective efforts are likely to promote the conservation of Ozette Lake sockeye salmon and other salmonids, some are very recent and few address conservation at a scale that is adequate to protect and conserve the Ozette Lake ESU. NMFS concludes that existing protective efforts are inadequate to preclude a listing for this ESU. However, NMFS will continue to encourage these and future protective efforts and will work with Federal, state, and tribal fisheries managers to evaluate, promote, and improve efforts to conserve sockeye and other salmon populations.

Determination

Section 3 of the ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that listing determinations be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

Ozette Lake Sockeye Salmon ESU - Based on results from its coastwide status review for sockeye salmon, and after taking into account comments and new information described earlier, NMFS concludes that the Ozette Lake ESU should be classified as threatened under the ESA. The majority of the NMFS BRT concluded that this ESU is likely to become endangered in the foreseeable future if present conditions continue. Furthermore, NMFS concludes that current protective efforts are insufficient to change the BRT's forecast of extinction risk.

In the listed Ozette Lake ESU, all naturally spawned populations of sockeye salmon residing below impassable natural barriers (e.g., long-standing, natural waterfalls) are listed as threatened. NMFS' intent in listing only ''naturally spawned'' populations is to protect sockeye salmon stocks that are indigenous to (i.e., part of) the ESU. In this listing determination NMFS has identified non-indigenous populations that co-occur with fish in the listed ESU. The agency recognizes the difficulty of differentiating between indigenous and non-indigenous fish, especially when the latter are not readily distinguishable with a mark (e.g., fin clip). Also, matings in the wild of either type would generally result in progeny that would be treated as listed fish (i.e., they would have been naturally spawned in the geographic range of the listed ESU and have no distinguishing mark). Therefore, to reduce confusion regarding which sockeye salmon are considered listed within the ESU, NMFS will treat all naturally spawned fish as listed for purposes of the ESA. Efforts to determine the conservation status of the ESU would similarly focus on the contribution of indigenous fish to the listed ESU. It should be noted that NMFS will take actions necessary to minimize or prevent non-indigenous sockeye salmon from spawning in the wild unless the fish are specifically part of a recovery effort.

NMFS has examined the relationship between hatchery and natural populations of sockeye salmon in this ESU, and has assessed whether any hatchery populations are essential for their recovery. In examining this relationship, NMFS scientists consulted with hatchery managers to determine whether any hatchery populations are similar enough to native, naturally spawned fish to be considered part of the biological ESU (NMFS, 1999a). The evaluation also considered whether any hatchery population should be considered essential for the recovery of a listed ESU. NMFS concludes that the sockeye salmon stock reared at Umbrella Creek Hatchery should be considered part of the Ozette Lake ESU, based on the fact that broodstock are derived from wild beach-spawning adults and that hatchery stock is not perpetuated by spawning fish returning to the hatchery. NMFS also concludes that the Umbrella Creek Hatchery stock is not essential for recovery. NMFS' opinion on this second question was influenced by the presence of significant numbers of sockeye salmon still spawning naturally on Olsen's Beach and in Allen's Bay in Ozette Lake; these fish could be used in recovery efforts. NMFS also concludes that if progeny of the sockeye salmon/kokanee hybrid stock reared at Umbrella Creek Hatchery still exist, they should not be considered part of the ESU. This decision was based on the wide genetic divergence of Ozette Lake stream-spawning kokanee and beach-spawning sockeye salmon and the likelihood that hybrids of these stocks would resemble neither of the native *O. nerka* stocks in Ozette Lake.

The determination that a hatchery stock is not ''essential'' for recovery does not preclude it from playing a role in recovery. Any hatchery population that is part of the ESU is available for use in recovery if conditions warrant. In this context, an ''essential'' hatchery population is one that is vital to incorporate into recovery efforts (for example, if the associated natural population(s) were extinct or at high risk of extinction). Under such circumstances, NMFS would consider taking the administrative action of listing existing hatchery fish.

NMFS' ''Interim Policy on Artificial Propagation of Pacific Salmon Under the Endangered Species Act'' (58 FR 17573, April 5, 1993) provides guidance on the treatment of hatchery stocks in the event of a listing. Under this policy, ''progeny of fish from the listed species that are propagated artificially are considered part of the listed species and are protected under the ESA.'' (58 FR 17573, April 5, 1993). In the case of the Umbrella Creek Hatchery stock, the protective regulations that NMFS will issue shortly may except take of naturally spawned listed fish for use as broodstock as part of an overall conservation program. According to the interim policy, the progeny of these hatchery-wild or wild-wild crosses would also be listed. Given the requirement for an acceptable conservation plan as a prerequisite for collecting broodstock, NMFS determines that it is not necessary to consider the progeny of intentional hatchery-wild or wild-wild crosses as listed.

In addition, NMFS believes it is desirable to incorporate naturally spawned fish into the hatchery population to ensure that genetic and life history characteristics do not diverge significantly from the natural population's. NMFS therefore concludes that it is not inconsistent with NMFS' interim policy, nor with the policy and purposes of the ESA, to consider these progeny as part of the ESU but not listed.

Baker River Sockeye Salmon ESU - For the reasons described in the March 10, 1998, proposed rule (63 FR 11750) and earlier in this document, NMFS concludes that the Baker River sockeye salmon ESU is not presently in danger of extinction, nor is it likely to become endangered in the foreseeable future if present conditions continue. NMFS will no longer classify this ESU as a candidate species.

Other Sockeye Salmon ESUs - While other ESUs and populations were not extensively reviewed at this time, NMFS did review updated trend information for the Lake Wenatchee and Okanogan River ESUs. Based on this new information, NMFS is concerned about the status of the Okanogan River and Lake Wenatchee ESUs, and will continue to closely monitor their status.

Prohibitions and Protective Measures

Section 4(d) of the ESA requires NMFS to issue protective regulations that it finds necessary and advisable to provide for the conservation of a threatened species. Section 9(a) of the ESA prohibits violations of protective regulations for threatened species promulgated under section 4(d). The 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. These 9(a) prohibitions and 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. NMFS will publish 4(d) protective regulations for the listed Ozette Lake sockeye salmon ESU in a separate **Federal Register** document. The process for completing the 4(d) rule will provide the opportunity for public comment on the proposed protective regulations.

In the case of threatened species, NMFS also has flexibility under section 4(d) to tailor the protective regulations based on the contents of available conservation measures. Even though existing conservation efforts and plans are not sufficient to preclude the need for listing at this time, they are nevertheless valuable for improving watershed health and restoring salmon populations. In those cases where well-developed and reliable conservation plans exist, NMFS may choose to incorporate them into the protective regulations and recovery plans. NMFS has already adopted 4(d) protective regulations that excepts a limited range of activities from general section 9 take prohibitions. For example, the interim 4(d) rule for Southern Oregon/Northern California Coasts coho salmon (62 FR 38479, July 18, 1997) excepts habitat restoration activities conducted in accordance with approved plans and fisheries conducted in accordance with an approved state management plan. In the future, 4(d) rules may except from take prohibitions activities identified in conservation plans governing such activities as forestry, agriculture, and road construction when such activities are conducted in accordance with the plans.

These are all examples where NMFS may apply modified section 9 prohibitions in light of the protections provided in a conservation plan that is adequately protective. There may be other circumstances as well in which NMFS would use the flexibility of section 4(d). For example, in some cases there may be a healthy population within an overall ESU that is listed. In such a case, it may not be necessary to apply the full range of prohibitions available in section 9. NMFS intends to use the flexibility of the ESA to respond appropriately to the biological condition of each ESU and to the strength of efforts to protect it.

Section 7(a)(4) of the ESA requires that Federal agencies confer with NMFS on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions likely to result in the destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) of the ESA requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with NMFS.

Examples of Federal actions likely to affect sockeye salmon in the listed ESU include authorized land management activities (e.g., timber sales and harvest) of the U.S. Forest Service (USFS). Federal actions, including the Army Corps of Engineers (COE) section 404 permitting activities under the Clean Water Act, COE permitting activities under the River and Harbors Act, National Pollution Discharge Elimination System permits issued by the Environmental Protection Agency, highway projects authorized by the Federal Highway Administration, and Federal Energy Regulatory Commission licenses for non-Federal development and operation of hydropower, may also require consultation. These actions will likely be subject to ESA section 7 consultation requirements that may result in conditions designed to achieve the intended purpose of the project and avoid or reduce impacts to sockeye salmon and its habitat within the range of the listed ESU.

There are likely to be Federal actions ongoing in the range of the listed ESUs at the time these listings become effective. Therefore, NMFS will review all ongoing actions that may affect the listed species with Federal agencies and will complete formal or informal consultations, where requested or necessary, for such actions pursuant to ESA section 7(a)(2).

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's ''take'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species.

NMFS has issued section 10(a)(1)(A) research or enhancement permits for other listed species (e.g., Snake River chinook salmon and Sacramento River winter-run chinook salmon) for a number of activities, including trapping and tagging, electroshocking to determine population presence and abundance, removal of fish from irrigation ditches, and collection of

adult fish for artificial propagation programs. NMFS is aware of sampling efforts for sockeye in the listed ESU. These and other research efforts could provide critical information regarding sockeye salmon distribution and population abundance.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the release of artificially propagated fish by tribal, state or privately operated and funded hatcheries, state or university research on species other than sockeye salmon not receiving Federal authorization or funding, the implementation of state fishing regulations, and timber harvest activities on non-Federal lands.

Take Guidance

On July 1, 1994, (59 FR 34272) NMFS and FWS published a policy committing the Services to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of a listing on proposed and on-going activities within the species' range. NMFS believes that, based on the best available information, the following actions will not result in a violation of section 9: (1) Possession of sockeye salmon from the listed ESU acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA; and (2) federally funded or approved projects that involve such activities as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which a section 7 consultation has been completed, and when such an activity is conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanied by a biological opinion pursuant to section 7 of the ESA. As described previously in this notice, NMFS may adopt 4(d) protective regulations that except other activities from section 9 take prohibitions for threatened species.

Activities that NMFS believes could potentially harm, injure or kill sockeye salmon in the listed ESU and result in a violation of section 9 include, but are not limited to: (1) Land-use activities that adversely affect sockeye salmon habitat in this ESU (e.g., logging, grazing, farming, road construction in riparian areas, and areas susceptible to mass wasting and surface erosion); (2) diverting water through an unscreened or inadequately screened diversion at times when juvenile sockeye salmon are present; (3) physical disturbance or blockage of the streambed or lakeshore where spawners or redds are present concurrent with the disturbance. The disturbance could be mechanical disruption from creating push-up dams, gravel removal, mining, or other work within a stream channel, trampling or smothering of redds by livestock in the streambed, driving vehicles or equipment across or down the streambed, and similar physical disruptions; (4) discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting the listed sockeye salmon; (5) pesticide and herbicide applications; (6) blocking fish passage through fills, dams, or impassable culverts; (7) interstate and foreign commerce of listed sockeye salmon and import/export of listed sockeye salmon without an ESA permit, unless the fish were harvested pursuant to this rule; (8) collecting or handling of listed sockeye salmon (permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species); and (9) introduction of non-native species likely to prey on listed sockeye salmon or displace them from their habitat. This list is not exhaustive. It is intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a take of listed sockeye salmon under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of this rule, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Effective Date of Final Listing

Given the cultural, scientific, and recreational importance of this species, and the broad geographic range of this listing, NMFS recognizes that numerous parties may be affected by this listing. Therefore, to permit an orderly implementation of the consultation requirements associated with this action, this final listing will take effect May 24, 1999.

Conservation Measures

Conservation benefits are provided to species listed as endangered or threatened under the ESA through increased recognition, recovery actions, Federal agency consultation requirements, and prohibitions on taking. Increased recognition through listing promotes public awareness and conservation actions by Federal, state, and local agencies, private organizations, and individuals.

Several conservation efforts are underway that may reverse the decline of west coast sockeye salmon and other salmonids. NMFS is encouraged by these significant efforts, which could provide all stakeholders with an approach to achieving the purposes of the ESA (i.e., protecting and restoring native fish populations and the ecosystems upon which they depend) that is less regulatory. NMFS will continue to encourage and support these initiatives as important components of recovery planning for sockeye salmon and other salmonids.

To succeed, protective regulations and recovery programs for sockeye salmon will need to focus on conserving aquatic ecosystem health. NMFS intends that Federal lands and Federal activities play a primary role in preserving listed populations and the ecosystems upon which they depend. However, throughout the range of the listed ESUs, sockeye salmon habitat occurs and can be affected by activities on state, tribal or private land.

Conservation measures that could be implemented to help conserve the species are listed here (the list is generalized and does not constitute NMFS' interpretation of a recovery plan under section 4(f) of the ESA). Progress on some of these is being made to differing degrees in specific areas.

1. Measures could be taken to promote practices that are more protective of (or restore) sockeye salmon habitat across a variety of land and water management activities. Activities affecting this habitat include timber harvest; agriculture; livestock grazing and operations; pesticide and herbicide applications; construction and urban development; road building and maintenance; sand and gravel mining; stream channelization; dredging and dredged spoil disposal; dock and marina construction; diking and bank stabilization; irrigation withdrawal, storage, and management; mineral mining; wastewater/pollutant discharge; wetland and floodplain alteration; habitat restoration projects; and woody debris/structure removal from rivers and estuaries. Each of these activities could be modified to ensure that watersheds and specific river reaches are adequately protected in the short- and long-terms.

2. Fish passage could be restored at barriers to migration through the installation or modification of fish ladders, upgrade of culverts, or removal of barriers.

3. Harvest regulations could be modified to protect listed sockeye salmon populations.

4. Artificial propagation programs could be modified to minimize negative impacts (e.g., genetic introgression, competition, disease, etc.) upon native populations of sockeye salmon.

5. Predator control/relocation programs could be implemented in areas where predators pose a significant threat to sockeye salmon.

6. Measures could be taken to improve monitoring of sockeye salmon populations and their habitat.

7. Federal agencies such as the USFS, U.S. Bureau of Land Management, Federal Energy Regulatory Commission, U.S. Army Corp of Engineers, U.S. Department of Transportation, and U.S. Bureau of Reclamation could review their management programs and use their discretionary authorities to formulate conservation plans pursuant to section 7(a)(1) of the ESA.

NMFS encourages non-Federal landowners to assess the impacts of their actions on threatened or endangered salmonids. In particular, NMFS encourages state and local governments to use their existing authorities and programs, and encourages the formation of watershed partnerships to promote conservation in accordance with ecosystem principles. These partnerships will be successful only if state, tribal, and local governments, landowner representatives, and Federal and non-Federal biologists all participate and share the goal of restoring salmon to the watersheds.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. Section 4(b)(6)(C)(ii) provides that, where critical habitat is not determinable at the time of final listing, NMFS may extend the period for designating critical habitat by not more than one additional year.

In the proposed rule (63 FR 11774, March 10, 1998), NMFS described the areas that may constitute critical habitat for the Ozette Lake sockeye salmon ESU. Since then, NMFS has received numerous comments from the public concerning the process and definition of critical habitat for sockeye salmon and other salmonids. Also, due to statutory time limitations, NMFS has not yet consulted with affected Indian tribes regarding the designation of critical habitat in areas that may affect tribal trust resources, tribally owned fee lands, or the exercise of tribal rights.

Given these remaining unresolved issues, NMFS determines at this time that a final critical habitat designation is not determinable for this ESU since additional time is required to complete the needed biological assessments and evaluate special management considerations affecting critical habitat. The agency therefore extends the deadline for designating critical habitat for 1 year until such assessments can be made and after appropriate consultations are completed.

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F.2d 825 (6th Cir. 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of the National Environmental Policy Act (NEPA) under NOAA Administrative Order 216–6.

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act (RFA) are not applicable to the listing process. In addition, this final rule is exempt from review under E.O. 12866.

This rule has been determined to be major under the Congressional Review Act (5 U.S.C. 801 *et seq.*)

At this time NMFS is not promulgating protective regulations pursuant to ESA section 4(d). In the future, prior to finalizing its 4(d) regulations for the threatened sockeye salmon ESU, NMFS will comply with all relevant NEPA and RFA requirements.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES**) and can also be obtained from the internet at www.nwr.noaa.gov.

Change in Enumeration of Threatened Species

In the proposed rule issued on March 10, 1998 (63 FR 11750), Ozette Lake sockeye salmon was designated the letter (o) in § 227.4. Since March 10, NMFS has issued a final rule consolidating and reorganizing existing regulations regarding implementation of the ESA. In this reorganization, § 227.4 has been redesignated, as § 223.102(a), therefore, Ozette Lake sockeye salmon is designated in this final rule as paragraph (a) (20) in § 223.102(a). The regulatory text of the proposed rule remains unchanged in this final rule.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: March 15, 1999.

Andrew A. Rosenberg, Ph.D.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 223 is amended as follows:

PART 223–THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

2. In § 223.102, paragraph (a)(19) is added to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(a) * * *

(19) Ozette Lake sockeye salmon (*Oncorhynchus nerka*). Includes all naturally spawned populations of sockeye salmon in Ozette Lake and streams and tributaries flowing into Ozette Lake, Washington.

* * * * *

[FR Doc. 99–6813 Filed 3–24–99; 8:45 am]

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Thursday
March 25, 1999

Part III

Department of Labor

Office of the Secretary

29 CFR Parts 96 and 99

Audit Requirement: Grants, Contacts and Other Agreements and States, Local Governments, and Non-Profit Organizations; Interim Final Rules

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Parts 96 and 99

RIN 1291–AA26 and 1291–AA27

Audit Requirements: Grants, Contracts, and Other Agreements and States, Local Governments, and Non-Profit Organizations

AGENCY: Office of the Secretary, Labor.

ACTION: Interim final rules; request for comment.

SUMMARY: The Department of Labor hereby revises its regulation on ''Audit Requirements For Grants, Contracts, and Other Agreements,'' to ensure consistency with previously published amendments to ''Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations'' and ''Uniform Administrative Requirements for Grants, and Cooperative Agreements to State and Local Governments.'' In addition, ''Audits of States, Local Governments, and Non-Profit Organizations,'' is published as a new regulation which codifies in (DOL) regulations the revised Office of Management and Budget (OMB) Circular A–133 in its entirety.

DATES: This rule will be effective on March 25, 1999. Written or electronic comments are invited on this Interim Final Rule. All written or electronic comments submitted on or before May 24, 1999 will be considered. Appropriate changes to the regulations will be made when the Final Rule is published, which adopts this interim rule as final.

ADDRESSES: Send written comments to Al Stewart, Director, Office of the Acquisition Advocate, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–1522, Washington, D.C. 20210. Send electronic comments to: Stewart-Milton@dol.gov.

FOR FURTHER INFORMATION CONTACT: Al Stewart, Director, Office of the Acquisition Advocate, telephone number (202) 693–4025, facsimile (202) 693–4019.

SUPPLEMENTARY INFORMATION: The Single Audit Act Amendments of 1996, (Public Law 104–156, 110 Stat. 1396), and the June 24, 1997, revision of OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'' (62 FR 35278, June 30, 1997), required agencies to adopt in codified regulations the standards in the revised Circular A–133 by August 29, 1997, so that they will apply to audits of fiscal years beginning after June 30, 1996. The revised Circular A–133 co-located audit requirements for States, local governments, and non-profit organizations. As a consequence, OMB rescinded OMB Circular A-128, ''Audits of State and Local Governments.'' On August 29, 1997, the Department of Labor amended its grants common rules at 29 CFR 95 and 29 CFR 97 in accordance with OMB guidance. Amendments to 29 CFR 96 are required to ensure continuity and ameliorate conflicts with provisions of 29 CFR Parts 95 and 97.

EFFECTIVE DATE AND ABSENCE OF NOTICE AND COMMENT: The Office of the Assistant Secretary for Administration and Management (OASAM) has determined that pursuant to the Administrative Procedure Act, the Single Audit Act Amendments of 1996, and the revised OMB Circular A–133, which provide standards applicable to non-Federal entities, are effective for audits of fiscal years beginning after June 30, 1996, provides good cause for waiving the customary requirement to delay the effective date of a final rule for 30 days following its publication. Accordingly, the issuance of a proposed rule, which would delay the effective date of a final rule for 30 days, would be contrary to the public interest. This Interim Final Rule sets a comment period to elicit any concerns raised by the Rule. OASAM has limited the comment period to 60 days so that input is received in time for the Agency to develop any revisions and promulgate a final rule to allow for the expeditious incorporation of the grants common rules at CFR Parts 95 and 97 and the new regulation at CFR Part 99.

I. Regulatory Procedures

Executive Order 12866

Executive Order 12866 requires that a regulatory impact analysis be prepared for ''major'' rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. This modification will not have an annual impact of $100 million or more or the other effects listed in the Order. However, the interim final rule would result in some savings to organizations administering grants or subgrants, primarily due to the increase in the threshold (from $25,000 to $300,000) that triggers an audit requirement. In addition, the due date for submission of the audit report by auditors has been reduced from 13 to 9 months. For these reasons, the participating agencies have determined that this interim final rule would not create a major rule within the meaning of the Order.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a ''significant economic impact on a substantial number of small entities,'' an analysis must be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities. This interim final rule will not have a significant economic impact on a substantial number of small entities. The interim final rule does not affect the amount of funds provided in the covered programs, but rather increases the threshold for non-Federal entities subject to audit, thereby reducing burden on some small entities. The Assistant Secretary of the Office for Administration and Management has certified to this effect to the Chief Counsel for the Advocacy of the Small Business Administration.

Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 (Pub. L. 104–4) requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of $100 million of State, local, and Indian tribal governments or the private sector. Since this interim final rule will not result in expenditures of this magnitude, such statements are not necessary.

Paperwork Reduction Act

This interim final rule will impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) after OMB finalizes the new SF–SAC, ''Data Collection Form for Reporting on Audits of States, Local Governments, and Non-Profit Organizations.'' On June 30, 1997, OMB requested public comments on the proposed SF–SAC (62 FR 35302).

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

II. Congressional Notification

Consistent with the Small Business Regulatory Enforcement Fairness Act of 1996, the Department will submit to Congress a report regarding the issuance of the final rule prior to the Effective Date set forth in the outset of this document. The report will note the Office of Management and Budget's determination that this rule does not constitute a ''major rule'' under the Act. 5 U.S.C. 801, 805.

List of Subjects

29 CFR Part 96

Accounting, Audit requirements, Contract programs, Grant programs, Reporting and recordkeeping.

29 CFR Part 99

Accounting, Audit requirements, Contract programs, Grant programs, Reporting and recordkeeping requirements.

For the reasons delineated in the preamble, Subtitle A of Title 29 of the Code of Federal Regulations is amended by revising Part 96 and by adding Part 99, as follows:

PART 96—AUDIT REQUIREMENTS FOR GRANTS, CONTRACTS, AND OTHER AGREEMENTS

Sec.
96.0 Purpose and scope of part.
96.1 Terminology.

Subpart A—Audits of States, Local Governments, and Non-profit Organizations

96.11 Purpose and scope of subpart.
96.12 Audits requirements.

Subpart B—[Reserved]

Subpart C—Audits of Entities Not Covered by Subpart A

96.31 Purpose and scope of subpart.
96.32 Audit requirement.

Subpart D—Access to Records, Audit Standards, and Relation of Organization-wide Audits to Other Audit Requirements

96.41 Access to records.
96.42 Audit standards.
96.43 Relation of organization-wide audits to other audit requirements.

Subpart E—Audit Resolution

96.51 Purpose and scope of subpart.
96.52 Pre-resolution phase activities.
96.53 Audit resolution generally.
96.54 Responsibility for subrecipient audits.

Subpart F—Appeals

96.61 Purpose and scope of subpart.
96.62 Contracts.
96.63 Federal financial assistance.

Authority: 31 U.S.C. 7500 *et seq.*; and OMB Circular No. A–133.

§ 96.0 Purpose and scope of part.

This part identifies the audit requirements for recipients and subrecipients of Department of Labor (DOL) awards and contains DOL's procedures for the resolution of audits. It applies to all grants and contracts and other Federal awards provided by or on behalf of the DOL.

§ 96.1 Terminology.

As used in this part, the terms ''Federal award,'' ''Federal financial assistance,'' ''recipient,'' and ''subrecipient'' have the same meanings as the definitions in 29 CFR 99.105 of this title.

Subpart A—Audits of States, Local Governments, and Non-profit Organizations

§ 96.11 Purpose and scope of subpart.

The regulations in this subpart and in 29 CFR part 99 implement Office of Management and Budget (OMB) Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' which was issued pursuant to The Single Audit Act Amendments of 1996 (Act). The Act builds upon earlier efforts to improve audits of Federal financial assistance programs. This subpart establishes uniform audit requirements and policy for recipients and subrecipients that receive Federal financial assistance from DOL.

§ 96.12 Audit requirements.

(a) Organizations covered by this subpart are responsible for arranging for independent audits that meet the requirements of this section.

(b) The audit requirements contained in 29 CFR part 99 shall be followed for audits of all fiscal years beginning after June 30, 1996.

(c) Except as provided in paragraph (d) of this section, the audit requirements applicable to earlier fiscal years under regulations and award conditions in force when the awards were made shall continue in force.

(d) The Secretary or his/her designee may provide written notice to recipients/subrecipients subject to paragraph (c) of this section directing them to follow the requirements of 29 CFR 99.320, which provides for submission of audit data collection forms and reporting packages to a Federal clearinghouse designated by OMB.

Subpart B—[Reserved]

Subpart C—Audits of Entities Not Covered by Subpart A

§ 96.31 Purpose and scope of subpart.

This subpart prescribes the requirement for audits of recipients, subrecipients, contractors, and subcontractors that receive funds from the DOL and are not covered by subpart A.

§ 96.32 Audit requirement.

The Secretary of Labor is responsible for the survey, audit or examination of recipients, subrecipients, contractors, and subcontractors covered by this subpart. Such surveys, audits, or examinations shall be conducted at the Secretary's discretion.

Subpart D—Access to Records, Audit Standards and Relation of Organization-wide Audits to Other Audit Requirements

§ 96.41 Access to records.

The Secretary of Labor, the DOL Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives (including certified public accountants under contract), shall have access to any books, documents, papers, and records (manual and automated) of the entity receiving funds from DOL and its subrecipients/subcontractors for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

§ 96.42 Audit standards.

Surveys, audits, and examinations will conform to the Government auditing standards, issued by the Comptroller General of the United States, and guides issued by the Secretary. For purposes of meeting audit requirements under subparts A and C, only the standards for financial and compliance audits need apply.

§ 96.43 Relation of organization-wide audits to other audit requirements.

To the extent that audits conducted in accordance with subpart A provide DOL officials with the information needed to carry out their responsibilities under Federal law or DOL regulations, the Secretary shall rely upon and use the information. Additional audit efforts are not precluded, but such efforts must build upon the organization-wide audit and not duplicate it. The provisions of subpart A do not authorize a covered entity, after having complied with those requirements, to constrain, in any manner, the Secretary from carrying out additional surveys, audits, or examinations as deemed necessary.

Subpart E—Audit Resolution

§ 96.51 Purpose and scope of subpart.

This subpart prescribes standards for resolution of audit findings, including, but not limited to, questioned costs and administrative deficiencies, identified as a result of the audit of grant agreements, contracts, and other agreements awarded by or on behalf of DOL. In cases where these standards conflict with statutes or other DOL regulations, the latter shall be controlling. The DOL Office of Inspector General (OIG) is available to assist agencies in the audit resolution process.

§ 96.52 Pre-resolution phase activities.

(a) *Submission of reports.* Recipients and subrecipients of DOL funds that are audited in accordance with the requirements of subpart A shall comply in all respects with the report submission requirements of 29 CFR part 99. Failure to submit a complete audit package will result in the return of the submitted package by the Clearinghouse, which will assign a delinquency classification until the completed package is submitted.

(b) *Quality control.* The Office of Inspector General, in conjunction with other Federal agencies, will implement an audit quality program which may include random, planned, or directed reviews of audits submitted in compliance with OMB Circular A–133. When audits are found not to be performed in compliance with the requirements, the OIG may share the findings with the auditor, the auditee, and the funding agencies, and may work with the local licensing authorities to achieve corrective action.

§ 96.53 Audit resolution generally.

The DOL official(s) responsible for audit resolution shall promptly evaluate findings and recommendations reported by auditors and the corrective action plan developed by the recipient to determine proper actions in response to audit findings and recommendations. The process of audit resolution includes at a minimum an initial determination, an informal resolution period, and a final determination.

(a) *Initial determination.* After the conclusion of any comment period for audits provided the recipient/contractor, the responsible DOL official(s) shall make an initial determination on the allowability of questioned costs or activities, administrative or systemic findings, and the corrective actions outlined by the recipient. Such determination shall be based on applicable statutes, regulations, administrative directives, or terms and conditions of the grant/contract award instrument.

(b) *Informal resolution.* The recipient/contractor shall have a reasonable period of time (as determined by the DOL official(s) responsible for audit resolution) from the date of issuance of the initial determination to informally resolve those matters in which the recipient/contractor disagrees with the decisions of the responsible DOL official(s).

(c) *Final determination.* After the conclusion of the informal resolution period, the responsible DOL official(s) shall issue a final determination that:

(1) As appropriate, indicate that efforts to informally resolve matters contained in the initial determination have either been successful or unsuccessful;

(2) Lists those matters upon which the parties continue to disagree;

(3) Lists any modifications to the factual findings and conclusions set forth in the initial determination;

(4) Lists any sanctions and required corrective actions; and

(5) Sets forth any appeal rights.

(d) *Time limit.* Insofar as possible, the requirements of this section should be met within 180 days of the date the final approved audit report is received by the DOL official(s) responsible for audit resolution.

§ 96.54 Responsibility for subrecipient audits.

Recipients of Federal assistance from DOL are responsible for ensuring that subrecipient organizations who expend $300,000 or more in a fiscal year are audited and that any audit findings are resolved in accordance with this part. The recipient shall:

(a) Determine whether appropriate audit requirements outlined in subpart A have been met;

(b) Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations;

(c) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of non-compliance with Federal law and regulations;

(d) Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

(e) Require that each subrecipient permit independent auditors to have access to the records and financial statements necessary to comply with this part.

Subpart F—Appeals

§ 96.61 Purpose and scope of subpart.

(a) The purpose of this subpart is to set forth procedures by which recipients and contractors may appeal final determinations by the DOL officials responsible for audit resolution as a result of audits.

(b) Subrecipients and subcontractors shall have only such appeal rights as may exist in subgrants or subcontracts with the respective recipients or contractors.

§ 96.62 Contracts.

(a) For the purpose of this subpart, the term ''contract'' includes all agreements described in sec. 602(a) of the Contract Disputes Act (Applicability of Law—Executive agency contracts) (41 U.S.C. 602(a)).

(b) Upon a contractor's receipt of the DOL contracting officer's final determination as a result of an audit, the contractor may appeal the final determination to the DOL Board of Contract Appeals, pursuant to 41 CFR part 29–60 and 48 CFR part 2933 or pursue such other remedies as may be available under the Contract Disputes Act.

§ 96.63 Federal financial assistance.

The DOL grantor agencies shall determine which of the two appeal options set forth in paragraphs (a) and (b) of this section the recipient may use to appeal the final determination of the grant officer. All awards within the same Federal financial assistance program shall follow the same appeal procedure.

(a) Appeal to the head of the grantor agency, or his/her designee, for which the audit was conducted.

(1) *Jurisdiction.* (i) *Request for hearing.* Within 21 days of receipt of the grant officer's final determination, the recipient may transmit, by certified mail, return receipt requested, a request for hearing to the head of the grantor agency, or his/her designee, as noted in the final determination. A copy must also be sent to the grant officer who signed the final determination.

(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination upon which review is requested. Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary of Labor and shall not be subject to further review.

(2) *Conduct of hearings.* The grantor agency shall establish procedures for the

conduct of hearings by the head of the grantor agency, or his/her designee.

(3) *Decision of the head of the grantor agency, or his/her designee.* The head of the grantor agency, or his/her designee, should render a written decision no later than 90 days after the closing of the record. This decision constitutes final action of the Secretary.

(b) *Appeal to the DOL Office of Administrative Law Judges.*

(1) *Jurisdiction.* (i) *Request for hearing.* Within 21 days of receipt of the grant officer's final determination, the recipient may transmit by certified mail, return receipt requested, a request for hearing to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street NW, Suite 400, Washington, DC 20001, with a copy to the grant officer who signed the final determination. The Chief Administrative Law Judge shall designate an administrative law judge to hear the appeal.

(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination upon which review is requested. Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary and shall not be subject to further review.

(2) *Conduct of hearings.* The DOL Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, set forth at 29 CFR part 18, shall govern the conduct of hearings under paragraph (b) of this section.

(3) *Decision of the administrative law judge.* The administrative law judge should render a written decision no later than 90 days after the closing of the record.

(4) *Filing exceptions to decision.* The decision of the administrative law judge shall constitute final action by the Secretary of Labor, unless, within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Secretary, specifically identifying the procedure or finding of fact, law, or policy with which exception is taken. Any exceptions not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary, unless the Secretary, within 30 days of such filing, has notified the parties that the case has been accepted for review.

(5) *Review by the Secretary of Labor.* Any case accepted for review by the Secretary shall be decided within 180 days of such acceptance. If not so decided, the decision of the administrative law judge shall become the final decision of the Secretary.

PART 99—AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT ORGANIZATIONS

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Authority: Public Law 104–156, 110 Stat. 1396 (31 U.S.C. 7500 *et seq.*), and OMB Circular A–133 revised June 24, 1997.

Subpart A—General

§ 99.100 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

§ 99.105 Definitions.

Audit finding means deficiencies which the auditor is required by § 99.510(a) to report in the schedule of findings and questioned costs.

Auditee means any non-Federal entity that expends Federal awards which must be audited under this part.

Auditor means an auditor that is a public accountant or a Federal, State, or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of non-profit organizations.

CFDA number means the number assigned to a Federal program in the Catalog of Federal Domestic Assistance (CFDA).

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. ''Other clusters'' are as defined by the Office of Management and Budget (OMB) in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an ''other cluster,'' a State shall identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 99.400(d)(1) and § 99.400(d)(2), respectively. A cluster of programs shall be considered as one program for determining major programs, as described in § 99.520, and, with the exception of R&D as described in § 99.200(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § 99.400(a).

Compliance supplement refers to the Circular A–133 Compliance Supplement, included as Appendix B to Circular A–133, or such documents as OMB or its designee may issue to replace it. This document is available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325.

Corrective action means action taken by the auditee that:

(1) Corrects identified deficiencies,

(2) Produces recommended improvements, or

(3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Federal agency has the same meaning as the term agency in Section 551(1) of title 5, United States Code.

Federal award means Federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities. It does not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Any audits of such vendors shall be covered by the

terms and conditions of the contract. Contracts to operate Federal Government-owned, contractor-operated (GOCOs) facilities are excluded from the requirements of this part.

Federal awarding agency means the Federal agency that provides an award directly to the recipient.

Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance, but does not include amounts received as reimbursement for services rendered to individuals as described in § 99.205(h) and § 99.205(i).

Federal program means: (1) All Federal awards to a non-Federal entity assigned a single number in the CFDA. (When no CFDA number is assigned, all Federal awards from the same agency made for the same purpose should be combined and considered one program.)

(2) Notwithstanding paragraph (1) of this definition, a cluster of programs. The types of clusters of programs are:

(i) Research and development (R&D);

(ii) Student financial aid (SFA); and

(iii) ''Other clusters'' as described in the definition of cluster of programs in this section.

GAGAS means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Generally accepted accounting principles has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Internal control means a process, effected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(1) Effectiveness and efficiency of operations;

(2) Reliability of financial reporting; and

(3) Compliance with applicable laws and regulations.

Internal control pertaining to the compliance requirements for Federal programs (Internal control over Federal programs) means a process—effected by an entity's management and other personnel—designed to provide reasonable assurance regarding the achievement of the following objectives for Federal programs:

(1) Transactions are properly recorded and accounted for to:

(i) Permit the preparation of reliable financial statements and Federal reports;

(ii) Maintain accountability over assets; and

(iii) Demonstrate compliance with laws, regulations, and other compliance requirements;

(2) Transactions are executed in compliance with:

(i) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program; and

(ii) Any other laws and regulations that are identified in the compliance supplement; and

(3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity.

Local government means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § 99.520 or a program identified as a major program by a Federal agency or pass-through entity in accordance with § 99.215(c).

Management decision means the evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision as to what corrective action is necessary.

Non-Federal entity means a State, local government, or non-profit organization.

Non-profit organization means:

(1) Any corporation, trust, association, cooperative, or other organization that:

(i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(ii) Is not organized primarily for profit; and

(iii) Uses its net proceeds to maintain, improve, or expand its operations; and

(2) The term non-profit organization includes non-profit institutions of higher education and hospitals.

OMB means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency for audit. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities. The duties of the oversight agency for audit are described in § 99.400(b).

Pass-through entity means a non-Federal entity that provides a Federal award to a subrecipient to carry out a Federal program.

Program-specific audit means an audit of one Federal program as provided for in § 99.200(c) and § 99.235.

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

(1) Which resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including funds used to match Federal funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Recipient means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program.

Research and development (R&D) means all research activities, both basic and applied, and all development activities that are performed by a non-Federal entity. Research is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. Development is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Single audit means an audit which includes both the entity's financial statements and the Federal awards as described in § 99.500.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, any multi-State, regional, or interstate entity which has governmental functions, and any Indian tribe as defined in this section.

Student Financial Aid (SFA) includes those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070 *et seq.*), which is administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subrecipient means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in § 99.210.

Types of compliance requirements refers to the types of compliance requirements listed in the compliance supplement. Examples include: activities allowed or unallowed; allowable costs/cost principles; cash management; eligibility; matching, level of effort, earmarking; and, reporting.

Vendor means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in § 99.210.

Subpart B—Audits

§ 99.200 Audit requirements.

(a) *Audit required.* Non-Federal entities that expend $300,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part. Guidance on determining Federal awards expended is provided in § 99.205.

(b) *Single audit.* Non-Federal entities that expend $300,000 or more in a year in Federal awards shall have a single audit conducted in accordance with § 99.500 except when they elect to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § 99.235. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) *Exemption when Federal awards expended are less than $300,000.* Non-Federal entities that expend less than $300,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in § 99.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

§ 99.205 Basis for determining Federal awards expended.

(a) *Determining Federal awards expended.* The determination of when an award is expended should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with laws, regulations, and the provisions of contracts or grant agreements, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and, the period when insurance is in force.

(b) *Loan and loan guarantees (loans).* Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines shall be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the fiscal year; plus

(2) Balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) *Loan and loan guarantees (loans) at institutions of higher education.* When loans are made to students of an institution of higher education but the institution does not make the loans, then only the value of loans made during the year shall be considered Federal awards expended in that year. The balance of loans for previous years is not included as Federal awards expended because the lender accounts for the prior balances.

(d) *Prior loan and loan guarantees (loans).* Loans, the proceeds of which were received and expended in prior-years, are not considered Federal awards expended under this part when the laws, regulations, and the provisions of contracts or grant agreements pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) *Endowment funds.* The cumulative balance of Federal awards for endowment funds which are federally restricted are considered awards expended in each year in which the funds are still restricted.

(f) *Free rent.* Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of an award to carry out a Federal program shall be included in determining Federal awards expended and subject to audit under this part.

(g) *Valuing non-cash assistance.* Federal non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(h) *Medicare.* Medicare payments to a non-Federal entity for providing patient care services to Medicare eligible individuals are not considered Federal awards expended under this part.

(i) *Medicaid.* Medicaid payments to a subrecipient for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) *Certain loans provided by the National Credit Union Administration.* For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured institutions are not considered Federal awards expended.

§ 99.210 Subrecipient and vendor determinations.

(a) *General.* An auditee may be a recipient, a subrecipient, and a vendor. Federal awards expended as a recipient or a subrecipient would be subject to audit under this part. The payments received for goods or services provided as a vendor would not be considered Federal awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a Federal award or a payment for goods and services.

(b) *Federal award.* Characteristics indicative of a Federal award received by a subrecipient are when the organization:

(1) Determines who is eligible to receive what Federal financial assistance;

(2) Has its performance measured against whether the objectives of the Federal program are met;

(3) Has responsibility for programmatic decision making;

(4) Has responsibility for adherence to applicable Federal program compliance requirements; and

(5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

(c) *Payment for goods and services.* Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program.

(d) *Use of judgment in making determination.* There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

(e) *For-profit subrecipient.* Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.

(f) *Compliance responsibility for vendors.* In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

§ 99.215 Relation to other audit requirements.

(a) *Audit under this part in lieu of other audits.* An audit made in accordance with this part shall be in lieu of any financial audit required under individual Federal awards. To the extent this audit meets a Federal agency's needs, it shall rely upon and use such audits. The provisions of this part neither limit the authority of Federal agencies, including their Inspectors General, or GAO to conduct or arrange for additional audits (e.g., financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain Federal agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

(b) *Federal agency to pay for additional audits.* A Federal agency that conducts or contracts for additional audits shall, consistent with other applicable laws and regulations, arrange for funding the full cost of such additional audits.

(c) *Request for a program to be audited as a major program.* A Federal agency may request an auditee to have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 99.520 and, if not, the estimated incremental cost. The Federal agency shall then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee shall have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

§ 99.220 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part shall be performed annually. Any biennial audit shall cover both years within the biennial period.

(a) A State or local government that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period under audit.

(b) Any non-profit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

§ 99.225 Sanctions.

No audit costs may be charged to Federal awards when audits required by this part have not been made or have been made but not in accordance with this part. In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities shall take appropriate action using sanctions such as:

(a) Withholding a percentage of Federal awards until the audit is completed satisfactorily;

(b) Withholding or disallowing overhead costs;

(c) Suspending Federal awards until the audit is conducted; or

(d) Terminating the Federal award.

§ 99.230 Audit costs.

(a) *Allowable costs.* Unless prohibited by law, the cost of audits made in accordance with the provisions of this part are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR)(48 CFR parts 30 and 31), or other applicable cost principles or regulations.

(b) *Unallowable costs.* A non-Federal entity shall not charge the following to a Federal award:

(1) The cost of any audit under the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 *et seq.*) not conducted in accordance with this part.

(2) The cost of auditing a non-Federal entity which has Federal awards expended of less than $300,000 per year and is thereby exempted under § 99.200(d) from having an audit conducted under this part. However, this does not prohibit a pass-through entity from charging Federal awards for the cost of limited scope audits to monitor its subrecipients in accordance with § 99.400(d)(3), provided the subrecipient does not have a single audit. For purposes of this part, limited scope audits only include agreed-upon procedures engagements conducted in accordance with either the AICPA's generally accepted auditing standards or attestation standards, that are paid for and arranged by a pass-through entity and address only one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching; level of effort; earmarking; and, reporting.

§ 99.235 Program-specific audits.

(a) *Program-specific audit guide available.* In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal control, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor should contact the Office of Inspector General of the Federal agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

(b) *Program-specific audit guide not available.* (1) When a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee shall prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 99.315(b), and a corrective action plan consistent with the requirements of § 99.315(c).

(3) The auditor shall:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal control and perform tests of internal control over the Federal program consistent with the requirements of § 99.500(c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the Federal program consistent with the requirements of § 99.500(d) for a major program; and

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding in accordance with the requirements of § 99.500(e).

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in conformity with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which shall describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § 99.505(d)(1), and findings and questioned costs consistent with the requirements of § 99.505(d)(3).

(c) *Report submission for program-specific audits.* (1) The audit shall be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal agency that provided the funding or a different period is specified in a program-specific audit guide. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the required reporting shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period, unless a different period is specified in a program-specific audit guide.) Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

(2) When a program-specific audit guide is available, the auditee shall submit to the Federal clearinghouse designated by the OMB, the data collection form prepared in accordance with § 99.320(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide to be retained as an archival copy. Also, the auditee shall submit to the Federal awarding agency or pass-through entity the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit shall consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with § 99.320(b), as applicable to a program-specific audit, and one copy of this reporting package shall be submitted to the Federal clearinghouse designated by the OMB to be retained as an archival copy. Also, when the schedule of findings and questioned costs disclosed audit findings or the summary schedule of prior audit findings reported the status of any audit findings, the auditee shall submit one copy of the reporting package to the Federal clearinghouse on

behalf of the Federal awarding agency, or directly to the pass-through entity in the case of a subrecipient. Instead of submitting the reporting package to the pass-through entity, when a subrecipient is not required to submit a reporting package to the pass-through entity, the subrecipient shall provide written notification to the pass-through entity, consistent with the requirements of § 99.320(e)(2). A subrecipient may submit a copy of the reporting package to the pass-through entity to comply with this notification requirement.

(d) *Other sections of this part may apply.* Program-specific audits are subject to § 99.100 through § 99.215(b), § 99.220 through § 99.230, § 99.300 through § 99.305, § 99.315, § 99.320(f) through § 99.320(j), § 99.400 through § 99.405, § 99.510 through § 99.515, and other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program laws and regulations.

Subpart C—Auditees

§ 99.300 Auditee responsibilities.

The auditee shall:

(a) Identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

(b) Maintain internal control over Federal programs that provides reasonable assurance that the auditee is managing Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs.

(c) Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.

(d) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § 99.310.

(e) Ensure that the audits required by this part are properly performed and submitted when due. When extensions to the report submission due date required by § 99.320(a) are granted by the cognizant or oversight agency for audit, promptly notify the Federal clearinghouse designated by OMB and each pass-through entity providing Federal awards of the extension.

(f) Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 99.315(b) and § 99.315(c), respectively.

§ 99.305 Auditor selection.

(a) *Auditor procurement.* In procuring audit services, auditees shall follow the procurement standards prescribed by the Grants Management Common Rule (hereinafter referred to as the ''A–102 Common Rule'') published March 11, 1988, and amended April 19, 1995; 29 CFR part 97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations;'' or the FAR (48 CFR part 42), as applicable (OMB Circulars are available from the Office of Administration, Publications Office, Room 2200, New Executive Office Building, Washington, DC 20503). Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in the A–102 Common Rule, OMB Circular A–110, or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

(b) *Restriction on auditor preparing indirect cost proposals.* An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded $1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs. To minimize any disruption in existing contracts for audit services, this paragraph applies to audits of fiscal years beginning after June 30, 1998.

(c) *Use of Federal auditors.* Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

§ 99.310 Financial statements.

(a) *Financial statements.* The auditee shall prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements shall be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, organization-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § 99.500(a) and prepare separate financial statements.

(b) *Schedule of expenditures of Federal awards.* The auditee shall also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple award years, the auditee may list the amount of Federal awards expended for each award year separately. At a minimum, the schedule shall:

(1) List individual Federal programs by Federal agency. For Federal programs included in a cluster of programs, list individual Federal programs within a cluster of programs. For R&D, total Federal awards expended shall be shown either by individual award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity shall be included.

(3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available.

(4) Include notes that describe the significant accounting policies used in preparing the schedule.

(5) To the extent practical, pass-through entities should identify in the schedule the total amount provided to subrecipients from each Federal program.

(6) Include, in either the schedule or a note to the schedule, the value of the Federal awards expended in the form of non-cash assistance, the amount of insurance in effect during the year, and loans or loan guarantees outstanding at year end. While not required, it is preferable to present this information in the schedule.

§ 99.315 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under § 99.510(c). Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(4) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.

(3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule shall provide an explanation.

(4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the Federal clearinghouse;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) *Corrective action plan.* At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an explanation and specific reasons.

§ 99.320 Report submission.

(a) *General.* The audit shall be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the data collection form and reporting package shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period.) Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) *Data collection.* (1) The auditee shall submit a data collection form which states whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The form shall be approved by OMB, available from the Federal clearinghouse designated by OMB, and include data elements similar to those presented in this paragraph. A senior level representative of the auditee (e.g., State controller, director of finance, chief executive officer, or chief financial officer) shall sign a statement to be included as part of the form certifying that: the auditee complied with the requirements of this part, the form was prepared in accordance with this part (and the instructions accompanying the form), and the information included in the form, in its entirety, are accurate and complete.

(2) The data collection form shall include the following data elements:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses.

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee.

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses.

(v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(vi) A list of the Federal awarding agencies which will receive a copy of the reporting package pursuant to § 99.320(d)(2).

(vii) A yes or no statement as to whether the auditee qualified as a low-risk auditee under § 99.530.

(viii) The dollar threshold used to distinguish between Type A and Type B programs as defined in § 99.520(b).

(ix) The Catalog of Federal Domestic Assistance (CFDA) number for each Federal program, as applicable.

(x) The name of each Federal program and identification of each major program. Individual programs within a cluster of programs should be listed in the same level of detail as they are listed in the schedule of expenditures of Federal awards.

(xi) The amount of expenditures in the schedule of expenditures of Federal awards associated with each Federal program.

(xii) For each Federal program, a yes or no statement as to whether there are audit findings in each of the following types of compliance requirements and the total amount of any questioned costs:

(A) Activities allowed or unallowed.

(B) Allowable costs/cost principles.

(C) Cash management.

(D) Davis-Bacon Act.

(E) Eligibility.

(F) Equipment and real property management.

(G) Matching, level of effort, earmarking.

(H) Period of availability of Federal funds.

(I) Procurement and suspension and debarment.

(J) Program income.

(K) Real property acquisition and relocation assistance.

(L) Reporting.

(M) Subrecipient monitoring.

(N) Special tests and provisions.

(xiii) Auditee Name, Employer Identification Number(s), Name and Title of Certifying Official, Telephone Number, Signature, and Date.

(xiv) Auditor Name, Name and Title of Contact Person, Auditor Address, Auditor Telephone Number, Signature, and Date.

(xv) Whether the auditee has either a cognizant or oversight agency for audit.

(xvi) The name of the cognizant or oversight agency for audit determined in accordance with § 99.400(a) and § 99.400(b), respectively.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor shall complete the applicable sections of the form. The auditor shall sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the data elements prescribed by OMB.

(c) *Reporting package.* The reporting package shall include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § 99.310(a) and § 99.310(b), respectively;

(2) Summary schedule of prior audit findings discussed in § 99.315(b);

(3) Auditor's report(s) discussed in § 99.505; and

(4) Corrective action plan discussed in § 99.315(c).

(d) *Submission to clearinghouse.* All auditees shall submit to the Federal clearinghouse designated by OMB the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section for:

(1) The Federal clearinghouse to retain as an archival copy; and

(2) Each Federal awarding agency when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the Federal awarding agency provided directly or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the Federal awarding agency provided directly.

(e) *Additional submission by subrecipients.* (1) In addition to the requirements discussed in paragraph (d) of this section, auditees that are also subrecipients shall submit to each pass-through entity one copy of the reporting package described in paragraph (c) of this section for each pass-through entity when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the pass-through entity provided or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the pass-through entity provided.

(2) Instead of submitting the reporting package to a pass-through entity, when a subrecipient is not required to submit a reporting package to a pass-through entity pursuant to paragraph (e)(1) of this section, the subrecipient shall provide written notification to the pass-through entity that: an audit of the subrecipient was conducted in accordance with this part (including the period covered by the audit and the name, amount, and CFDA number of the Federal award(s) provided by the pass-through entity); the schedule of findings and questioned costs disclosed no audit findings relating to the Federal award(s) that the pass-through entity provided; and, the summary schedule of prior audit findings did not report on the status of any audit findings relating to the Federal award(s) that the pass-through entity provided. A subrecipient may submit a copy of the reporting package described in paragraph (c) of this section to a pass-through entity to comply with this notification requirement.

(f) *Requests for report copies.* In response to requests by a Federal agency or pass-through entity, auditees shall submit the appropriate copies of the reporting package described in paragraph (c) of this section and, if requested, a copy of any management letters issued by the auditor.

(g) *Report retention requirements.* Auditees shall keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the Federal clearinghouse designated by OMB. Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.

(h) *Clearinghouse responsibilities.* The Federal clearinghouse designated by OMB shall distribute the reporting packages received in accordance with paragraph (d)(2) of this section and § 99.235(c)(3) to applicable Federal awarding agencies, maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees which have not submitted the required data collection forms and reporting packages.

(i) *Clearinghouse address.* The address of the Federal clearinghouse currently designated by OMB is: Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132.

(j) *Electronic filing.* Nothing in this part shall preclude electronic submissions to the Federal clearinghouse in such manner as may be approved by OMB. With OMB approval, the Federal clearinghouse may pilot test methods of electronic submissions.

Subpart D—Federal Agencies and Pass-through Entities

§ 99.400 Responsibilities.

(a) *Cognizant agency for audit responsibilities.* Recipients expending more than $25 million a year in Federal awards shall have a cognizant agency for audit. The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency for audit assignment. To provide for continuity of cognizance, the determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 1995, 2000, 2005, and every fifth year thereafter. For example, audit cognizance for periods ending in 1997 through 2000 will be determined based on Federal awards expended in 1995. (However, for States and local governments that expend more than $25 million a year in Federal awards and have previously assigned cognizant agencies for audit, the requirements of this paragraph are not applicable until fiscal years beginning after June 30, 2000.) Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency which provides substantial direct funding and agrees to be the cognizant agency for audit. Within 30 days after any reassignment, both the old and the new cognizant agency for audit shall notify the auditee, and, if known, the auditor of the reassignment. The cognizant agency for audit shall:

(1) Provide technical audit advice and liaison to auditees and auditors.

(2) Consider auditee requests for extensions to the report submission due date required by § 99.320(a). The cognizant agency for audit may grant extensions for good cause.

(3) Obtain or conduct quality control reviews of selected audits made by non-Federal auditors, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations.

(5) Advise the auditor and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit shall notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(6) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon audits performed in accordance with this part.

(7) Coordinate a management decision for audit findings that affect the Federal programs of more than one agency.

(8) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(9) For biennial audits permitted under § 99.220, consider auditee requests to qualify as a low-risk auditee under § 99.530(a).

(b) *Oversight agency for audit responsibilities.* An auditee which does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § 99.105. The oversight agency for audit:

(1) Shall provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) *Federal awarding agency responsibilities.* The Federal awarding agency shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each recipient of the CFDA title and number, award name and number, award year, and if the award is for R&D. When some of this information is not available, the Federal agency shall provide information necessary to clearly describe the Federal award.

(2) Advise recipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements.

(3) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.

(4) Provide technical advice and counsel to auditees and auditors as requested.

(5) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

(6) Assign a person responsible for providing annual updates of the compliance supplement to OMB.

(d) Pass-through entity responsibilities. A pass-through entity shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.

(2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

(3) Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

(4) Ensure that subrecipients expending $300,000 or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.

(5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

(6) Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

(7) Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

§ 99.405 Management decision.

(a) *General.* The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.

(b) *Federal agency.* As provided in § 99.400(a)(7), the cognizant agency for audit shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § 99.400(c)(5), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the Federal agencies concerned.

(c) *Pass-through entity.* As provided in § 99.400(d)(5), the pass-through entity shall be responsible for making the management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) *Time requirements.* The entity responsible for making the management decision shall do so within six months of receipt of the audit report. Corrective action should be initiated within six months after receipt of the audit report and proceed as rapidly as possible.

(e) *Reference numbers.* Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with § 99.510(c).

Subpart E—Auditors

§ 99.500 Scope of audit.

(a) *General.* The audit shall be conducted in accordance with GAGAS. The audit shall cover the entire operations of the auditee; or, at the option of the auditee, such audit shall include a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered Federal awards during such fiscal year, provided that each such audit shall encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which shall be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards shall be for the same fiscal year.

(b) *Financial statements.* The auditor shall determine whether the financial statements of the auditee are presented fairly in all material respects in conformity with generally accepted accounting principles. The auditor shall

also determine whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the auditee's financial statements taken as a whole.

(c) *Internal control.* (1) In addition to the requirements of GAGAS, the auditor shall perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk for major programs.

(2) Except as provided in paragraph (c)(3) of this section, the auditor shall:

(i) Plan the testing of internal control over major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(2)(i) of this section.

(3) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(2) of this section are not required for those compliance requirements. However, the auditor shall report a reportable condition (including whether any such condition is a material weakness) in accordance with § 99.510, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) *Compliance.* (1) In addition to the requirements of GAGAS, the auditor shall determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should use the types of compliance requirements contained in the compliance supplement as guidance for identifying the types of compliance requirements to test, and determine the requirements governing the Federal program by reviewing the provisions of contracts and grant agreements and the laws and regulations referred to in such contracts and grant agreements.

(4) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance.

(e) *Audit follow-up.* The auditor shall follow-up on prior audit findings; perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § 99.315(b); and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor shall perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) *Data collection form.* As required in § 99.320(b)(3), the auditor shall complete and sign specified sections of the data collection form.

§ 99.505 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) A report on internal control related to the financial statements and major programs. This report shall describe the scope of testing of internal control and the results of the tests, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements. This report shall also include an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which shall include the following three components:

(1) A summary of the auditor's results which shall include:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses;

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee;

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses;

(v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings which the auditor is required to report under § 99.510(a);

(vii) An identification of major programs;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 99.520(b); and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under § 99.530.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which shall include audit findings as defined in § 99.510(a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) which relate to the same issue should be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings which relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this

section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

§ 99.510 Audit findings.

(a) Audit findings reported. The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(1) Reportable conditions in internal control over major programs. The auditor's determination of whether a deficiency in internal control is a reportable condition for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement. The auditor shall identify reportable conditions which are individually or cumulatively material weaknesses.

(2) Material noncompliance with the provisions of laws, regulations, contracts, or grant agreements related to a major program. The auditor's determination of whether a noncompliance with the provisions of laws, regulations, contracts, or grant agreements is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement.

(3) Known questioned costs which are greater than $10,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor shall also report known questioned costs when likely questioned costs are greater than $10,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs which are greater than $10,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program which is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program which is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than $10,000, then the auditor shall report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for major programs is other than an unqualified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to make an additional reporting when the auditor confirms that the fraud was reported outside of the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 99.315(b) materially misrepresents the status of any prior audit finding.

(b) A*udit finding detail.* Audit findings shall be presented in sufficient detail for the auditee to prepare a corrective action plan and take corrective action and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information shall be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award number, is not available, the auditor shall provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including statutory, regulatory, or other citation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) Identification of questioned costs and how they were computed.

(5) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified shall be related to the universe and the number of cases examined and be quantified in terms of dollar value.

(6) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action.

(7) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(8) Views of responsible officials of the auditee when there is disagreement with the audit findings, to the extent practical.

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

§ 99.515 Audit working papers.

(a) *Retention of working papers.* The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, or pass-through entity to extend the retention period. When the auditor is aware that the Federal awarding agency, pass-through entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding for guidance prior to destruction of the working papers and reports.

(b) *Access to working papers.* Audit working papers shall be made available upon request to the cognizant or oversight agency for audit or its designee, a Federal agency providing direct or indirect funding, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to working papers includes the right of Federal agencies to obtain copies of working papers, as is reasonable and necessary.

§ 99.520 Major program determination.

(a) *General.* The auditor shall use a risk-based approach to determine which Federal programs are major programs. This risk-based approach shall include consideration of: Current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (i) of this section shall be followed.

(b) *Step 1.* (1) The auditor shall identify the larger Federal programs,

which shall be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the larger of:

(i) $300,000 or three percent (.03) of total Federal awards expended in the case of an auditee for which total Federal awards expended equal or exceed $300,000 but are less than or equal to $100 million.

(ii) $3 million or three-tenths of one percent (.003) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed $100 million but are less than or equal to $10 billion.

(iii) $30 million or 15 hundredths of one percent (.0015) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed $10 billion.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section shall be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) should not result in the exclusion of other programs as Type A programs. When a Federal program providing loans significantly affects the number or size of Type A programs, the auditor shall consider this Federal program as a Type A program and exclude its values in determining other Type A programs.

(4) For biennial audits permitted under § 99.220, the determination of Type A and Type B programs shall be based upon the Federal awards expended during the two-year period.

(c) *Step 2.* (1) The auditor shall identify Type A programs which are low-risk. For a Type A program to be considered low-risk, it shall have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, it shall have had no audit findings under § 99.510(a). However, the auditor may use judgment and consider that audit findings from questioned costs under § 99.510(a)(3) and § 99.510(a)(4), fraud under § 99.510(a)(6), and audit follow-up for the summary schedule of prior audit findings under § 99.510(a)(7) do not preclude the Type A program from being low-risk. The auditor shall consider: the criteria in § 99.525(c), § 99.525(d)(1), § 99.525(d)(2), and § 99.525(d)(3); the results of audit follow-up; whether any changes in personnel or systems affecting a Type A program have significantly increased risk; and apply professional judgment in determining whether a Type A program is low-risk.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program at certain recipients may not be considered low-risk. For example, it may be necessary for a large Type A program to be audited as major each year at particular recipients to allow the Federal agency to comply with the Government Management Reform Act of 1994 (31 U.S.C. 3515). The Federal agency shall notify the recipient and, if known, the auditor at least 180 days prior to the end of the fiscal year to be audited of OMB's approval.

(d) *Step 3.* (1) The auditor shall identify Type B programs which are high-risk using professional judgment and the criteria in § 99.525. However, should the auditor select Option 2 under Step 4 (paragraph (e)(2)(i)(B) of this section), the auditor is not required to identify more high-risk Type B programs than the number of low-risk Type A programs. Except for known reportable conditions in internal control or compliance problems as discussed in § 99.525(b)(1), § 99.525(b)(2), and § 99.525(c)(1), a single criteria in § 99.525 would seldom cause a Type B program to be considered high-risk.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed the larger of:

(i) $100,000 or three-tenths of one percent (.003) of total Federal awards expended when the auditee has less than or equal to $100 million in total Federal awards expended.

(ii) $300,000 or three-hundredths of one percent (.0003) of total Federal awards expended when the auditee has more than $100 million in total Federal awards expended.

(e) *Step 4.* At a minimum, the auditor shall audit all of the following as major programs:

(1) All Type A programs, except the auditor may exclude any Type A programs identified as low-risk under Step 2 (paragraph (c)(1) of this section).

(2)(i) High-risk Type B programs as identified under either of the following two options:

(A) Option 1. At least one half of the Type B programs identified as high-risk under Step 3 (paragraph (d) of this section), except this paragraph (e)(2)(i)(A) does not require the auditor to audit more high-risk Type B programs than the number of low-risk Type A programs identified as low-risk under Step 2.

(B) Option 2. One high-risk Type B program for each Type A program identified as low-risk under Step 2.

(ii) When identifying which high-risk Type B programs to audit as major under either Option 1 or 2 in paragraph (e)(2)(i)(A) or (B), the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This paragraph (e)(3) may require the auditor to audit more programs as major than the number of Type A programs.

(f) *Percentage of coverage rule.* The auditor shall audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 50 percent of total Federal awards expended. If the auditee meets the criteria in § 99.530 for a low-risk auditee, the auditor need only audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 25 percent of total Federal awards expended.

(g) *Documentation of risk.* The auditor shall document in the working papers the risk analysis process used in determining major programs.

(h) *Auditor's judgment.* When the major program determination was performed and documented in accordance with this part, the auditor's judgment in applying the risk-based approach to determine major programs shall be presumed correct. Challenges by Federal agencies and pass-through entities shall only be for clearly improper use of the guidance in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor shall consider this guidance in determining major programs in audits not yet completed.

(i) *Deviation from use of risk criteria.* For first-year audits, the auditor may elect to determine major programs as all Type A programs plus any Type B programs as necessary to meet the percentage of coverage rule discussed in paragraph (f) of this section. Under this option, the auditor would not be required to perform the procedures discussed in paragraphs (c), (d), and (e) of this section.

(1) A first-year audit is the first year the entity is audited under this part or the first year of a change of auditors.

(2) To ensure that a frequent change of auditors would not preclude audit of high-risk Type B programs, this election for first-year audits may not be used by an auditee more than once in every three years.

§ 99.525 Criteria for Federal program risk.

(a) *General.* The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the Federal program. The auditor shall use auditor judgment and consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) *Current and prior audit experience.* (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor shall consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(iii) The extent to which computer processing is used to administer Federal programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) *Oversight exercised by Federal agencies and pass-through entities.* (1) Oversight exercised by Federal agencies or pass-through entities could indicate risk. For example, recent monitoring or other reviews performed by an oversight entity which disclosed no significant problems would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs which are higher risk. The OMB plans to provide this identification in the compliance supplement.

(d) *Inherent risk of the Federal program.* (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have a high-risk for time and effort reporting, but otherwise be at low-risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, laws, regulations, or the provisions of contracts or grant agreements may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

§ 99.530 Criteria for a low-risk auditee.

An auditee which meets all of the following conditions for each of the preceding two years (or, in the case of biennial audits, preceding two audit periods) shall qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 99.520:

(a) Single audits were performed on an annual basis in accordance with the provisions of this part. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee, unless agreed to in advance by the cognizant or oversight agency for audit.

(b) The auditor's opinions on the financial statements and the schedule of expenditures of Federal awards were unqualified. However, the cognizant or oversight agency for audit may judge that an opinion qualification does not affect the management of Federal awards and provide a waiver.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS. However, the cognizant or oversight agency for audit may judge that any identified material weaknesses do not affect the management of Federal awards and provide a waiver.

(d) None of the Federal programs had audit findings from any of the following in either of the preceding two years (or, in the case of biennial audits, preceding two audit periods) in which they were classified as Type A programs:

(1) Internal control deficiencies which were identified as material weaknesses;

(2) Noncompliance with the provisions of laws, regulations, contracts, or grant agreements which have a material effect on the Type A program; or

(3) Known or likely questioned costs that exceed five percent of the total Federal awards expended for a Type A program during the year.

Signed at Washington, D.C. this 11th day of March, 1999.

Alexis M. Herman,

Secretary of Labor.

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Thursday
March 25, 1999

Part IV

Department of Education

Office of Special Education and Rehabilitative Services; Proposed Priority; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Notice of Proposed Priority

SUMMARY: The Secretary proposes a priority for the Special Education—Training and Information for Parents of Children with Disabilities program administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act (IDEA), as amended. The Secretary may use this priority in Fiscal Year 1999 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve results for children with disabilities. The proposed priority is intended to ensure wide and effective use of program funds.

DATES: Comments must be received on or before April 26, 1999.

ADDRESSES: All comments concerning this proposed priority should be addressed to: Debra Sturdivant, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3521, Switzer Building, Washington, DC 20202–2641. Comments may also be sent through the Internet: comments@ed.gov

You must include the term ''Training and Information for Parents of Children with Disabilities'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: For further information regarding this proposed priority contact Debra Sturdivant. Telephone: (202) 205–8038. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8953. FAX: (202) 205–8105 (FAX is the preferred method for requesting information). Internet: Debra__Sturdivant@ed.gov

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by calling (202) 205–8113.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for this priority. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895.

SUPPLEMENTARY INFORMATION: This notice contains one proposed priority under the Training and Information for Parents of Children with Disabilities program authorized by IDEA. This proposed priority supports the National Education Goals by helping to improve results for children with disabilities.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project depends on the availability of funds, the content of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Purpose of Program

The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Under section 682(e)(1) and (e)(2) of IDEA, the Secretary is required to: (1) make at least one award to a parent organization in each State, unless the Secretary does not receive an application from such an organization in each State of sufficient quality to warrant approval; and (2) select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.

Eligible applicants for awards under this priority are parent organizations, as defined in section 682(g) of IDEA. A parent organization is a private nonprofit organization (other than an institution of higher education) that (1) has a board of directors, the parent and professional members of which are broadly representative of the population to be served and the majority of whom are parents of children with disabilities, that includes individuals with disabilities working in the fields of special education, related services, and early intervention; or (2) if the private nonprofit organization does not have such a board, it has a membership that represents the interest of individuals with disabilities and must establish a special governing board with the same requirements of paragraph (1) and develops a memorandum of understanding between this special governing board and the board of directors of the organization that clearly outlines the relationship between the board and the committee and the decision making responsibilities and authority of each.

Priority

Under section 682 of the Act, and 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only those applications that meet this proposed priority:

Proposed Absolute Priority—Parent Training and Information Centers (84.328M)

Background

The IDEA Amendments of 1997 strengthen the role of parents and increase their involvement in decisions about their children's education. Other changes in the law, increased dependence on and the use of technology, and a greater emphasis on networking and promoting partnerships between parents and school personnel require the PTI centers to be strengthened and refocused. In order to allocate resources more equitably, create a unified system of service delivery, and provide the broadest coverage for the parents and families in every State, the Department will begin to make awards in four(4)-year cycles for each State. Beginning in FY 1999, applications for awards will be accepted for the following States: Arizona, Delaware, District of Columbia, Iowa, Indiana, Massachusetts, Minnesota, Mississippi, Missouri, South Dakota, Virginia, Washington, and Wyoming.

In addition to the above State awards, the Secretary intends to fund a maximum of two awards. One award that focuses on the needs of Native-American families who have children with disabilities and one award that focuses on the needs of Military families who have children with disabilities.

Until the first four(4)-year cycle is completed, there may be a need to have an interim schedule for awards in States where there are more than one PTI and their current awards do not have the same end date. Therefore, we will hold a competition for one or more awards in these States for the time periods needed to match the end date of the last Center funded. Applications will be accepted for FY 1999 interim competitions for the following States: (1) California—3-year award, (2) Illinois—3-year award, and (3) New York—2-year award.

Priority

The Secretary proposes to establish an absolute priority to support parent training and information centers that—

(a) Provide training and information that meets the training and information needs of parents of children with disabilities in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified;

(b) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under IDEA, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in IDEA;

(c) Serve the parents of infants, toddlers, and children with the full range of disabilities;

(d) Assist parents to—

(1) Better understand the nature of their children's disabilities and their educational and developmental needs;

(2) Communicate effectively with personnel responsible for providing special education, early intervention, and related services;

(3) Participate in decision making processes and the development of individualized education programs and individualized family service plans;

(4) Obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

(5) Understand the provisions of the Act for the education of, and the provision of early intervention services to, children with disabilities; and

(6) Participate in school reform activities;

(f) Contract with the State education agency, if the State elects to contract with the parent training and information center, for the purpose of meeting with parents who choose not to use the mediation process to encourage the use, and explain the benefits, of mediation consistent with sections 615(e)(2)(B) and (D) of IDEA;

(g) Network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 685(d) of IDEA, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities;

(h) Establish cooperative relations with the Community Parent Resource Center or Centers in their State in accordance with section 683(b)(3) of IDEA; and

(i) Annually report to the Secretary on—

(1) The number of parents to whom it provided information and training in the most recently concluded fiscal year, and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities; and

(j) If there is more than one parent center in a particular State, coordinate their activities to ensure the most effective assistance to parents in that State.

An applicant must identify the strategies it will undertake—

(a) To ensure that the needs for training and information of underserved parents of children with disabilities in the areas to be served are effectively met, particularly in underserved areas of the State; and

(b) To work with the community-based organizations, particularly in the underserved areas of the State.

A parent training and information center that receives assistance under this absolute priority may also conduct the following activities—

(a) Provide information to teachers and other professionals who provide special education and related services to children with disabilities;

(b) Assist students with disabilities to understand their rights and responsibilities on reaching the age of majority, as included under section 615(m) of IDEA; and

(c) Assist parents of children with disabilities to be informed participants in the development and implementation of the State improvement plan under IDEA.

A project's budget must include funds to attend a two-day Project Directors' meeting to be held in Washington, D.C. each year of the project.

In order to demonstrate eligibility to receive a grant, an applicant must describe how its board or special governing committee meets the criteria for a parent organization in section 682(g) of IDEA. In addition, any parent organization that establishes a special governing committee under section 682(g)(2) of IDEA must demonstrate that the by-laws of its organization allows the governing committee to be responsible for operating the project (consistent with existing fiscal policies of its organization).

Current funding levels, population of school age children, and the relative proportion of children living in poverty will be considered in determining funding levels for grants.

Intergovernmental Review

The Training and Information for Parents of Children with Disabilities program in this notice is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3524, 300 C Street, SW, Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

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Note: The official version of a document is the document published in the **Federal Register**.

(Program Authority: 20 U.S.C. 1482)

(Catalog of Federal Domestic Assistance Number: Training and Information for Parents of Children with Disabilities, (84.328))

Dated: March 19, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–7243 Filed 3–24–99; 8:45 am]

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federal register

Thursday
March 25, 1999

Part V

Department of Health and Human Services

Public Health Service

42 CFR Part 36

Indian Child Protection and Family Violence Prevention Act Minimum Standards of Character; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 36

RIN 0917–AA02

Indian Child Protection and Family Violence Prevention Act Minimum Standards of Character

AGENCY: Indian Health Service, Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Indian Health Service (IHS) is proposing to establish regulations as mandated by section 408 of the Indian Child Protection and Family Violence Prevention Act (the ''Act''), that prescribe minimum standards of character and suitability of employment criteria for individuals who are employed or are being considered for employment in positions with duties and responsibilities that involve regular contact with or control over Indian children.

DATES: Comments must be received on or before May 24, 1999.

ADDRESSES: Written comments may be sent to Betty J. Penn, Regulations Officer, Indian Health Service, Twinbrook Metro Plaza, Suite 450, 12300 Twinbrook Parkway, Rockville, Maryland 20852. Comments will be made available for public inspection at this address from 8:30 a.m. to 5:00 p.m., Monday–Friday beginning approximately two weeks after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Ramona Williams, Child Protection Coordinator, Office of Mental Health/Social Services, Indian Health Service, 5300 Homestead Road, NE., Albuquerque, New Mexico 87110, (505) 248–4245. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The IHS is proposing regulations as mandated by section 408 of the Act, that prescribe minimum standards of character for individuals with duties and responsibilities that involve regular contact with or control over Indian children. The minimum standards of character prescribed in these proposed rules can be found in § 36.405.

The Act requires that minimum standards of character prescribed by these regulations ensure that no individuals appointed to positions involving regular contact with or control over Indian children shall have been found guilty of or entered a plea of nolo contendere or guilty to an offense under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; or crimes against persons. The IHS is proposing that the minimum standards of character have been met only after individuals in positions involving regular contact with or control over Indian children have been the subject of a satisfactory background investigation, and it has been determined that these individuals have not been found guilty of or entered a plea of nolo contendere or guilty to an offense under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; or crimes against persons.

If an individual has been determined to be unsuitable for employment in a position involving regular contact with or control over Indian children, the IHS is proposing that adjudicative standards may be used to ensure that the individual is suitable for employment in a position, if available, that does not involve regular contact with or control over Indian children. This would require a determination that the individual's prior conduct will not interfere with the performance of duties and will not create a potential risk to the safety and well-being of any Indian children.

The Bureau of Indian Affairs (BIA) published final regulations at 25 CFR part 63 establishing minimum standards of character and suitability of employment as required by the Act. The IHS is proposing minimum standards of character similar to those of the BIA so that similar standards will be applied by each agency. The Act requires that tribes or tribal organizations who receive funds under the Indian Self-Determination and Education Assistance Act (ISDEA), Pub. L. 93–638, employ individuals in positions involving regular contact with or control over Indian children only if the individuals meet standards of character no less stringent than those prescribed under these regulations. Thus, the minimum standards of character as proposed by these rules will become the basis for tribes or tribal organizations to use when developing their own minimum standards of character and suitability for employment of individuals.

Federal employees are regularly subject to the additional suitability criteria contained in 5 CFR part 731 as a condition of employment. In addition, section 231 of the Crime Control Act of 1990, Pub. L. 101–647, 42 U.S.C. 13041, provides that an individual employed by a Federal agency by direct hire or under contract may be disqualified from consideration or continuing employment if such individual has been convicted of a sex crime, an offense involving a child victim or a drug felony, or any other crime if such conviction bears on an individual's fitness to have responsibility for the safety and well-being of children.

Tribes or tribal organizations may but are not required to apply additional criteria in determining whether an individual is suitable for a position with duties and responsibilities that involve regular contact with or control over Indian children. Any additional suitability criteria beyond the minimum standards of character required by these proposed rules would be determined by each individual tribe or tribal organization in accordance with its own personnel policies and procedures. Standards of character established by tribes or tribal organizations should be used to determine whether an individual is suitable for employment in a position that permits contact with or control over Indian children. If not, the individual may only be placed in a position that does not permit regular contact with or control over Indian children.

Under the Act, Indian tribes or tribal organizations are responsible for identifying individuals in positions within their tribal programs whose duties and responsibilities involve regular contact with or control over Indian children. The Act requires tribes or tribal organizations to conduct background investigations of these individuals. Tribes or tribal organizations are not required to follow the United States Office of Personnel Management (OPM) requirements for background investigations for Federal employees. However, in order to meet the minimum standards of character under these proposed rules, tribes or tribal organizations must ensure that background investigations are completed on individuals with duties and responsibilities that involve regular contact with or control over Indian children. The background investigations require a criminal history background check, including a fingerprint check through the Criminal Justice Information Services Division of the Federal Bureau of Investigation (FBI), under procedures approved by the FBI, and inquiries to State and tribal law enforcement agencies. The IHS has entered into an interagency agreement with the BIA to assist tribes and tribal organizations to access fingerprint/National Criminal History checks through existing FBI files and data bases of individuals being considered for or

placed in positions identified by the tribal programs as having regular contact with or control over Indian children.

The IHS presented an earlier draft of these proposed rules at the 14th Annual National Indian Health Board Consumer Conference. In addition, the IHS provided a copy of the draft proposed rules to the tribal leader of each federally recognized tribe for their review and comment. These proposed rules were modified to reflect the comments received.

Pending publication of these proposed rules, the IHS issued policy guidance requiring IHS personnel staff to identify positions involving regular contact with or control over Indian children, to conduct background investigations of individuals in these positions, and to identify those individuals who do not meet the minimum standards of character under section 408 of the Act. These proposed rules have taken into consideration the agency's experience in implementing section 408 of the Act.

The Department has determined that where an individual has been convicted of or pleaded guilty or nolo contendere to one of the enumerated crimes in section 408 of the Act, the IHS does not have the discretion to retain that individual in a position involving regular contact with or control over Indian children. We believe this is true regardless of such factors as the date of incident, circumstances of incident, rehabilitation or other relevant factors that might result in a determination that the individual is not a potential risk to Indian children. However, the individual must be given an opportunity to explain, deny, or refute unfavorable and incorrect information before an adjudication is final. The IHS would have the discretion to remove that individual to a position not involving regular contact with or control over Indian children after a determination is made that Indian children will not be placed at risk.

There are several terms in section 408 of the Act that were not defined by Congress. The IHS is proposing to define these terms in these regulations to remove any ambiguity created by the statute. The IHS has defined these terms based on the agency's experience in implementing section 408 of the Act.

The term *regular contract with or control over Indian children* is not defined in the Act. The IHS has defined the term in these proposed rules to apply to those positions where the responsibility for Indian children is within the scope of the individual's duties and responsibilities or where the individual has access to Indian children on a recurring or foreseeable basis that could potentially place an Indian child as risk. The IHS has developed a list of possible positions within the agency that might involve regular contact with or control over Indian children. The IHS has discretion to identify those positions on this list, on a case-by-case basis, to determine whether the duties and responsibilities of a particular position involve regular contact with or control over Indian children as defined by these proposed rules.

In addition, Congress did not define the terms crimes against persons or crimes of violence. The IHS is proposing to define the terms crimes against persons and crimes of violence for purposes of these proposed rules. The Act does not distinguish between felonies and misdemeanors, and thus, it has been determined that the Department does not have discretion to distinguish between felonies and misdemeanors in defining these terms. For example, if a crime is categorized as a crime against persons under Federal, State, or tribal law, a conviction or plea (even if a misdemeanor) would require termination or bar the individual from employment in a position involving regular contact with or control over Indian children. In determining whether an offense falls within these categories, reference may be made to the applicable Federal, State, or tribal law under which the individual was convicted or pleaded guilty or nolo contendere.

The IHS welcomes comments regarding these proposed rules from the public and especially the tribes and tribal organizations affected by them. Interested persons may submit written comments regarding the proposed rule to the location identified in the **ADDRESSES** section of this document.

Executive Order 12866

This proposed rule is a significant regulatory action under Executive Order (E.O.) 12866 and requires review by the Office of Management and Budget (OMB). Depending upon the number of positions for which determinations of suitability for employment are required, the cost of the background investigations (including the cost of each FBI fingerprint check) may have an economic effect on each tribal government and tribal organization under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.* and require additional outlays by tribal governments, tribal organizations, and the Federal Government. These costs are not projected to exceed $100 million. The cost of background investigation of Federal employees by the OPM are estimated to be $475,000. The cost of FBI fingerprint checks requested by tribes is approximately $20,000. In addition, the IHS is expected to expend $90,000 per year to support one staff position and related costs associated with tribal requests for FBI fingerprint checks processed through the BIA.

Executive Order 12612: Federalism

The Department has determined that this proposed rule does not have significant federalism effects under E.O. 12612 and will not interfere with the roles, rights and responsibilities of states.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the OMB for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

Whether the information collection is necessary and useful to carry out the proper functions of the agency;

The accuracy of the agency's estimate of the information collection burden;

The quality, utility, and clarity of the information to be collected; and

Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting comment on each of these issues for the proposed information collection requirements discussed below.

Sections 36.410—What Questions Must the IHS Ask as Part of the Background Investigation?

All applicants for a position involving regular contact with or control over Indian children are required to undergo background investigations to determine whether they meet minimum standards of character for that position. This section describes questions that will be asked as part of the background investigation. Applicants must state whether they have been arrested, charged, convicted of or plead guilty to certain enumerated crimes. In addition, the individuals will be required to sign, under penalty of perjury, a statement verifying the truth of all of the information provided in the employment application and acknowledging that knowingly falsifying or concealing information is subject to fine or imprisonment, or both.

Finally, the applicant must sign an informed consent form authorizing a criminal record check.

The IHS anticipates there will be approximately 100 respondents who will require no more than 15 minutes each to respond to these questions and sign the required forms.

For comments that relate to information collection requirements, mail a copy of comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attention Allison Herron Eydt, IHS Desk Officer.

List of Subjects in 42 CFR Part 36

American Indians, Alaska Natives, Children, Child health, Employment.

Dated: September 21, 1998.

Michael H. Trujillo,

Assistant Surgeon General, Director, Indian Health Service.

Approved: December 10, 1998.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set out in the preamble, the Department proposes to add subpart K to Part 36 of Title 42, CFR, as follows:

Subpart K—Indian Child Protection and Family Violence Prevention

Sec.

36.401 Purpose.
36.402 Policy.
36.403 Definitions.
36.404 What does the Indian Child Protection and Family Violence Prevention Act require of the IHS and Indian tribes or tribal organizations receiving funds under the ISDEA?
36.405 What are the minimum standards of character for individuals placed in, or applying for, a position that involves regular contact with or control over Indian children?
36.406 What are other factors, in addition to the minimum standards of character, that may be considered in determining placement of an individual in a position that involves regular contact with or control over Indian children?
36.407 What positions require a background investigation and determination of suitability for employment or retention?
36.408 Who conducts the background investigation and prepares determinations of suitability for employment?
36.409 Are the requirements for IHS adjudication different from the requirements for Indian tribes and tribal organizations?
36.410 What questions must the IHS ask as part of the background investigation?
36.411 What protections must the IHS and tribes or tribal organizations provide to individuals undergoing a background investigation?
36.412 How does the IHS determine suitability for employment and efficiency of service?
36.413 What rights does an applicant, volunteer, or employee have during this process?
36.414 When should the IHS deny employment or dismiss an employee?
36.415 What must the IHS do if an individual has been charged with an offense but the charge is pending or no disposition has been made by a court?

Authority: 25 U.S.C. 3201; 5 U.S.C. 301; 42 U.S.C. 13041.

Subpart K—Indian Child Protection and Family Violence Prevention

§ 36.401 Purpose.

The purpose of the regulations in this subpart is to establish minimum standards of character to ensure that individuals having regular contact with or control over Indian children have not been convicted of certain types of crimes or acted in a manner that placed others at risk or raised questions about their trustworthiness as mandated by the Indian Child Protection and Family Violence Prevention Act of 1990, Public Law 101–630, 104 Stat. 4544, 25 U.S.C. 3201–3211.

§ 36.402 Policy.

In enacting the Indian Child Protection and Family Violence Prevention Act, the Congress recognized there is no resource more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe. The minimum standards of character and suitability of employment for individuals ensure that Indian children are protected. In order to protect Indian children, the IHS has established minimum standards of character requiring completion of a satisfactory background investigation that ensures that no individuals who have been found guilty of, or entered a plea of nolo contendere or guilty to, any offense under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; or crimes against persons, are placed in positions involving regular contact with or control over Indian children.

§ 36.403 Definitions

Crimes against persons means an offense that has an element the use, attempted use, or threatened use of physical force or other abuse of a person and includes, but is not limited to, homicide; assault; kidnapping; false imprisonment; reckless endangerment; robbery; rape; sexual assault, molestation, exploitation, contact, or prostitution; and other sexual offenses. In determining whether an offense falls within this category, reference may be made to the applicable Federal, State, or tribal law under which the individual was convicted or pleaded guilty or nolo contendere.

Crimes of violence means:

(1) An offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(2) Any other offense that is a felony and that, by its nature, involves substantial risk that physical force against the person or property of another may be used in the course of committing the offense. In determining whether an offense falls within this category, reference may be made to the applicable Federal, State, or tribal law under which the individual was convicted or pleaded guilty or nolo contendere.

Indian means any individual who is a member of an Indian tribe, as defined in this section.

Indian child means any unmarried person under the age of eighteen who is either a member of an Indian tribe or eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Individuals means persons with duties and responsibilities that involve regular contact with or control over Indian children and includes but is not limited to the following:

(1) Employees in the competitive or excepted service, the Commissioned corps, or the Senior Executive Service in the IHS;

(2) Individuals who perform service for or under the supervision of the IHS while being permanently assigned to another IHS office or to another organization, such as a Federal agency, State, or tribe;

(3) Individuals who volunteer to perform services for or under the supervision of the IHS;

(4) Individuals who contract with the IHS to perform services in IHS facilities.

Must is used in place of shall and indicates a mandatory or imperative act or requirement.

Regular contact with or control over an Indian child means responsibility for an Indian child within the scope of the individual's duties and responsibilities or access to Indian children on a recurring and foreseeable basis that could potentially place an Indian child at risk.

Tribal organization as defined in the ISDEA, means the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

§ 36.404 What does the Indian Child Protection and Family Violence Prevention Act require of the IHS and Indian tribes or tribal organizations receiving funds under the ISDEA?

(a) The IHS must compile a list of all authorized positions with duties and responsibilities that involve regular contact with or control over Indian children; investigate the character of each individual who is employed or is being considered for employment in such a position; and prescribe minimum standards of character that each individual must meet to be appointed to such positions.

(b) All Indian tribes or tribal organizations receiving funds under the authority of the ISDEA must identify those positions that permit regular contact with or control over Indian children; conduct an investigation of the character of each individual who is employed or is being considered for employment in a position that involves regular contact with or control over Indian children; and employ only individuals who meet standards of character that are no less stringent than those prescribed for the IHS.

§ 36.405 What are the minimum standards of character for individuals placed in, or applying for, a position that involves regular contact with or control over Indian children?

The minimum standards of character shall mean a benchmark of moral, ethical, and emotional strengths established by character traits and past conduct to ensure that the individual is competent to complete his/her job without harm to Indian children. The minimum standards of character shall be considered met only after the individual has been the subject of a satisfactory background investigation. The background investigation shall include a review of:

(a) The individual's trustworthiness, through inquiries with the individual's references and places of employment and education;

(b) A criminal history background check, which includes a fingerprint check through the Criminal Justice Information Services Division of the FBI, under procedures approved by the FBI, and inquiries to State and tribal law enforcement agencies for residence for the previous 5 years listed on the individual's application; and

(c) A determination as to whether the individual has been found guilty of or entered a plea of nolo contendere or guilty to any offense under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; or crimes against persons.

§ 36.406 What are other factors, in addition to the minimum standards of character, that may be considered in determining placement of an individual in a position that involves regular contact with or control over Indian children?

(a) All Federal employees are subject to suitability criteria contained in 5 CFR Part 31 as a condition of employment.

(b) Section 231 of the Crime Control Act of 1990, Pub. L. 101–647, 42 U.S.C. 13041, provides that an individual may be disqualified from consideration or continuing employment if such individual has been convicted of a sex crime, an offense involving a child victim or a drug felony, or any other crime if such conviction bears on an individual's fitness to have responsibility for the safety and well-being of children.

(c) Tribes or tribal organizations may but are not required to apply additional criteria in determining whether an individual is suitable for a position with duties and responsibilities that involve regular contact with or control over Indian children. Any additional suitability criteria established by tribes or tribal organizations beyond the minimum standards of character described in § 36.405 would be determined by each individual tribe or tribal organization in accordance with its own personnel policies and procedures.

§ 36.407 What positions require a background investigation and determination of suitability for employment or retention?

(a) All positions that allow an individual regular contact with or control over Indian children are subject to a background investigation and determination of suitability for employment. The IHS has compiled a list of positions within the agency in which the duties and responsibilities could involve regular contact with or control over Indian children. The list will be periodically updated and made available at all IHS Personnel Offices upon request. Positions should be reviewed on a case-by-case basis to determine whether the individual in that position has regular contact with or control over Indian children.

(b) Tribes and tribal organizations may use the list compiled by the IHS or develop a list of positions within their program that involve regular contact with or control over Indian children.

§ 36.408 Who conducts the background investigation and prepares determinations of suitability for employment?

(a) The IHS must use the Office of Personnel Management (OPM) to conduct background investigations for Federal employees. The IHS must designate qualified security personnel to adjudicate the results of background investigations.

(b) Indian tribes and tribal organizations may conduct their own background investigations, contract with private firms, or request that a Federal agency conduct investigations. (FBI criminal history record information, however, may only be received or evaluated by governmental agencies, including tribal government agencies, and may not be disseminated to private entities.) The investigation should cover the past five years of the individual's employment, education, etc.

§ 36.409 Are the requirements for IHS adjudication different from the requirements for Indian tribes and tribal organizations?

(a) In addition to the minimum requirements for background investigations found in § 36.405, IHS's adjudicating officials must review the results of searches by State human services agencies, the OPM National Agency Check and Inquiries, the OPM Security/Suitability Investigations Index, and the Defense Clearance and Investigations Index.

(b) All IHS employees who have regular contact with or control over Indian children must be reinvestigated every five years during their employment in that or any other position that allows regular contact with or control over Indian children.

(c) Indian tribes or tribal organizations may but are not required to adopt portions of the rules in this subpart that

are specifically applicable to employment within the IHS in conducting background investigations and adjudicating suitability for employment in tribal positions that allow regular contact with or control over Indian children.

§ 36.410 What questions must the IHS ask as part of the background investigation?

(a) Applications for employment with the IHS must include the following questions:

(1) Has the individual been arrested or charged with a crime involving a child? If yes, the individual must provide the date, explanation of the violation, disposition of the arrest or charge, place of occurrence, and the name and address of the police department or court involved.

(2) Has the individual ever been found guilty of, or entered a plea of nolo contendere or guilty to, any offense under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; or crimes against persons? If yes, the individual must provide an explanation of the violation, place of occurrence, date and disposition of the court proceeding, and the name and address of the police department or court involved.

(b) The IHS must require that the individual sign, under penalty of perjury, a statement verifying the truth of all information provided in the employment application and acknowledging that knowingly falsifying or concealing a material fact is a felony that may result in fines up to $10,000 or 5 years imprisonment, or both.

(c) The IHS must inform the individual that a criminal history record check is a condition of employment and require the individual to consent in writing to a criminal history record check.

§ 36.411 What protections must the IHS and tribes or tribal organizations provide to individuals undergoing a background investigation?

(a) The IHS must comply with all policies, procedures, criteria, and guidance contained in other appropriate guidelines, such as the OPM policies, procedures, criteria, and guidance.

(b) Indian tribes and tribal organizations must comply with the privacy requirements of the Federal, State, or other tribal agency providing the background investigations. Indian tribes and tribal organizations may establish their own procedures that safeguard information derived from background investigations.

§ 36.412 How does the IHS determine suitability for employment and efficiency of service?

(a) Adjudication is the process employers use to determine suitability for employment and efficiency of service. The adjudication process protects the interests of the employer and the right of applicants and employees. Adjudication requires uniform evaluation to ensure fair and consistent judgment.

(b) Each case is judge on its own merits. All available information, both favorable and unfavorable, should be considered and assessed in terms of accuracy, completeness, relevance, seriousness, overall significance, and how similar cases have been handled in the past.

(c) The adjudicating official who conducts the adjudication must first have been the subject of a favorable background investigation.

(d) Each adjudicating official must be thoroughly familiar with all laws, regulations, and criteria involved in making a determination for suitability.

(e) The adjudicating official must review the background investigation to determine the character, reputation, and trustworthiness of the individual. At a minimum, the background investigation must:

(1) Review each security investigation form and employment application and compare the information provided.

(2) Review the results of written record searches requested from local law enforcement agencies, former employer, former supervisors, employment references, and schools.

(3) Review the results of the fingerprint charts maintained by the Federal Bureau of Investigation or other law enforcement information maintained by other agencies.

(4) Review the information obtained through a background investigation and determine whether the individual has been found guilty of, or entered a plea of nolo contendere of guilty to, any offense under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; or crimes against persons.

(f) After an opportunity has been afforded the individual to respond, pursuant to § 36.413, and it is adjudicated that the individual has been found guilty of or entered a plea of nolo contendere or guilty to an enumerated offense under paragraph (e)(4) of this section, that individual shall not be placed or retained in a position involving regular contact with or control over Indian children.

(g) For individuals who have been determined to be unsuitable for employment in positions having regular contact with or control over Indian children, the IHS may use Federal adjudicative standards to certify that an individual is suitable for employment in a position, if available, that does not involve regular contact with or control over Indian children. The adjudicating official must determine that the individual's prior conduct will not interfere with the performance of duties and will not create a potential risk to the safety and well-being of any Indian children after consideration of the following factors:

(1) The nature and seriousness of the conduct in question.

(2) The recency and circumstances surrounding the conduct in question.

(3) The age of the individual at the time of the incident.

(4) Societal conditions that may have contributed to the nature of the conduct.

(5) The probability that the individual will continue the type of behavior in question.

(6) The individual's commitment to rehabilitation and a change in the behavior in question.

(7) The degree of public trust and the possibility the public would be placed at risk if the individual is appointed to the position.

§ 36.413 What rights does an applicant, volunteer, or employee have during this process?

(a) The applicant, volunteer, or employee must be provided an opportunity to explain, deny, or refute unfavorable and incorrect information gathered in an investigation, before the adjudication is final. He/she should receive a written summary of all derogatory information and be informed of the process for explaining, denying, or refuting unfavorable information.

(b) The adjudicating officials must not release the actual background investigative report to an applicant, volunteer, or employee. However, they may issue a written summary of the derogatory information.

(c)The applicant, volunteer, or employee who is the subject of a background investigation may obtain a copy of the reports from the originating (Federal, State, or other tribal) agency and challenge the accuracy and completeness of any information maintained by that agency.

(d) The results of an investigation cannot be used for any purpose other than to determine suitability for employment in a position that involves regular contact with or control over Indian children.

(e) Investigative reports contain information of a highly personal nature and must be maintained confidentially and secured in locked files. Investigative reports must be seen only by those officials who, in performing their official duties, need to know the information contained in the report.

§ 36414 When should the IHS deny employment or dismiss an employee?

(a) The IHS must deny employment to an individual or dismiss an employee, when the duties and responsibilities of the position the individual person would hold or holds involve regular contact with or control over Indian children, and it has been adjudicated, pursuant to § 36.412 and § 36.413, that the individual has been found guilty of, or entered a plea of guilty or nolo contendere to, any Federal, State, or tribal offense involving a crime of violence; sexual assault, molestation, exploitation, contact, or prostitution; or crimes against persons. The IHS has the discretion to place such an individual in a position, if available, that does not involve regular contact with or control over Indian children, if a determination has been made that such placement would not put Indian children at risk and the individual would be able to perform the duties and responsibilities of this position.

(b) Pursuant to section 231 of the Crime Control Act of 1990, Pub. L. 101–647, 42 U.S.C. 13041, as amended by Pub. L. 102–190, the IHS may hire an individual provisionally prior to the completion of a background investigation if, at all times prior to receipt of the background investigation during which children are in the care of the individual, the individual is within the sight and under the supervision of a staff person and a satisfactory background investigation has been completed on that staff person.

§ 36.415 What must the IHS do if an individual has been charged with an offense but the charge is pending or no disposition has been made by a court?

(a) The IHS may deny the applicant employment until the charge has been resolved.

(b) The IHS may deny the employee any on-the-job contact with children until the charge is resolved.

(c) The IHS may detail or reassign the employee to other duties that do not involve regular contact with children.

(d) The IHS may place the employee on indefinite suspension, in accordance with statutory and regulatory requirements, until the court has disposed of the charge.

[FR Doc. 99–7341 Filed 3–24–99; 8:45 am]

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federal register

Thursday
March 25, 1999

Part VI

Department of Housing and Urban Development

24 CFR Part 203

FHA Single Family Mortgage Insurance; Statutory Changes for Maximum Mortgage Limit and Downpayment Requirement; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4431–F–01]

RIN 2502–AH31

FHA Single Family Mortgage Insurance; Statutory Changes for Maximum Mortgage Limit and Downpayment Requirement

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends provisions of current regulations to provide consistency with recent statutory changes for the maximum mortgage limit and downpayment requirements for FHA single family mortgage insurance programs.

EFFECTIVE DATE: April 26, 1999.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Home Mortgage Insurance Division, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–2700. (This is not a toll free number.) For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On October 21, 1998, President Clinton approved the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L. 105–276. Section 212 of the Act extended on a nationwide basis, through September 30, 2000, the simplified downpayment calculations that have been in effect the previous two years for FHA-insured single family mortgages in Alaska and Hawaii. Section 228 of the Act permitted increased FHA mortgage limits for high-cost areas of the country and raised the basic FHA ''floor'' mortgage limit available throughout the country. The Department has concluded that neither provision presents implementation issues that require a notice-and-comment procedure before making the necessary conforming revisions to 24 CFR part 203.

Mortgage Limits

As revised, 24 CFR 203.18 will no longer reproduce the statutory language of section 203(b)(2)(A) of the National Housing Act (NHA) regarding dollar amount limitations on FHA-insured mortgages. For a number of years, in an effort to respond to Congressional expectations of rapid implementation, the Department has initially implemented statutory changes in FHA single family mortgage limits through Mortgagee Letters with the intention of producing a conforming final rule soon afterwards. The Mortgagee Letter procedure has proven to be an effective means of rapidly disseminating information on the initial implementation of these statutory changes. However, HUD's intention to produce a follow-up conforming final rule rapidly has not always been realized in the crush of other competing regulatory priorities. For example, the statutory provision that first related FHA maximum mortgage limits to Freddie Mac's 1992 conforming loan limits was approved in October 1992 but not reflected in FHA regulations until the end of July 1993. In September 1994, the statutory provision was amended to substitute Freddie Mac's current conforming loan limit for the 1992 loan limit, but this change is not yet reflected in regulations.

In recent years, because of the frequent changes in underlying legislation and the annual changes in mortgage limits due to changes in the Freddie Mac limit, the regulations have not served as an important or reliable vehicle for disseminating current information on mortgage limits to the industry or the general public. The Department has concluded that the public would be better served by regulations that make clear that the statute sets out the basic approach to maximum mortgage limits for an area and that HUD will implement changes in mortgage limits by non-regulatory administrative means following the procedure set forth in § 203.18(h). By citing the applicable statutory section, the revised § 203.18(a) will still serve as an informational tool for persons who are uncertain where the statutory provision is located without misleading anyone by outdated provisions.

The Department has also updated 24 CFR 203.29(a) regarding section 214 of the NHA and increased mortgage limits in Alaska, Hawaii, Guam and the Virgin Islands. Some unnecessary repetition of statutory language has been omitted, and the regulatory requirement that mortgage limit increases authorized by section 214 be published in the **Federal Register** has been replaced by a reference to § 203.18(h). Section 203.18(h) generally permits area mortgage limit changes within the statutory minimum and maximum levels to be established by administrative issuances to affected mortgagees as an alternative to **Federal Register** notice, but it has not previously been applicable to increases authorized by section 214 because of the regulatory language requiring a **Federal Register** notice. Section 214 specifically permits the Secretary to make increases by regulations ''or otherwise''. This does not require a **Federal Register** notice, and there is no administrative need to continue to distinguish the regulatory procedures for mortgage limits based on section 214 from the procedures for other mortgage limits.

Downpayment Simplification

Section 203.18 is also revised to present the current requirements on downpayments and loan-to-value ratios in a more accessible fashion. In general, the revised rule refers simply to the applicable statutory provisions in the NHA: section 203(b)(10) on a temporary basis, with section 203(b)(2)(B) still in effect on a permanent basis. (Until the interim rule discussed below takes effect, § 203.18(a)(3) will include the current substantive approach to implementation of 203(b)(2)(B) for high-ratio mortgages on new homes. Readers are advised to consider this final rule and the interim rule together because § 203.18(a)(3) of the interim rule, rather than this final rule, presents HUD's warranty policy for high-ratio mortgages, subject to further reconsideration after review of public comments on the interim rule.)

This final rule also continues HUD's previous policy of distinguishing between secondary and primary residences for downpayment purposes by limiting insured mortgages on secondary residences to 85% of appraised value. Section 203(b)(10) has no effect on the calculation of mortgage amounts under section 203(h) of the NHA for homes for disaster victims or section 203(i) of the NHA for homes in outlying areas. Therefore, the language in § 203.18(d) for section 203(i) mortgages remains the same except for one technical cross-reference change required because of the revision of § 203.18(a). No changes are made to § 203.18(e) for homes for disaster victims.

The definition of appraised value in § 203.18(f)(4) is amended to recognize that the loan-to-value ratios under section 203(b)(10) downpayment simplification are intended to be applied to appraised value (or sales price, if lower) without including HUD-approved closing costs as part of appraised value.

In today's **Federal Register**, a separate interim rule is published regarding a substantive change in policy on warranty requirements for high ratio mortgages on new homes. That interim

rule will take effect one day after this final rule. It will clarify the applicability of the Department's current handbook policy requiring a comprehensive 1-year builder's warranty for new homes, as a necessary step to full implementation of downpayment simplification for new homes and as a permanent change in policy. It will also make a substantive revision to § 203.18(a)(3) of this final rule.

Justification for Final Rule

HUD ordinarily provides an opportunity for the public to comment on HUD rules before they take effect. However, 24 CFR 10.1 permits HUD to dispense with notice and public procedures—through either an interim or a final rule—if HUD determines that notice and public procedure are impracticable, unnecessary or contrary to the public interest. In this case, public comment is both unnecessary and contrary to the public interest. It is unnecessary because the rule as revised simply reflects the statutory changes, without any other change in substance, with some simplification in regulatory language. Delayed effectiveness pending public comment would be contrary to the public interest because the regulations would mislead by setting forth an outdated version of the law.

Other Matters

Environmental Review

This final rule is exempted from environmental review under the categorical exclusion in 24 CFR 50.19(c)(6).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule merely authorizes an alternative way of qualifying a newly-constructed home for a high-ratio FHA-insured mortgage. The final rule has no adverse or disproportionate economic impact on small businesses.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this final rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes would result from this final rule that affect the relationship between the Federal Government and State and local governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for the principal FHA single family mortgage insurance program is 14.117. This final rule would also apply through cross-referencing to FHA mortgage insurance for condominium units (14.133) and other smaller programs.

List of Subjects in 24 CFR part 203

Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 203 is amended to read as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715u; 42 U.S.C. 3535(d).

2. Section 203.18 is amended by revising paragraph (a), the introductory text of paragraph (b), paragraph (d)(1)(i), and paragraph (f)(4)(ii) to read as follows:

§ 203.18 Maximum mortgage amounts.

(a) *Mortgagors of principal or secondary residences.* The principal amount of the mortgage must not exceed the lesser of the following amounts that apply:

(1) The dollar amount limitation that applies for the area under section 203(b)(2)(A) of the National Housing Act including any increase in the dollar limitation under § 203.29, as announced in accordance with § 203.18(h);

(2)(i) The amount based on appraised value that is permitted by section 203(b)(10) of the National Housing Act, if that provision is in effect and applies to the mortgage; or

(ii) If section 203(b)(10) is not in effect or otherwise does not apply to the mortgage, the lesser of the amounts based on appraised value that are permitted by section 203(b)(2)(B) of the National Housing Act and paragraph (g) of this section;

(3) An amount equal to 90 percent of the appraised value, if the dwelling is a new home that was completed 1 year or less from the date of the mortgage insurance application and the dwelling is neither approved before the beginning of construction or covered by an acceptable consumer protection or warranty plan as provided in section 203(b)(2)(B) of the National Housing Act; or

(4) An amount equal to 85 percent of the appraised value if the mortgage covers a dwelling that is to be occupied as a secondary residence (as defined in paragraph (f)(2) of this section).

(b) *Veteran qualifications.* The special veteran terms provided in section 203(b)(2) of the National Housing Act shall apply only if the mortgagor submits one of the following certifications:

* * * * *

(d) * * *

(1) * * *

(i) 75 percent of the dollar limitation under (a)(1).

* * * * *

(f) * * *

(4) * * *

(i) * * *

(ii) Borrower-paid closing costs allowed under § 203.27(a)(1)–(3), except that closing costs do not apply if section 203(b)(10) of the National Housing Act is in effect and neither sales price nor closing costs apply for purposes of paragraph (g) of this section.

* * * * *

3. Section 203.29 is amended by revising paragraph (a) to read as follows:

§ 203.29 Eligible mortgages in Alaska, Guam, Hawaii, or the Virgin Islands.

(a) *When is an increased mortgage limit permitted for these areas?* For Alaska, Guam, Hawaii or the Virgin Islands, the Commissioner may increase the maximum mortgage amount permitted by section 203(b)(2)(A) of the National Housing Act when authorized by section 214 of that Act, through the procedures described in § 203.18(h).

* * * * *

Dated: March 11, 1999.

William C. Apgar,

Assistant Secretary for Housing.

[FR Doc. 99–7346 Filed 3–24–99; 8:45 am]

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federal register

Thursday
March 25, 1999

Part VII

Department of Housing and Urban Development

24 CFR Parts 203 and 234

Builder Warranty for High-Ratio FHA-Insured Single Family Mortgages for New Homes; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 203 and 234

[Docket No. FR–4288–I–01]

RIN 2502–AH08

Builder Warranty for High-Ratio FHA-Insured Single Family Mortgages for New Homes

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule permits FHA insurance for a mortgage on a new home to exceed a 90 percent loan-to-value ratio if the home is covered by a 1-year builder's warranty that meets the requirements of HUD regulations. Recently-enacted legislation has increased FHA's flexibility to set the conditions for insured mortgages on new homes.

DATES: Effective date: April 27, 1999. Comment due date: May 24, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Home Mortgage Insurance Division, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, (202) 708–2700. (This is not a toll free number.) For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background Information

Before a recent change, section 203(b)(2) of the National Housing Act (NHA) permitted HUD to provide FHA insurance for a high-ratio single family mortgage (i.e, a mortgage with a loan-to-value ratio exceeding 90% of appraised value) for a new home if any one of several conditions stated in section 203(b)(2) of the NHA was met: either the property was approved for insurance by HUD or the Department of Veterans Affairs before the beginning of construction, or the home was covered by a consumer protection or warranty plan acceptable to the Secretary. In HUD's regulations in 24 CFR 203.200–.209, HUD sets forth requirements for a 10-year warranty plan that would be considered acceptable. (In this preamble, ''new construction'' or ''new home'' refers to any home that was completed earlier than 1 year before the date of the application for mortgage insurance.)

Section 212 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, amended section 203(b)(10) of the NHA to extend nationwide through September 30, 2000, a simplified downpayment calculation applicable in the prior two years in Alaska and Hawaii. The new calculation applies ''[n]otwithstanding any other provision of this subsection.'' This ''subsection'' includes section 203(b)(2). HUD has considered whether this ''notwithstanding'' language supersedes only some of the loan-to-value provisions in section 203(b)(2) of the NHA—i.e., the loan-to-value maximum ratios applicable to mortgages that could have been insured as high-ratio (over 90%) mortgages under previous law—or whether the ''notwithstanding'' language may also be interpreted as superseding the 90% ratio limitation that is otherwise applicable to new construction mortgages that do not meet any of the conditions cited above. HUD has adopted the broader view of the ''notwithstanding'' language and concludes that the National Housing Act now permits HUD to insure new construction mortgages with loan-to-value ratios exceeding 90% despite the absence of prior approval or any warranty. However, section 203(b)(10) does not preclude HUD from imposing additional reasonable conditions for high-ratio new construction mortgages through regulations. In addition, HUD was already considering changing its warranty policy regardless of any change in legislation. HUD was considering reducing the length of the term of a warranty required for a high-ratio mortgage, and permitting a builder to provide the warranty.

HUD has decided that each high-ratio new construction mortgage should be accompanied by a builder warranty that provides sufficient protection for the public and the mortgagors, and that HUD already has an adequate requirement in the first-year warranty requirement imposed by HUD Handbook 4145.1 REV–2, paragraph 3–18.[1] That paragraph provides that whenever a mortgage for a new home will exceed a 90 percent loan-to-value ratio, a builder must sign Form HUD–92544 which states in part:

> The undersigned Warrantor further warrants to the Purchaser(s)/Owner(s) or his/her (their) successors or transferees, the property against defects in equipment, material, or workmanship or materials supplied or performed by the Warrantor or any subcontractor or supplier at any tier resulting in noncompliance with standards of quality as measured by acceptable trade practices. This warranty shall continue for a period of one year from the date of original conveyance of title to such Purchaser(s) or from the date of full completion of each of any items completed after conveyance of title. The Warrantor shall remedy, at the Warrantor's expense, any defect(s) of equipment, material, or workmanship furnished by the Warrantor. Warrantor shall restore any work damaged in fulfilling the terms and conditions of this warranty.

Form HUD–92544 has been approved by the Office of Management and Budget (see Paperwork Reduction Act Statement below.)

This Interim Rule

HUD is revising current 24 CFR 203.14 to conform to this broad warranty requirement for the first year of occupancy. The current text of § 203.14 generally follows the structure and content of section 801 of the Housing Act of 1954 (12 U.S.C. 1701j–1), which is narrowly focused on warranting that construction is in substantial conformity with the plans and specifications that served as the basis for the pre-construction appraisal, but HUD's actual first year warranty requirements are considerably broader. The revised § 203.14 would also apply to FHA single family programs other than the basic section 203 programs through existing cross-references in program regulations. HUD has amended the cross-references for condominium unit mortgages in 24 CFR 234.1 so that § 203.14 is no longer excluded from the sections incorporated by cross-reference. HUD has also made a necessary conforming change to § 203.18(a)(3), to replace the current text that was included in a final rule also published in today's **Federal Register** (with an effective date one day earlier than this interum rule).

As HUD strives to achieve its objectives of expanding homeownership opportunities, it is continuously seeking

[1] Note that Form HUD–92544A referenced in that paragraph was subsequently combined with Form HUD–92544, ''Warranty of Completion of Construction'', which is available through the Internet at http://www.hudclips.org/subscriber/html/forms.htm.

to develop approaches and products that will facilitate this effort. HUD believes that the comprehensive 1-year builder warranty provides valuable consumer protection and should continue to be required even without any specific statutory requirement. HUD interprets new section 203(b)(10) as making the 10-year warranty plan approach unnecessary as long as section 203(b)(10) is applicable, however, and HUD is therefore removing 24 CFR 203.200–.209. If section 203(b)(10) expires in the future without being replaced with an equivalent provision, so that section 203(b)(2) once again prevents insurance of high-ratio new construction mortgages in the absence of prior approval or a warranty plan acceptable to HUD, HUD expects to continue to accept compliance with the 1-year builder warranty requirement in this rule as compliance with the section 203(b)(2) requirement for an acceptable warranty plan. This change is consistent with longstanding industry practices and requirements. HUD replaced its archaic and onerous requirements with a process that relies on local building codes and inspections and adherence to national building construction standards. Consequently, the one year warranty requirement is congruent with these efforts.

The quality of housing and building technology has improved substantially over the years. Limiting the warranty requirements for new homes to the comprehensive 1-year builder warranty should increase homeownership by making the FHA program more widely accessible for new homes, thereby enhancing the level of consumer protection for new homes with marginal if any increases in costs to the consumer. No adverse impact on the FHA insurance funds is expected because the quality of the additional newly-constructed homes that may qualify for FHA insurance under the interim rule is likely to exceed the quality of existing homes which already qualify for high-ratio mortgages without special warranty requirements.

Justification for Interim Rulemaking

HUD ordinarily provides an opportunity for the public to comment on HUD rules before they take effect in accordance with HUD's regulations in 24 CFR part 10. However, 24 CFR 10.1 permits HUD to dispense with notice and public procedures—through either an interim or a final rule—if HUD determines that notice and public procedure are impracticable, unnecessary or contrary to the public interest. In this case, HUD has determined that the rule should take effect as an interim rule—before the public comment period has ended—because the rule is an important part of the implementation of the downpayment simplification statute.

Congress intended prompt implementation of the downpayment simplification and authorized it only for a limited time. Downpayment simplification has already been implemented for all existing homes through Mortgagee Letter 98–29 and a recent conforming final rule. Implementation of downpayment simplification for new homes is appropriately accomplished through rulemaking, instead of simply through a Mortgagee Letter, because of the discretion HUD is exercising in its interpretation of the scope of the temporary ''notwithstanding'' language of section 203(b)(10) of the NHA and the permanent language of section 203(b)(2) of the NHA, and in HUD's consequent administrative determination of the appropriate scope of warranty protection that should be provided to purchasers of new homes with FHA-insured mortgages.

HUD believes that there should continue to be a distinction between the requirements for new and existing homes that receive insurance for high ratio mortgages. It is not appropriate to implement section 203(b)(10) by completely dispensing with any warranty requirement for new homes, and the existing statutory 1-year builder warranty requirement in section 801 of the Housing Act of 1954 (see current 24 CFR 203.14) is triggered only if the builder seeks pre-construction approval for a home, which the builder would have no incentive to do if high-ratio mortgages were otherwise available for new construction. Therefore, this rule is needed to fill a gap in warranty requirements that otherwise would result if HUD simply implemented section 203(b)(10) for new construction without additional non-statutory regulatory requirements. Although the 1-year builder warranty requirements of this interim rule currently appear in a handbook, they take on added importance in light of downpayment simplification and it is important to present the requirements in regulatory form without delay.

If this extra level of consumer protection were provided only after the completion of full notice and comment rulemaking, however, the public would lose much of the benefit of section 203(b)(10) for new homes during the limited period section 203(b)(10) is authorized. Such a delay would be contrary to the public interest because it would lessen the availability of insured financing for new homes and reduce the choice of housing to many low- and moderate-income families, in conflict with the Congressional purposes behind the nationwide attempt to fix downpayment requirements that have been widely perceived as unnecessarily confusing and burdensome. Congress expects HUD to use the temporary authority for nationwide downpayment simplification to gain sufficient experience to support an evaluation of the benefits and drawbacks of continuing nationwide downpayment simplification on a permanent basis. Any substantial delay in full implementation of nationwide application—including simplification of requirements for high-ratio new construction—would limit the experience needed to support an evaluation.

In this interim rule HUD is adding no new burdens on builders or lenders with respect to the 1-year warranty for new homes currently required by handbook. HUD will consider all public comments received on this interim rule before issuing a final rule.

Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in § 203.14 of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0059. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. Only 13

warranty companies are now approved to provide a 10-year warranty plan for homes with FHA-insured mortgages. The demand for 10-year warranties may drop considerably once the warranty no longer helps to qualify a home for a high-ratio FHA-insured mortgage, although some builders may continue to offer such warranties as a marketing tool. The small universe of warranty companies that may be affected, however, is insufficient to support a conclusion that there will be a substantial impact on small business. Small businesses are specifically invited, however, to comment on whether this interim rule will significantly affect them, and to make any recommendations on alternatives for compliance the requirements of this rule. Comments should be submitted in accordance with the instructions in the **DATES** and **ADDRESSES** sections in the preamble of this interim rule.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this interim rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes would result from this proposed rule that affect the relationship between the Federal Government and State and local governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for principal FHA single family mortgage insurance is 14.117. This interim rule would also apply through cross-referencing to FHA mortgage insurance for condominium units (14.133).

List of Subjects

24 CFR part 203

Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 203 and 234 are amended to read as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715u; 42 U.S.C. 3535(d).

2. Section 203.14 is revised to read as follows:

§ 203.14 Builders' warranty for initial year of occupancy.

If the property was not completed more than 1 year before the date of the mortgage insurance application and the loan-to-value ratio for the mortgage exceeds 90% in accordance with § 203.18, the builder or other seller must provide to the mortgagor a 1-year warranty that:

(a) Meets the requirements of section 801 of the Housing Act of 1954, if applicable;

(b) Warrants against defects in equipment, material or workmanship resulting in noncompliance with standards of quality as measured by acceptable trade practices;

(c) Is enforceable by the original purchaser of the property and any successor owners during the initial year of occupancy; and

(d) Otherwise is acceptable in form and content to the Secretary.

(Approved by the Office of Management and Budget under control number 2502–0059).

3. Section 203.18 is amended by revising paragraph (a)(3) to read as follows:

§ 203.18 Maximum mortgage amounts.

(a) * * *

(3) If the dwelling was completed 1 year or less from the date of the mortgage insurance application, an amount equal to 90 percent of the appraised value, unless the dwelling is covered by a builder warranty meeting the requirements of § 203.14;

* * * * *

§§ 203.200–203.209 [Removed]

4. Sections 203.200–203.209 are removed.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

5. The authority citation for part 234 is revised to read as follows:

Authority: 12 U.S.C. 1715b and 1715y; 42 U.S.C. 3535(d).

6. Section 234.1(a) is revised to read as follows:

§ 234.1 Cross-reference.

(a) *Incorporation of part 203 provisions; exclusions.* All of the provisions of subpart A of part 203 of this chapter concerning eligibility requirements of mortgages covering one- to four-family dwellings under section 203 of the National Housing Act (12 U.S.C. 1709) apply to mortgages on individually owned units insured under section 234 of the National Housing Act (12 U.S.C. 1715y) except the following provisions:

Sec.
203.12 Mortgage insurance on proposed or new construction in a new subdivision.
203.18a Solar energy system.
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203.38 Location of dwelling.
203.42 Rental properties.
203.43c Eligibility of mortgages involving a dwelling in a cooperative housing development.
203.43d Eligibility of mortgages in certain communities.
203.43f Eligibility of mortgages covering manufactured homes.
203.43g Eligibility of mortgages in certain communities.
203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.
203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act.
203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.
203.50 Eligibility of rehabilitation loans.

* * * * *

Dated: March 4, 1999.

William C. Apgar,

Assistant Secretary for Housing.

[FR Doc. 99–7345 Filed 3–24–99; 8:45 am]

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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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