9–9–99
Vol. 64 No. 174
Pages 48933–49078

federal register

Thursday
September 9, 1999

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273 and 274

[Amdt. No. 378]

RIN 0584–AC61

Food Stamp Program: Electronic Benefit Transfer Benefit Adjustments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This action provides interim rulemaking for a proposed rule published on May 19, 1998. It revises Food Stamp Program regulations pertaining to the State agency's ability to make an adjustment to a household's account in an Electronic Benefit Transfer (EBT) system. The changes enable State agencies to make an adjustment to correct system errors without sending an advance notice as currently required. This rule also revises the formula for recovering funds under the re-presentation rule.

The Department received a large number of comments to the proposed rule, many of which suggested substantive changes. At least two significant changes to the proposed rule have been incorporated as a result of the comments received. Therefore, the Department has decided to allow further comment by publishing an interim final rule. All comments received will be analyzed, and any appropriate changes in the rule will be incorporated into the subsequent publication of a final rule.

DATES: This interim rule is effective October 12, 1999. State agencies must implement the rule no later than March 7, 2000. Comments must be received on or before November 8, 1999.

ADDRESSES: Comments should be submitted to Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be faxed to the attention of Mr. Cohen at (703) 605–0232, or by e-mail to jeff.cohen@fns.usda.gov. Written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 718.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Mr. Cohen at the above addresses or by telephone at (703) 305–2517.

SUPPLEMENTARY INFORMATION:

Interim Rule

Because this rule has significant changes from the proposed rule, the Department is soliciting further public comment for 60 days. All comments received will be analyzed, and any appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

Executive Order 12866

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

Public Law 104–4

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

This interim final rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Samuel Chambers, Jr., Administrator, Food and Nutrition Service, has certified that this final rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Dates'' paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program, the administrative procedures are as follows: (1) for Program benefit recipients—State

administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 for rules related to non-quality control (QC) liabilities or 7 CFR Part 283 for rules related to QC liabilities; (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Background

Proposed regulations were published in the **Federal Register** on May 19, 1998 at 63 FR 27511 to change the way in which certain EBT error conditions are handled. The change was proposed following concerns from the EBT community that current regulations do not allow State agencies, or their processors, to make an adjustment to correct certain system errors in a manner consistent with the commercial environment. During normal EBT transaction processing, settlement is completed when the transaction acquirer has been properly credited for an amount equal to the amount debited from the household's benefit allotment. System malfunctions, however, can cause an interruption to this process, resulting in a settlement condition that does not reflect the original transaction. The regulations proposed to allow State agencies to make adjustments for these errors when concurrent notice was sent to the household as opposed to the advance notice required by current regulations. Changes were also proposed for handling re-presentations. Readers are referred to the proposed regulation for a more complete understanding of this final action.

Comments on the proposal were solicited through July 20, 1998. This final action takes those comments received into account. Twenty-eight comment letters were received in response to the proposed rule. Individual comments were received from eighteen State agencies. (An additional 10 State agencies commented as part of joint consortia letters.) Of the remaining letters, 4 were from retailers and/or their associations, 2 from EBT processors, 3 were from Public Interest Groups, and 1 was from an alliance of States, networks, financial institutions and retailers. Although four of the letters were received late, their comments were considered. None of these four, however, raised comments resulting in changes to the proposed rule that were not raised by other commenters.

In general, the commenters supported the Department's efforts to streamline the adjustment process for certain types of system errors. The overwhelming majority of the commenters, however, believed that the Department did not go far enough in doing so and that the EBT adjustment policy should mirror commercial practice. The major comments deemed by the Department to be significant are discussed below.

General

There is a significant difference between how EBT adjustments would be handled under the proposed rules and how they are handled in the commercial environment. While commercial adjustments are handled by processors as routine corrections not requiring special notification to customers, in the Food Stamp Program, when adjustments are a debit against the household's account, they are viewed as a type of adverse action. A majority of commenters believed that the food stamp adjustment policy should strictly follow commercial or Electronic Funds Transfer (EFT) standards, arguing that Congress expressly recognized the importance of conforming EBT programs to commercial standards by directing that ''an electronic benefit transfer system should take into account generally accepted standard operating rules based on commercial electronic technology'' (7 U.S.C. 2016 (i)(1)(D)).

The Department is aware that Congress wanted programs to ''take into account'' commercial practices; however, by not mandating that EBT follow commercial practices, Congress recognized that EBT differs from EFT and, in some circumstances, must adhere to different standards. Certainly, in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, (PRWORA), a precedent for such a divergence was set when EBT was explicitly exempted from Regulation E, a requirement for commercial EFT.

The Department believes that, while the overall procedural framework for handling adjustments in the commercial environment is acceptable, there are certain areas—i.e., notifications and the rights to appeal—that must adhere to the requirements set forth in the Food Stamp Act of 1977, as amended, 7 U.S.C. § 2011–2036, (FSA), and food stamp regulations. This is especially important in light of the fact that the commercial environment is silent in some of these areas, or the commercial standards in place are not appropriate for those who depend upon food stamp benefits for basic subsistence.

Several commenters wanted the rule to clarify that State agencies have final authority and reversal authority on all adjustments. They also wanted the rule to require EBT processors to give State agencies adjustment information upon request. The Department believes that Food Stamp regulations already require processors to provide such information by mandating at 7 CFR § 274.12(j)(1)(vi) that systems maintain an audit trail documenting the full cycle of issuance ''through settlement of retailer credits'' and by requiring at 7 CFR § 274.12(j)(2) that the system provide appropriate management reports. As for final authority over adjustments, the Department believes that EBT regulations, and contracts between State agencies and their processors, give States final authority over all matters pertaining to household accounts.

One commenter believed that the proposed rule implied that all adjustments take place at the State level, when, in fact, they are usually handled by the processors. The proposed rule was not meant to imply that the State agencies handle adjustments. All EBT regulations are addressed to the States, as they have authority over the administration of the Food Stamp Program. As with other operational components of EBT, any of the requirements of this rule can be handled by processors, as agents of the State agencies, if appropriate. State agencies remain ultimately responsible, however, for the actions of their contractors.

One commenter suggested that adjustments should be handled as any other administrative claim. The Department believes that adjustments are different from claims in that the errors do not result in money owed to FNS. All of the processing and reporting of claims are based on a collection against an incorrect benefit issuance being passed back to the government. Collection for adjustments, on the other hand, do not result in savings to the government and, therefore, cannot be handled in the same manner as claims.

One commenter stated that the proposed rule implied that adjustments are allowed, but not required. The intent of the proposed rule was to clarify, through regulations, how EBT system errors would be corrected under EBT. It was, therefore, the Department's intent to require all State agencies to follow these rules. The interim rule includes clarifying language that makes the adjustment rule mandatory.

Definitions

The proposed rule limited the type of adjustments that could be processed without advance notice, to system errors resulting in an out-of-balance settlement condition. Several commenters supported this restriction, echoing the

Department's belief that adjustments resulting from human error should not be included in this rule. Other commenters sought to expand the definition of adjustments to include monthly issuance-posting errors and other State agency, non-settling errors. A number of commenters asked for clarifications regarding the definition of a system error.

The Department agrees that adjustments should be allowed only in those situations in which a transaction was not completed because of a system error. A system error is one which occurs due to malfunction at the EBT host, the third party processor, the retailer host system, the Point-of-Sale (POS), or as a result of telecommunications malfunctions. By definition, the amount of an adjustment cannot differ from the value of the original transaction. (The Department recognizes that the original transaction amount may no longer be available in a recipient's account at the time of the adjustment and will allow an adjustment against remaining benefits, even if it differs from the original transaction amount). This definition is in keeping with commercial operating rules and the QUEST EBT operating rules.

Human errors, such as those that may result in incorrect postings, incorrect entries at the POS by the clerk, operating in training mode, etc., are not covered by this rule. The Department believes the household should have the right to advance notice on these more questionable ''adjustments'' to their allotments. Human errors do not leave the same audit trail that system errors do, i.e., documentation of an out-of-balance condition, such as system logs that are generated from any of the reconciliation points.

Monthly-issuance posting errors are pre-issuance errors and, as such, are not within the rule's definition of an adjustment; however, the Department recognizes the need for State agencies to expeditiously correct these errors. The Department will take this comment under consideration for future proposed rulemaking.

Future Month's Benefits

The proposed rule did not allow a debit adjustment from a recipient's account to be made from a future month's benefit, i.e., benefits that were not in the account at the time of the error. Commenters overwhelmingly disagreed with this restriction, arguing that the restriction in the proposed rule increases the probability that the funds will not be available to do a debit adjustment to the household's account. These commenters also argued that restricting adjustments against a future month also puts an unfair burden on retailers who may suffer a loss of revenue if recipients spend benefits prior to an adjustment being made. Finally, many commenters raised concerns about the administrative burdens inherent in using the re-presentation process when collecting from future month's benefits.

The Department has been persuaded by the commenters that adjusting from future months' benefits prevents retailers from having to bear an unfair financial burden due to system errors. Further, since this rule only applies to situations in which the need for an adjustment can be clearly documented, we are confident that there is a minimal risk that recipients will have their accounts adjusted erroneously. The Department understands that the average debit adjustment to a household is relatively small. This is consistent with overall transaction data that shows the average EBT transaction amount is $20. This would lead us to project that, on average, most transactions requiring adjustments would not be large enough to cause a hardship to a food stamp household, where the average benefit amount is $173. This average transaction amount is also well below the $50 currently allowed in the first month of a re-presentation against the household. The interim final rule is, therefore, changed to allow an adjustment against a future month's benefit. This includes future months in which there has been a break in receipt of benefits.

In implementing this change to the proposed rule, the Department will require State agencies to amend training materials to disclose information to households about adjustments including the possibility that an adjustment can be made against a future month's benefit. Training material must also inform the households of their right to a fair hearing if they do not feel that the adjustment is warranted, and their right to receive a credit for the adjustment amount, pending a fair hearing decision. States that have already implemented EBT will have one year from the date of this notice to grandfather disclosure information on adjustments into their training materials.

Notice and Fair Hearing Requirement

The proposed rule required State agencies to send a concurrent notice when an adjustment was done that would adversely affect the household. The notice would give households the right to a fair hearing and the right to be credited for the adjustment amount pending the outcome of the fair hearing. The majority of comments received on this subject did not agree with the notice and fair hearing requirements for EBT adjustments. Most commented that it was inappropriate to apply these requirements to adjustments because they believe notice requirements in the program rules should be limited to circumstances in which benefits are being reduced to collect a previous overissuance of benefits. There were also a number of concerns about the cost of mailing notices, as well as the coordination required between the State agency and the processor, since the processor usually does not have current household addresses. Several commenters, however, supported the application of the notice and hearing requirements, including one which suggested that the Department prescribe the level of detail that should be in the notice. Three commenters supported the adequate notice as opposed to a 10-day advance notice. Another commenter suggested that a notice not be sent as long as the adjustment was done within 5 days as required by the proposed rule.

The Department is not convinced that adjustments should be exempt from the notice requirement. The Food Stamp Act gives recipients certain rights which cannot be abrogated because of the logistical problems inherent in providing the notice. Nor does the fact that these are transactional errors as opposed to benefit overissuances nullify this right. Section 11(e)(10) of the FSA requires State agencies to provide ''for the granting of a fair hearing and a prompt determination thereafter to any household aggrieved by the action of the State agency under *any* provision of its plan of operation as it affects the participation of such household in the food stamp program or by a claim against the household for an overissuance.'' (emphasis added) Further, in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), the Court ruled that, where ''basic subsistence is at stake,'' due process requires that households receive notice and an opportunity for a fair hearing *prior* to the denial of such government benefits. Absent a guarantee that there is absolutely no chance of erroneous adjustments, the Department concludes that households shall retain their notice and fair hearing rights. The level of detail required in the notice is described in 7 CFR 273.13, i.e., State agencies are required to include information about the circumstances which resulted in the adverse action. States are encouraged to include as much detail about the transaction—date, time and location—as possible, since

such information could reduce calls to the Help Desk.

States have requested clarification on the timeframes for the fair hearing. The interim rule has been clarified to state that the household has 90 days from the date of the notice to request a fair hearing. Further, the household has 10 days from the date of the notice to request a re-credit or provisional credit pending the fair hearing decision. Two commenters suggested that a notice (with attendant fair hearing rights) only be required when there has been an incorrect adjustment. For the reasons cited above, the Department believes that all actions taken to reduce the household's allotment are subject to notice.

Two commenters questioned the cost effectiveness of sending a notice when the adjustment is a credit to the client. The notice and fair hearing requirements found in 7 CFR 273.13 and 273.15 only apply to adverse action; therefore, an adjustment which resulted in a credit to a household would not require a notice.

One commenter suggested that the State be required to send the notice, not the contractor. The Department does not want to prescribe how the notice requirement is handled but, instead, prefers to give each State agency and their processor an opportunity to develop a process that works in their unique environment.

Finally, two commenters objected to the State agencies paying a share of administrative costs associated with mailing out notices, handling appeals, and handling re-credits or provisional credits. The Department has no authority in Federal law to pay more than the federal financial participation for food stamp administrative costs, and therefore, cannot pay the States' share.

Re-Credits (Provisional Credits)

A number of other comments related to re-crediting or provisional credits pending a determination of the fair hearings. Some commenters objected to re-crediting pending a fair hearing, while an equal number of those commenting in this area supported it. A few commenters requested clarification on how to handle re-credits, specifically who is liable when an adjustment is due, how re-credits should be funded, and how they should be reported. Some commenters thought the State agency or the processors should be liable, not the retailers.

The Department is clarifying that provisional credits should be handled as any other adjustment. If a household requests a provisional credit pending a fair hearing, the State agency must notify the processor to initiate another adjustment to credit the recipient's account. If the original adjustment was already completed, and payment made to the party suffering the loss, then that account must be debited in order to give a provisional credit to the household.

Two commenters opposed language that allowed State agencies to discontinue collection activity when households and/or retailers were no longer on the program. The Department believes that by allowing an adjustment against future month's benefits, it is simplifying the management controls necessary to collect from households if they return to the program after a break in assistance. Therefore, language stating that households that have left the program are not subject to further collection activity has been removed. Similarly, the proposed rule did not require processors or others such as third party processors to collect against a household when the retailer is no longer with the Food Stamp Program. The Department is not persuaded to change its position regarding retailers. FNS recognizes that once retailers leave the system they are not easily tracked and wishes to reduce the administrative burden on State agencies by not requiring them to further track retailers. However, collections made from clients that are not credited to retailers must be returned to FNS.

The Department is also clarifying the interim rule by changing the term ''re-credits'' to ''provisional credits'' to keep the language in line with commercial nomenclature.

Timeframes

Most of the commenters believed that the proposed 5-day timeframes to complete an adjustment were too short given the actions that must take place and the number of participants inherent in the adjustment process. The processes described by the commenters include compilation of documentation, research, notification to other participants and making the adjustment—more business partners in the chain add to the processing time. Some commenters estimated that the process in the commercial environment typically takes from 10–45 days, influenced by uncontrollable factors, such as retailers who don't settle daily. The Department has taken these comments into consideration and has modified the interim rule. The interim rule distinguishes between adjustments generated by retailers and recipients.

We believe that most recipient generated adjustments will result in funds owed to the household. In these scenarios, recipients have suffered a loss through no fault of their own, ostensibly through a verifiable system error. By allowing an adjustment against a future month's benefit, the Department is giving the processor the opportunity to do an adjustment prior to a full investigation, if required, without risk of liability if a household is erroneously credited. The Department wishes to emphasize that the provisions of this interim rule also apply to ''correcting adjustments'', i.e., those adjustments generated to reverse an erroneous credit to a recipient's account. Therefore, for client initiated adjustments, the 5-day timeframe remains as proposed.

Commenters identified several scenarios where either the retailer, the client, or the processor would be unaware of an error until well after it has occurred. After reviewing the comments, the Department determined that the timeframes for client initiated adjustments should be counted from the date the household notifies the State agency of the error. This distinction is critical since EBT recipients do not receive monthly statements and, therefore, may not be aware of an error until the next time they attempt to do a transaction. The problem is exacerbated by the fact that a system error often results in an incorrect receipt. For these reasons, the rule has been changed. Client initiated adjustments shall be made within 5 business days of the date the household notifies the State agency or the Help Desk of the error. The household has 180 days from the date the error occurred to make the notification. This requirement does not absolve the State agency/processor from making the adjustment if the 5-day deadline is missed.

The Department acknowledges that retailer and client initiated adjustments are handled differently. The retailer has access to settlement information from the processor or third party. Several commenters stated that not all retailers, particularly small ones, settle on a daily basis and would not know of an error until after the 5-day timeframe had passed. The Department has been persuaded by these arguments and has modified the rule. Retailer initiated adjustments must be completed within 10 days from the date the error occurred. Retailer initiated adjustments that result in a debit to the household's account are not allowed after 10 days.

One commenter requested that correction of benefits should be done in 24 hours, whenever possible. The Department wishes to emphasize the importance to both State agencies and processors of making adjustments as quickly as possible. However, 24 hours

is not a reasonable expectation given the number of parties that are typically involved in the process.

One commenter thought the Department should put specific deadlines on each business partner in the process, i.e. prescribe timeframes to the third parties, processors, retailers, contractors, etc. for handling their own segment of the process. The Department believes that such an approach would be administratively burdensome. We realize, however, that each of these partners has a responsibility to the others to handle their portion expeditiously if timeframes are to be met. We would recommend that this level of detail be addressed in retailer and third party agreements.

The rule has been re-written to clarify that these provisions apply to both credit and debit adjustments. The rule is also being clarified to state that business days means Automated Clearing House (ACH) days.

One commenter wanted clarification on the ramifications of not meeting timeframes. This rule will not impose penalties for not meeting timeframes. As with other regulatory requirements, States are required to ensure the processor's compliance.

Investigations

One commenter thought the rule should be more prescriptive in the area of dispute resolutions: such as, requiring control numbers on complaints taken at customer service, providing detailed instructions for investigating claims, etc. The commenter went on to suggest that the burden of proof be on the retailer in investigating disputes.

The Department is not convinced that this rule should provide more details in investigating system error adjustment claims. The rule covers a very limited type of error, not unlike those handled routinely in the commercial environment. Since there is nothing unique to a food stamp adjustment that would require the Department to justify deviation from existing practices, the interim final rule will remain silent on details for investigating these types of errors. Processors, third parties, retailers and customer service representatives should follow industry practice in ensuring that investigations are handled correctly in a timely manner.

Re-Presentations

As stated in the preamble to the proposed rule, the Department has heard from States and processors that the current re-presentation regulations present costly programming challenges. In an effort to provide some relief, the proposed rules allowed a second collection option for States: a flat $10 or 10% of the allotment from the first month. This eliminated the need to program up to $50 for the first month and a different retention for the remaining months. Most of the commenters believed that, even with the proposed changes, re-presentation remains an unworkable and inefficient way of handling collections. Some commenters stated that the programming involved would still be expensive, and the monthly accounting would take up too much in resources. FNS believes that the change to allow adjustments to future month's benefits for system errors will obviate the need for re-presentations in most circumstances covered by this rule. However, the need for re-presentations remains for those cases in which there has been system downtime. Therefore, the Department is finalizing the rule to allow the State agency to collect at the current rate of $50 in the first month and 10% thereafter, or to go to the flat monthly rate of $10 or 10%, as proposed.

Several commenters asked for clarification on whether or not re-presentation becomes mandatory under this rule. Another commenter suggested that re-presentation should be mandatory. The Department is clarifying that re-presentation remains voluntary under this rule since most States have not been willing to incur the associated costs.

One commenter requested clarification on who holds the funds during re-presentation and who holds the outstanding account. In a re-presentation scenario, the money is collected by the State agency on behalf of the party to whom the debt is owed. The State agency would pass the payments to the parties owed through the processor.

Finally, one commenter asked for clarification on re-presentation since the term is not used in the same way as the QUEST Operating Rules. The Department recognizes that re-presentation, as used in this rule, is unique to the Food Stamp Program. Any references to re-presentation are used in the context of 7 CFR 274.12(e). Food Stamp Program regulations and QUEST Operating Rules, are mutually exclusive, since all States have not adopted the QUEST rules and the Food Stamp Program regulations take precedence over the QUEST rules.

Implementation

This interim rule is effective October 12, 1999. State agencies must implement the rule no later than March 9, 2000.

List of Subjects

7 CFR Part 272

Alaska, Civil Rights, Food Stamps, Grant Programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative procedures and practices, Food Stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 7 CFR Parts 272, 273 and 274 are amended as follows:

1. The authority citation for 7 CFR Parts 272, 273 and 274 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, paragraph (g)(154) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(154) *Amendment No. 378.* The provisions of Amendment No.378 are effective October 12, 1999. State agencies must implement the rule no later than March 7, 2000. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with § 275.12(d)(2)(vii) of this chapter.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.13, a new paragraph (a)(3)(vii) is added to read as follows:

§ 273.13 Notice of adverse action.

(a) * * *

(3) * * *

(vii) An EBT system-error has occurred during the redemption process, resulting in an out-of-balance settlement condition. The State agency shall adjust the benefit in accordance with § 274.12 of this chapter.

* * * * *

4. In § 273.15, the fourth sentence of paragraph (k)(1) is revised and two new

sentences are added after the fourth sentence to read as follows:

§ 273.15 Fair hearings.

* * * * *

(k) *Continuation of benefits.*

(1) * * * If the State agency action is upheld by the hearing decision, a claim against the household shall be established for all overissuances, with one exception. In the case of an EBT adjustment, the State agency shall debit the household's account immediately for the total amount erroneously credited when the fair hearing was requested. If there are no benefits remaining in the household's account at the time the State agency action is upheld, the State agency shall make the adjustment from the next month's benefits, subject to the limitations of this section and, if necessary, continue each month until the debt is re-paid.

* * *

* * * * *

PART 274—ISSUANCE AND USE OF COUPONS

5. In § 274.12:

a. Paragraph (f)(4) is revised;

b. Paragraph (f)(7)(iii) is amended by removing the second sentence;

c. A new paragraph (f)(10)(viii) is added;

d. Paragraph (l)(1)(iii) is revised;

The revisions and addition read as follows:

§ 274.12 Electronic Benefit Transfer issuance system approval standards.

* * * * *

(f) *Household participation* * * *

(4) *Issuance of Benefits.* State agencies shall establish an availability date for household access to their benefits and inform households of this date.

(i) The State agency may make adjustments to benefits posted to household accounts after the posting process is complete but prior to the availability date for household access in the event benefits are erroneously posted.

(ii) A State agency shall make adjustments to an account after the availability date to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error. A system error is defined as an error resulting from a malfunction at any point in the redemption process: from the system host computer, to the switch, to the third party processors, store host computer or POS device. By definition, an adjustment must be equal to the amount of the original error transaction and may result in either a debit or credit to the household.

(A) Client initiated adjustments shall be made no later than 5 business days from the date the household notifies the State agency of the error. Business days are defined as Automated Clearing House (ACH) days.

(B) The household has 180 days from the date of the error to notify the State agency of the need for an adjustment.

(C) Retailer initiated adjustments shall be made no later than 10 business days from the date the error occurred.

(D) If there are insufficient benefits remaining to cover the entire adjustment, the adjustment shall be made using the remaining balance, with the difference being subject to collection in a future month, subject to the limitations found in § 273.15 of this chapter and in this section.

(E) The household shall be given, at a minimum, adequate notice in accordance with § 273.13 of this chapter.

(F) The household shall have 90 days from the date of the notice to request a fair hearing.

(G) Should the household dispute the adjustment and a request is made within 10 days of the notice, a provisional credit must be made to the household's account pending resolution.

(iii) The appropriate management controls and procedures for accessing benefit accounts after the posting shall be instituted to ensure that no unauthorized adjustments are made in accordance with paragraph (f)(7)(iii) of this section.

* * * * *

(10) * * *

(viii) Disclosure information regarding adjustments and the households rights to notice, fair hearings and provisional credits. The disclosure should also state where to call to dispute an adjustment and request a fair hearing. State agencies that have already implemented EBT shall have one year in which to grandfather adjustment disclosure into their training materials.

* * * * *

(l) *Re-presentation.* * * *

(1) * * *

(iii) The State agency may debit the benefit allotment of a household following the insufficient funds transaction in either of two ways:

(A) Any amount which equals at least $10 or up to 10% of the transaction. This amount will be deducted monthly until the total balance owed is paid-in-full. State agencies may opt to re-present at a level that is less than the 10% maximum, however, this lesser amount must be applied to all households.

(B) $50 in the first month and the greater of $10 or 10% of the allotment in subsequent months until the total balance owed is paid-in-full. If the monthly allotment is less than $50, the State shall debit the account for $10.

* * * * *

Dated: August 23, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–23410 Filed 9–8–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

Commodity Credit Corporation

7 CFR Part 1446

RIN 0560–AF 81

1998-Crop Peanuts, National Poundage Quota, National Average Price Support Level for Quota and Additional Peanuts, and Minimum Commodity Credit Corporation Export Edible Sales Price for Additional Peanuts

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1998 peanut crop: the national poundage quota for quota peanuts is established at 1,167,000 short tons (st); the national average support level for quota peanuts is $610 per st; the national average support level for additional peanuts is set at $175 per st; and the minimum Commodity Credit Corporation (CCC) export edible sales price for price support loan inventory additional peanuts is $400 per st. The poundage quota is established pursuant to statutory requirements contained in the Agricultural Adjustment Act of 1938, as amended (the 1938 Act). The determination of the national average support levels for quota and additional peanuts was made pursuant to the statutory requirements of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act). The determination and announcement of the minimum export edible sale price for additional peanuts is a discretionary action made to facilitate the negotiation of private contracts for export edible peanuts.

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Robison, USDA, Farm Service Agency, STOP 0514, 1400 Independence Avenue, SW,

Washington, DC 20250–0514, telephone 202–720–9255. Copies of the cost-benefit assessment prepared for this rule can be obtained from Mr. Robison.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by OMB.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Paperwork Reduction Act

These proposed amendments do not contain information collections that require clearance by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Farm Service Agency (FSA) nor Commodity Credit Corporation (CCC) are required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Unfunded Federal Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act (UMRA), 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 UMRA.

Background

A. Announcement of the Quota

Peanut producers voting in a mail referendum December 1 through 4, 1997, approved poundage quotas for the 1998 through 2002 marketing years (MY) by 94.8 percent. Therefore, the Secretary must offer a 1998-crop peanut program.

Section 358–1(a)(1) of the 1938 Act, as amended by the 1996 Act, requires that the national poundage quota for peanuts for each of the 1996 through 2002 MYs be established by the Secretary at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each MY to domestic edible (excluding seed) and related uses. As to seed, section 358–1(b)(2)(B) of the 1938 Act, as amended, provides that a temporary allocation of quota pounds for the MY only shall be made to producers for each of the 1996 through 2002 MY and that the temporary seed quota allocation shall be equal to the pounds of seed peanuts planted on the farm as may be adjusted and determined under regulations prescribed by the Secretary. The MY for 1998-crop peanuts runs from August 1, 1998, through July 31, 1999.

The national poundage quota for the 1998 MY was established at 1,167,000 st, based on the following data:

Estimated Domestic Edible and Related Uses for 1998-Crop Peanuts

Item	Farmer stock equivalent (short tons)
Domestic edible:	
Domestic production:	
For domestic food use ..	950,500
On-farm and local sales	9,500
Related uses:	
Crushing residual	125,000
Shrinkage and other losses	38,000
Segregation 2 and 3 loan:	
Transfers to quota loan	5,000
Under production	39,000
Total	1,167,000

The estimate of MY 1998 domestic food use of peanuts was developed in two steps. First, the farmer stock equivalent of 1,105,500 st was estimated by the USDA Interagency Commodity Estimates Committee (ICEC). Second, this estimate was reduced by 155,000 st to exclude peanut imports, peanut butter imports, and peanut butter exports. Although estimates of domestic edible utilization typically include product exports, peanut butter exports are generally either made from, or may otherwise be credited under section 358(e) of the 1938 Act as being made from additional peanuts. MY 1998 farm use and local sales were estimated at 1 percent of ICEC's MY 1998 production estimate. This percentage reflects the average difference between USDA production data and Federal-State Inspection Service inspection data. About one-half of farm use and local sales is allocated to food use and the remainder to seed, and seed is excluded from quota determinations under amendments to the 1938 Act by the 1996 Act.

The crushing residual represents the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts. In any given lot of farmer stock peanuts, a portion of such peanuts is only suitable for the crushing market. The quota consists of the edible and crushing content of the farmer stock weight of quota peanuts. The crushing residual identified above reflects the assumption that crushing grade peanuts will be about 12 percent, on a farmer stock basis, of the total of MY 1998 domestic production.

The allowance for shrinkage and other losses is an estimate of reduced kernel weight available for milling as well as for kernel losses due to damage, fire, and spillage. These losses were estimated by multiplying a factor of 0.04 times domestic food use. The utilized factor is a FSA estimate equal to the minimum allowable shrinkage used in calculating a handler's obligation to export or crush additional peanuts as set forth in Section 359e(d)(2)(iv) of the 1938 Act. Excessive moisture and weight loss due to foreign material in delivered farmer stock peanuts were not considered since such factors are accounted for as inspection factors at buying points and do not impact quota marketing tonnage.

The adjustment for Segregation 2 and 3 loan transfers represents transfer of Segregation 2 and 3 peanuts from additional price support loan pools to quota loan pools. Such transfers occur when quota peanut producers have insufficient Segregation 1 peanuts to fill their quotas yet have Segregation 2 and 3 peanuts in additional loan pools which would have been eligible to be pledged as collateral for price support at the quota loan rate, if it were not for quality problems. In such cases, for price support purposes only, these peanuts may be pledged as collateral for price support loans at a discounted quota loan rate. Subject to a national limit of 5,000 st, individual producers can transfer up to 25 percent of their effective farm poundage quota from the additional loan pool and receive 70 percent of the quota loan rate. Regarding the disposition of such peanuts, the CCC will ensure that they are crushed for oil.

In addition, an allowance has been made for underproduction. Historically, only 92 percent of the quota has been marketed. Since the 1996 Act eliminated the carryover of unmarketed quota pounds, any quota pounds not marketed will be a loss of potential income for producers. It is expected that somewhat more than 92 percent will be marketed. It was assumed, based on a

consideration of all factors, that 96.7 percent of the 1998 quota will be marketed. This assumption, together with expected growth in domestic consumption of peanut products through new uses and a small increase in demand because of lower peanut support prices resulted in the setting of a national peanut poundage quota of 1,167,000 st for the 1998 MY.

Discussion of Comments

This determination followed the publication of a proposed rule on December 2, 1997, in the **Federal Register** (62 FR 63678), which proposed a MY 1998 national poundage quota level between 1,133,000 and 1,175,000 st, an additional price support level between $132 per st to $175 per st, and a minimum CCC sales price for export edible peanuts for sales of price support loan peanuts for the 1998 crop between $350 and $400 per st. There were 13 letters received comprising 19 separate comments in response to the notice during the comment period that ended on December 9, 1997. Comments were submitted by two consumer groups, five manufacturers' groups, two sheller and handler groups, two sheller and handler firms, and two producer organizations. Comments were received relative to quota levels, the additional price support level and the minimum CCC sales price for additional peanuts. In reference to quota levels, the consumer and manufacturer groups were concerned with adequate supplies, stock levels, and all suggested that the quota be set above the recommended range. The sheller association and the buying point association recommended the quota be set at the upper end or above the proposed range. The sheller and the handler recommended no change. The producer groups recommended no change to not more than 2.5 percent increase.

A larger quota requested by consumer and manufacturer groups would have minimal benefit for consumers of peanut products or the peanut industry. At this time, Bureau of Labor Statistics data for peanut butter does not make the case that lower quota support prices since the 1996 Act have been passed on to consumers. Also, industry sources point out that infrastructure is unevenly distributed across the production belt and that competition among handlers and shellers for grower loyalty keeps prices bid for farmer stock peanuts above the quota support level. Since increases in demand for greater supplies of peanuts is normally small, a quota of 1,250,000 st, as suggested by some commentators, would likely result in a surplus and a loss on loan placements for more than 80,000 st of peanuts. These peanut losses would be around $400 per st. Losses of up to $20 million could occur and result in producer assessments ranging from $15 to $20 per st the following year. For the above stated reasons a quota of 1,250,000 st would not be expected to impact consumer prices and would be expected to adversely affect producer income. In any event, the quota formula is set by statute and the determined quota was calculated using that formula.

B. Additional Peanut Support Level

Section 155(b)(2) of the 1996 Act provides that price support shall be made available for additional peanuts at such level as the Secretary determines will ensure no losses to CCC from the sale or disposal of such peanuts, taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets.

The MY 1998 price support level for additional peanuts was announced at $175 per st on February 13, 1998. The national average price support rate for quota peanuts, for each of the 1996 through 2002 crops, is set at $610 per st by the 1996 Act and is codified at 7 CFR 1446.103.

The MY 1998 price support level for additional peanuts was established at $175 per st to ensure no losses to CCC from the sale or disposal of additional peanuts. Peanuts are pledged as collateral for price support loans. The peanuts are then sold in order to recoup the loan principal, interest and related costs. The statutory factors have been analyzed as set out below. Based on those factors, it is anticipated that while the current oil market is strong, there is enough uncertainty in the market to suggest caution.

In making this determination, the following market information was considered:

1. The domestic use of peanut oil during MY 1998 is forecast to be 105,000 st, up 2 percent from MY 1997 projected domestic use. MY 1998 peanut oil beginning stocks are expected to be 27,500 st, down 36 percent from MY 1997. The MY 1998 average peanut oil price is expected to be $0.413 per pound, down $0.017 per pound from MY 1997.

2. The domestic use of peanut meal during MY 1998 is forecast to be 150,000 st, up 20,000 st from MY 1997 projected domestic use. MY 1998 peanut meal beginning stocks are expected to be 4,000 st, unchanged from MY 1997. The MY 1998 average peanut meal price is expected to be $147.50 per st, down $22.50 per st from MY 1997.

3. The domestic disappearance of soybean oil during MY 1998 is forecast to be 7,300,000 st, up 1.7 percent from projected MY 1997 domestic disappearance. MY 1998 soybean oil beginning stocks are expected to be 777,500 st, up about 2.3 percent from MY 1997. The MY 1998 average soybean oil price is expected to be $0.248 per pound, down $0.002 per pound from MY 1997.

4. The domestic disappearance of cottonseed oil during MY 1998 is forecast to be 515,500 st, up 0.5 percent from projected MY 1997 domestic disappearance. MY 1998 cottonseed oil beginning stocks are expected to be 40,500 st, up 22.7 percent from MY 1997. The MY 1998 average cottonseed oil price is expected to be $0.270 per pound, down $0.0075 per pound from MY 1997.

5. The domestic disappearance of soybean meal during MY 1998 is forecast to be 29,250,000 st, up 3.5 percent from projected MY 1997 domestic disappearance. MY 1998 soybean meal beginning stocks are expected to be 225,000 st, up about 8.7 percent from MY 1997. The MY 1997 average soybean meal price is expected to be $182.50 per st, down $30.00 per st from MY 1997.

6. The domestic disappearance of cottonseed meal during MY 1998 is forecast to be 1,640,000 st, down 0.3 percent from projected MY 1997 domestic disappearance. MY 1998 cottonseed meal beginning stocks are expected to be 41,000 st, unchanged from MY 1997. The MY 1998 average cottonseed meal price is expected to be $135.00 per st, down $25 per st from MY 1997.

7. The world use of peanuts for MY 1997 is expected to be 24.07 million metric tons, down 8.0 percent from MY 1996. World peanut production for MY 1997 is forecast to be 24.58 million metric tons, down 7.8 percent from MY 1996. Ending stocks for MY 1997 are forecast at 0.51 million metric tons, up 4.5 percent from 1996.

MY 1997 begins with record oil stocks and record imports of oil during MY 1996. Yet MY 1998 peanut oil prices are projected to be 41.3 cents per pound. Based on the supply and use situation at the beginning of MY 1997 and projections for MY 1998, there are conflicting signals in the supply price relationship in the peanut oil market that suggest caution in setting the additional peanut support level. Also, producers are expected to place about 10,000 st of quota peanuts and 140,000 st of additional peanuts under price

support loan. The accompanying table shows loan outlays under three additional price support levels and receipts under three bid price (price offer) levels.

ESTIMATED PEANUT PROGRAM OUTLAYS AND RECEIPTS FOR MY 1998

[FSA/TPD 12/97]

Loans Made: [1]			
Quota	.....	.....	10,000 st
Additional	.....	.....	140,000 st
Loan Rate: [2]			
Quota	$610/st	$610/st	$610/st
Additional	$132/st	$150/st	$175/st
Outlays	Million Dollars		
MY 98	28	31	34
	Average Bid Price		
Item [3]	$150/st	$250/st	$325/st
Receipts	Million Dollars		
MY 98	23	38	49
Net Cost [1]	0	0	0

[1] Assumed levels based on 1996/1997 and 1997/98 experiences.
[2] Plus $25/st administrative expense.
[3] Assumes quota and additional loan inventory sold as oil stock to show maximum monetary exposure of assumed loan receipts.
[4] Program must operate at no-net-cost to treasury. Shortfalls are made up through grower assessments and pool dividends.

Discussion of Comments

During the comment period that ended December 9, 1997, there were three comments received concerning the 1998 additional peanut price support level. One sheller association and one handler association made specific recommendations on the additional price support level. They recommended a range of $175 to $250 per st. The volume of additional peanuts being bought back and strong prices in the oil seed complex were cited as the reason to increase the additional price support level. The producer group recommended setting the additional support level within the proposed range. The final determination was made for the reasons given above. An analysis of the data for that year is available from the contact person listed above.

C. Announcement of CCC Sales Price for Additional Peanuts Sold for Export Edible Use

The establishment of a minimum price at which 1998 crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is a discretionary action. The announcement of that price provides producers and handlers with information to facilitate the negotiation of private contracts for the sale of additional peanuts for export.

An overly high price may discourage private sales. If too low, the minimum price could have an unnecessary, adverse effect on prices paid to producers for additional peanuts. The minimum price at which 1998 crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets was established at $400 per st on April 30, 1998. This price should encourage exports while providing price stability for additional peanuts sold under contract. It will also assure handlers that CCC will not undercut their export contracting efforts with offerings of additional peanuts for export edible sales below the announced minimum sales price.

Advance Notice of Proposed Rule Making

An Advance Notice of Proposed Rulemaking was published in the **Federal Register** on August 18, 1997 (62 FR 43955) requesting comments on the method for determining the minimum CCC export edible sales price for additional peanuts. Ten letters containing 10 comments were received during the comment period ending September 30, 1997. Seven comments were from producer groups, two from sheller groups and one from an individual sheller. The seven producer groups recommended no change from the $400 per st level. One sheller group recommended setting an absolute dollar figure each year and ranging between $350 to $375 per st for 1998. One sheller group and one sheller submitted a formula based on the peanut oil market.

Proposed Rule

Three letters containing three separate comments concerning the minimum CCC sales price for additional peanuts sold for export edible use were received during the comment period for the Proposed Rule ending December 9, 1997. One sheller group, one handler group, and one grower group made specific comments concerning the sales policy.

One sheller group resubmitted its proposed formula tied to the peanut oil market to set the minimum CCC export edible sales price for additional peanuts. The handler group and a producer group recommended setting the price at an fixed level. The handler group suggested a range of $350 to $400 per st. The producer group wanted the price to remain at $400 per st. The final price was set based on the factors set forth above.

List of Subjects

7 CFR Part 729

Peanuts, Penalties, Poundage quotas, Reporting and record keeping requirements.

7 CFR Part 1446

Loan program—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Accordingly, this final rule amends 7 CFR parts 729 and 1446 as follows:

PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: 7 U.S.C. 1301, 1357 *et seq.*, 1372, 1373, 1375, and 7271.

2. Section 729.216 paragraph (c) is revised to read as follows:

§ 729.216 National poundage quota.

* * * * *

(c) Quota determination for individual marketing years (excluding seed):

(1) The national poundage quota for quota peanuts for marketing year 1996 is 1,100,000 short tons.

(2) The national poundage quota for quota peanuts for marketing year 1997 is 1,133,000 short tons.

(3) The national poundage quota for quota peanuts for marketing year 1998 is 1,167,000 short tons.

PART 1446—PEANUTS

3. The authority citation for 7 CFR part 1446 continues to read as follows:

Authority: 7 U.S.C. 7271, 15 U.S.C. 714b and 714c.

4. Section 1446.310 is amended by adding new paragraph (c) to read as follows:

§ 1446.310 Additional peanut support levels.

* * * * *

(c) The national support rate for additional peanuts for the 1998 crop is $175 per short ton.

5. Section 1446.311 is amended by adding new paragraph (c) to read as follows:

§ 1446.311 Minimum CCC sales price for certain peanuts.

(c) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1998 and subsequent crops is $400 per short ton.

Signed at Washington, DC, on August 31, 1999.

Keith Kelly,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–23377 Filed 9–8–99; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 7, 9, 50, 51, 52, 60, 62, 72, 75, 76, 100, and 110

RIN 3150–AG07

Electronic Availability of NRC Public Records and Ending of NRC Local Public Document Room Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect a change in the way its records are made available to the public. The amendments reflect the NRC's decision to implement a new document management system that will permit the electronic storage, retrieval, and on-line ordering of publicly available NRC official records through the NRC Web site.

EFFECTIVE DATE: October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Russell A. Powell, Chief, Information Services Branch, Information Management Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6527, email: RAP1@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect the use of a new electronic record keeping system for NRC records. The NRC is establishing the Agencywide Documents Access and Management System (ADAMS) to provide for the electronic submission, storage, and retrieval of NRC official records. When ADAMS becomes operational, any NRC official records that are normally publicly available under the Commission's regulations will be available electronically through ADAMS. The regulations governing which records are publicly available are unaffected by this final rule. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

When ADAMS becomes operational, NRC will discontinue furnishing paper and microfiche copies of its publicly available records to the NRC Public Document Room (PDR), located in Washington, DC, and the Local Public Document Rooms (LPDRs), located near nuclear power plants and other nuclear facilities. Under ADAMS, NRC will initially begin making available electronically through the Electronic Reading Room on the NRC Internet Web site, imaged copies of its newly received and created publicly available official records that are in paper form. However, ultimately, NRC's newly created official records will all be stored in ADAMS only in electronic form, and NRC will maintain only its pre-ADAMS records as paper copies. Because of budget constraints and the improved access to newly received and created records via the NRC Web site under ADAMS, the Commission decided to discontinue funding of the LPDR program beyond Fiscal Year 1999.

The NRC currently maintains 86 LPDRs in the vicinity of nuclear reactor and materials licensees: 72 support power reactors; 2 support gaseous diffusion plants; 3 support high-level waste repositories; and the remaining 9 support fuel-cycle, low-level waste, and other facilities. A survey of the facilities where LPDRs are currently located revealed that all but six now provide, or will provide Internet access to its patrons by the end of 1999. Additionally, although NRC plans to discontinue the LPDR program, it has offered each of the current LPDR libraries the opportunity to keep their current LPDR document collections so the pre-ADAMS LPDR collections can continue to be available in the local communities. Of the 86 current LPDRs, 64 have expressed an interest in maintaining their current LPDR document collections after the LPDR program is discontinued. The decision to accept this offer to transfer ownership of these collections and the length of time they will be maintained will be at the sole discretion of each library.

In addition, the Government Printing Office (GPO) has agreed to accept the LPDR microfiche collections that were not kept by the current LPDR libraries. GPO will place these collections in their Federal Depository Library Program (FDLP). This assures the continuation of at least one LPDR microfiche collection in each of the states which now has one.

ADAMS will provide the following added benefits that should preclude or minimize any public concerns regarding the impact from discontinuing the LPDR program:

1. ADAMS Internet access will provide access to new records in full text and image.

2. ADAMS will provide an improved electronic search capability. Under the existing system, only the bibliographic indexes and abstracts for most records are available from the online BRS and NUDOCS.

3. Some new records will be available to the public within days instead of the

two weeks or longer it now takes for LPDRs to receive microfiche or paper copies of new accessions.

4. Internet public access to the NRC Web site will provide direct access to a much broader range of the public than just to those who, because of their close proximity, have access to the PDR and LPDRs.

The NRC PDR will still have pre-ADAMS paper and microfiche records on site and available to the public for viewing and copying. The PDR will also have computer terminals available for the public to access new documents on the NRC Web site. The public will still be able to obtain paper copies of new electronic records by printing them from the NRC Internet Web site, by ordering them for a fee from the PDR directly from the NRC Web site, or by using current ordering methods. The current methods are: in-person at the PDR, mail, e-mail, fax or by calling the PDR Reference Services on the toll-free 800 telephone number. Bibliographic descriptions of documents currently identified in the PDR's Bibliographic Retrieval System (BRS) and in NUDOCS will be posted on the NRC Web site. This will also allow the public to order copies of pre-ADAMS paper and microfiche records. The public will also have access to the NRC Web site from any computer with Internet access, and will be able to download the records to the computer they are using for printing or other supported functions.

Public Comment Summary

The NRC published a proposed rule on May 7, 1999, (64 FR 24531). In response, the NRC received ten comments from the public. The comments are addressed individually below:

1. Martha Dibblee, Received via Email May 14, 1999

Comment: If you eliminate the public document room and put it on the Internet (which I believe is a wonderful idea since I use the Internet) the rule or an appendix should include a list of public libraries in the U.S.

Response: The Public Document Room (PDR), in Washington, DC, is not being eliminated. The Local Public Document Room (LPDR) program, supporting document collections set up in libraries near nuclear facilities, is being discontinued. However, most of those libraries are retaining their collections. A list of public libraries in the U.S. should be available at any public library as well as on the Internet.

2. Connecticut Yankee Atomic Power Company (CYAPCO), Dated May 20, 1999

Comment: CYAPCO fully supports the NRC's initiative to implement a new document management system that would permit the electronic storage, retrieval, and on-line ordering of publicly available NRC official records through the NRC Web site.

Response: NRC considers this comment supportive of the rule and it requires no further response.

Comment: CYAPCO also supports expanded use of ADAMS for electronic licensee submittals and agency documents for docketed correspondence.

Response: NRC considers this comment supportive of the rule and it requires no further response.

3. State of Illinois, Department of Nuclear Safety (IDNS), Dated May 27, 1999

Comment: IDNS supports the expanded availability of NRC records through the NRC Web site. This should facilitate greater public access to the records and cost savings to NRC.

Response: NRC considers this comment supportive of the rule and it requires no further response.

Comment: Will documents relating to Part 30 and Part 40 licenses be available on the NRC's Web site?

Response: Yes, publicly available documents received or created after the implementation of ADAMS, relating to part 30 and part 40 licenses will be available on the NRC's Web site. Documents prior to the implementation of ADAMS, will not routinely be placed into the ADAMS system, but they can be identified from the legacy systems indexes available online in the ADAMS Electronic Reading Room and ordered from the PDR; or, if convenient, can be accessed on the microfiche at one of the libraries that has retained the LPDR record collection. Those libraries and their locations will be identified on the NRC Web site.

Comment: NRC, not licensees, will be responsible for imaging paper copies into electronic form. Is this correct? How will NRC handle oversize documents?

Response: Yes, NRC will be responsible for imaging paper copies if licensees do not submit documents in electronic form, including oversized documents.

Comment: Is there a legal requirement that facilities, where LPDRs are currently located, provide Internet access?

Response: No, NRC has no authority to do so and has never established any requirement that facilities where LPDRs are currently located provide Internet access.

Comment: Whose responsibility is it to provide and maintain such access?

Response: The decision as to whether or not an LPDR or any other public or educational library provides and/or maintains Internet access is not within NRC's jurisdiction. However, under the Telecommunications Act of 1996, the Federal government is supporting Internet access from public libraries and schools through fees collected under regulations issued by the Federal Communications Commission. Likewise, many States have programs supporting Internet access from public libraries.

Comment: Has it been determined that such Internet access is Y2K compliant? If not, when will Y2K compliance be determined?

Response: NRC has no jurisdiction over Internet access at any of its current LPDR library facilities, including whether or not such access is Y2K compliant.

4. Lynn Connor, Portland, Oregon, Dated June 15, 1999

Comment: I believe it is impossible to provide any meaningful comment on a system that is not yet operational and for which there is very little public information available on how it will work.

Response: NRC acknowledges this comment and believes that sufficient information has been provided regarding the planned operation of the new system.

5. Sarah M. Fields, Moab, Utah, Dated June 21, 1999

Comment: The NRC should maintain at least one LPDR in each state that currently has an LPDR.

Response: Of the 73 LPDRs that have microfiche, 54 have agreed to keep their collections and the remaining 19 will be transferred to the GPO Federal Depository Library Program, assuring the continuation of at least one LPDR collection in each of the states which now has one. The libraries that currently house the collections to be relocated will receive the final shipments of microfiche from the current document management system, making the collections complete before any transfers. The LPDRs that have opted to keep their collections have been asked to contact the GPO first before making any disposition decisions if they change their mind and no longer wish to maintain their collections.

Comment: The NRC should facilitate the transfer of the LPDR collection from

any LPDR which does not wish to keep its collection to an appropriate library near the site of uranium mills which have operated under license to the AEC and/or the NRC.

Response: See response to previous comment.

Comment: The NRC should establish a priority list for the transfer of LPDR collections to mill site areas. First on the list should be the Grants and Gallup areas of New Mexico, Wyoming, and southeastern Utah.

Response: The first priority that NRC established was to allow current LPDR libraries to keep the collections they now have. The next priority was to transfer any microfiche collections that LPDR libraries did not elect to keep to the GPO for placement in their Federal Depository Library Program (FDLP) in, at minimum, each of the states which now has an LPDR microfiche collection. The NRC currently maintains an LPDR in the Grants and Gallup areas of New Mexico, located at the Dine College, Crownepoint, New Mexico. An LPDR also exits in the state of Utah at the Marriott Library, University of Utah, Salt Lake City. Both of those libraries have elected to keep their collections. There is not currently an LPDR in the state of Wyoming.

The change will not lessen the public's accessibility to NRC information, except to those few who, because of their close proximity, have had convenient access to the PDR and LPDRs prior to relocation of an LPDR. Overall, public access to the NRC Web site via the Internet will provide direct access to a much broader range of the public than just those few for whom they were conveniently located before the move. The public can now use any access to the Internet to access NRC publicly available documents, whether it be from a public, college, or university library, their place of business, or their home using their own personal computer.

6. Nuclear Energy Institute (NEI), Dated June 21, 1999

Comment: NEI commends the NRC on its initiative to make its records available electronically. The availability of NRC records via an electronic format will provide broader, more timely access of this information to all of the NRC's stakeholders. Furthermore, the cost savings that will be realized through the elimination of the Local Public Document Room (LPDRs) will be beneficial to all stakeholders.

Response: NRC considers this comment supportive of the rule and it requires no further response.

7. Licensing Support Services, Dated June 18, 1999

Comment: It is prudent to try out a new system first, to debut it and verify that it can accomplish what is intended, before abandoning the tried-and-true method it is to replace.

Response: The NRC's current document management system, NUDOCS, was not Y2K compliant. A decision had to be made whether to expend funds to keep that system operating after ADAMS. The NRC determined that it was not economically feasible to keep NUDOCS operational.

Comment: The likelihood of a delay in implementing ADAMS, combined with the end of support for LPDRs at the beginning of FY00, makes it very likely that public access to information will be interrupted for a time.

Response: ADAMS should begin providing public access to documents effective October 1999. Public access to information is not expected to be interrupted. As previously described, most of the current LPDRs that have microfiche have agreed to keep their collections and the remaining ones will be transferred to the GPO Federal Depository Library Program. Should ADAMS implementation be delayed, NRC would continue with the current process until the new system is in place.

Comment: LSS is concerned that the volume of material, and the practical needs of preparing it for web availability, will make it difficult or impossible to fulfill the promise made in the proposed rule.

Response: Currently, documents to be posted to the Web site have to first be coded in hypertext markup language. This process can take several days. However, ADAMS is not currently being used for the posting of documents to the web. ADAMS does not require coding to post to the Web and, when it becomes operational, the only delays in release will be those which the NRC staff purposely establishes to preclude premature releases to the public.

8. Unsigned and Undated, Received June 24, 1999

Comment: The commenter provides various comments regarding concerns or dissatisfaction with the current status of public accessibility to records and interest in expansion of the current LPDR system.

Response: The proposed rule announced the change in the way the NRC will provide publicly available information. The change will not lessen the accessibility to NRC information, except perhaps in a few instances where LPDRs relocate, thereby making access to those records less accessible to those for whom they were conveniently located before the move. Overall, public access to the NRC Web site via the Internet will provide direct access to a much broader range of the public than just to those few who, because of their close proximity, have had convenient access to the PDR and LPDRs. The public can now use any access to the Internet to access NRC publicly available documents, whether it be from a public, college, or university library, their place of business, or their home using their own personal computer. These changes to NRC regulations only affect the way records are made available to the public by formally discontinuing the LPDR program and making the Web the main avenue for public access. No other changes have been made or addressed.

Comment: Has NRC done an assessment of the use of the LPDRs and how do members of the public feel about NRC's plans?

Response: Over the years, NRC has received quarterly reports of public usage of the LPDRs and found use at many of them to be minimal. Based on the limited number of comments in response to the proposed rule and other miscellaneous responses in direct conversations with LPDR librarians, the current PDR and LPDR users welcome the new system which promises to provide much broader and easier access than currently available.

Comment: Should users be forced to pay a fee to access NRC documents?

Response: Libraries do not charge their patrons to view on the Internet, but as with paper copies, charges may be made for printing. Users now pay fees for copies of documents whether they obtain them from the PDR or the LPDR. Under ADAMS, many users will be able to obtain documents at no cost via their home computers by downloading to a disk or printing a document. However, just as they do now, the public can still order documents from the PDR for a fee.

Comment: The NRC needs a customer feedback process to ensure that public's comments are obtained and acted upon during the transition period.

Response: NRC is very much aware of the need for public feedback to resolve problems that are certain to be encountered in this major transition. The PDR will continue to serve as the public interface to assist the public in obtaining timely and full access to NRC's publicly available information and the ADAMS Web site will provide information and a means for the public to ask questions and provide comments.

Comment: Will NRC fund and maintain and upgrade the computer terminals, software, and printers in LPDRs?

Response: No. The NRC is discontinuing its LPDR program and will no longer be funding libraries that keep those collections.

Comment: If NRC is replacing the LPDR with the Internet why can't those records made available through NTIS also be made available through the Internet?

Response: Records made available through NTIS will be available through the Internet in ADAMS.

Comment: Shouldn't NRC build a relational information system such that a member of the public can locate all NRC and licensee information, including upcoming meetings about a specific licensee?

Response: The PDR staff has been assigned primary responsibility for the design of the organizational scheme for ADAMS to ensure that the transition from the current systems (BRS and NUDOCS) for locating documents to ADAMS will be as easy as possible for the public.

9. Winston & Strawn, Dated June 23, 1999

Comment: Given the magnitude and volume of official record material created and received by the Agency, we urge that a similar organizational scheme be adopted for the ADAMS to help facilitate the public access to documents by docket number, reference group, or subject area.

Response: See the previous response.

Comment: We recommend that the ADAMS or the PDR accommodate the public availability of records that are not suitable for electronic dissemination (e.g. video tapes, audio tapes, etc.).

Response: The NRC will accommodate the public availability of records that are not suitable for electronic dissemination.

Comment: Will imaged records in the ADAMS include the official NRC watermark and signature?

Response: The electronic copy of documents in ADAMS will show a signature (and watermark if it is present and visible enough to be imaged) just as is currently available in the microfiche and photocopies of paper records.

Comment: We believe that all NUREGs should be available on ADAMS.

Response: All publicly available NUREGs published after the implementation of ADAMS will be available in ADAMS. NUREGs published before the implementation of ADAMS may be placed in ADAMS on a selective basis.

Comment: The NRC should implement controls to ensure that the document processing contractor is properly qualified to classify ''externally generated'' documents.

Response: The NRC document processing contractor is the same contractor that processed documents under the NUDOCS system and will be qualified to classify those documents it processes under ADAMS. The document processing contractor determines the public availability of documents only for certain documents using pre-determined criteria. All others are made publicly available by staff review of the documents and instructions to the document processing contractor or by the staff processing them directly into ADAMS.

Comment: The NRC should include an advance copy public library in the ADAMS architecture.

Response: There will not be a need for an advance copy public library, since once a document is marked to be released to the public, the release is made. There will not be any backlog of unprocessed documents in this document management system.

10. Gerry C. Slagis, Pleasant Hill, CA, Dated June 23, 1999

Comment: I applaud the use of ADAMS to make NRC official records available to the public. However, I am against the shutting down of the LPDR program beyond Fiscal Year 1999. The problem is public access to the NRC official records prior to ADAMS. A person needs to be able to view the documents before copying certain pages or ordering the entire document.

Response: Although the NRC is going to discontinue the LPDR program at the end of September 1999, documents issued prior to ADAMS implementation will still be accessible to the public. Documents published or issued before the implementation of ADAMS, will not routinely be placed into the ADAMS system. However, these documents can be identified from the legacy systems (BRS and NUDOCS) indexes available online in the ADAMS Electronic Reading Room and ordered from the PDR; or, if convenient, can be accessed on the microfiche at one of the libraries that has retained the LPDR record collection. Most of the LPDRs are keeping their microfiche collections. Therefore, most of the public who have access to an LPDR now will continue to have access after ADAMS is operational. Those libraries and their locations will be identified on the NRC Web site.

Because records will be released electronically to the public rather than in paper or microfiche, this rule amends the regulations in 10 CFR Parts 1, 2, 7, 9, 50, 51, 52, 60, 62, 72, 75, 76, 100, and 110 to reflect the manner in which these records would be made publicly available.

To reflect the discontinuance of NRC support of libraries serving as LPDRs, references to NRC LPDRs will be deleted in 10 CFR 2.1231(a)(1)(ii), and (b); 9.35 (b) and (e); 50.30(a)(5); part 50 Appendix Q, section 4; 51.120; part 52, Appendix O, section 5; part 52, Appendix Q, section 4, and 76.37(a).

In addition, several other minor conforming changes will be made. The definition of the PDR in 10 CFR 2.4, 60.2, and 110.2 is now in a new paragraph and will be revised to reflect that records newly created or received since the implementation of ADAMS that are publicly available are now available in the PDR in electronic form for inspection and copying, and that copies can be ordered from the PDR. A new paragraph will define the NRC Web site as the Internet location where NRC records are made available for public inspection and copying and that the public can also order copies of documents from the PDR through the NRC Web site.

Section 9.2(a) will be revised to delete the reference to the availability of records on 48x microfiche through the National Technical Information Service (NTIS). When NRC begins making its records available from the NRC Web site, microfiche copies will no longer be produced. The address for the NTIS and a statement that certain listed documents can be ordered from the NTIS will be added to 9.21(a). Section 9.21(d) will be deleted because the publication Title List of Documents Made Publicly Available, NUREG–0540, will no longer be published. Section 9.21(e) will be revised to show that only the published versions of final opinions and orders, referred to in 9.2(c)(1), are available from the NTIS in the publication, Nuclear Regulatory Issuances (NUREG–0750). The reference to interpretations in 9.21(c)(2) will be deleted because they are not available from NTIS.

Section 9.23(a)(2) will be deleted because it repeats information included in the revised 9.21(a). Section 51.123(a) and (b) will be revised to reflect the correct address where requests for draft environmental impact statements and draft findings of no significant hazard can be submitted.

Changes are made in several sections to reflect the correct name of the NRC

PDR. In addition, several misspelling corrections are made.

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. There are no industry consensus standards that apply to the electronic availability of public records. Thus, the provisions of the Act do not apply to this rulemaking.

Environmental Impact—Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1) and (2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0043, 3150–0011, 3150–0021, 3150–0151, 3150–0127, 3150–0143, 3150–0132, 3150–0055, 3150–0093, and 3150–0036.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

This final rule implements a new NRC procedure for making records available for public inspection and copying. This rule does not have any adverse economic impact on any class of licensee or the NRC. To the contrary, the final rule with its new provisions allowing Internet access from homes, offices, schools, and public libraries to NRC publicly released records provides some new and additional benefits to those seeking access to NRC records. A survey of the facilities where LPDRs are currently located revealed that all but six now provide, or will provide, Internet access to its patrons by the end of 1999. Additionally, although NRC plans to discontinue the LPDR program, it has offered each of the current LPDR libraries the opportunity to keep their current LPDR document collections so the pre-ADAMS LPDR collections can continue to be available in the local communities. Of the 86 current LPDRs, 64 have expressed an interest in maintaining their current LPDR document collections after the LPDR program is discontinued. This constitutes the regulatory analysis for this rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact upon a substantial number of small entities. The final rule implements a new procedure for making records available to the public. The NRC believes that the changes will not have an adverse economic impact on any class of licensee, including small entities, or the general public. On the contrary, the NRC believes that the final rule provides wider opportunities and make it easier for interested persons to obtain or review publicly available NRC records.

Backfit Analysis

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

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 OMB.

List of Subjects in 10 CFR

10 CFR Part 1

Organization and functions (Government agencies).

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 7

Advisory committees, Sunshine Act.

10 CFR Part 9

Criminal penalties, Freedom of Information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and records.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site review, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 62

Administrative practice and procedure, Denial of access, Emergency access to low-level waste disposal, Low-level radioactive waste, Low-level radioactive treatment and disposal, Low-level waste policy amendments act of 1985, Nuclear materials, Reporting and recordkeeping requirements.

10 CFR Part 72

Manpower training programs, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

10 CFR Part 100

Nuclear power plants and reactors, Reactor siting criteria.

10 CFR Part 110

Administrative practice and procedure, Classified Information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Parts 1, 2, 7, 9, 50, 51, 52, 60, 62, 72, 75, 76, 100 and 110.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION:

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

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209,91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

2. In § 1.3, paragraph (a) is revised to read as follows:

§ 1.3 Sources of additional information.

(a) A statement of the NRC's organization, policies, procedures, assignments of responsibility, and delegations of authority is in the Nuclear Regulatory Commission Management Directives System and other NRC issuances, including local directives issued by Regional Offices. Letters and memoranda containing directives, delegations of authority and the like are also issued from time to time and may not yet be incorporated into the Management Directives System, parts of which are revised as necessary. Copies of the Management Directives System and other delegations of authority are available for public inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW., Washington, D.C., and at each of NRC's Regional Offices. Information may also be obtained from the Office of Public Affairs or from Public Affairs Officers at the Regional Offices. In addition, NRC Functional Organization Charts, NUREG–0325, contains detailed descriptions of the functional responsibilities of NRC's offices. It is revised annually and is available for public inspection at the NRC Web site, http://www.nrc.gov, and/or at the NRC Public Document Room, or for purchase from the Superintendent of Documents, US Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082; and from the National Technical Information Service, Springfield, VA 22161.

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PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

3. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)). sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C.2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155,10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

4. Section 2.4 is amended by adding the definition of *NRC Public Document Room and NRC Web site* to read as follows:

§ 2.4 Definitions.

* * * * *

NRC Public Document Room means the facility at 2120 L Street, NW, Washington, DC where certain public records of the NRC that were made available for public inspection in paper or microfiche prior to the implementation of the NRC Agencywide Documents Access and Management System, commonly referred to as ADAMS, will remain available for public inspection. It is also the place where NRC makes computer terminals available to access the Electronic Reading Room component of ADAMS on the NRC Web site, http://www.nrc.gov, and where copies can be made or ordered as set forth in § 9.35 of this chapter. The facility is staffed with reference librarians to assist the public in identifying and locating documents and in using the NRC Web site and ADAMS. The NRC Public Document Room is open from 7:45 am to 4:15 pm, Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (202–634–3273 or 800–397–4209) between 8:30 am and 4:15 pm, or by e-mail (*PDR@nrc.gov*), fax (202–634–3343), or letter (NRC Public Document Room, LL–6, Washington, D.C. 20555–0001).

* * * * *

NRC Web site, http://www.nrc.gov, is the Internet uniform resource locator name for the Internet address of the Web site where NRC will ordinarily make available its public records for inspection.

* * * * *

5. In § 2.101, paragraph (a)(2) is revised to read as follows:

§ 2.101 Filing of application

(a) * * *

(2) Each application for a license for a facility or for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee will be assigned a docket number. However, to allow a determination as to whether an application for a construction permit or operating license for a production or utilization facility is complete and acceptable for docketing, it will be initially treated as a tendered

application. A copy of the tendered application will be available for public inspection at the NRC Web site, *http://www.nrc.gov,* and/or at the NRC Public Document Room. Generally, the determination on acceptability for docketing will be made within a period of thirty (30) days. However, in selected construction permit applications, the Commission may decide to determine acceptability on the basis of the technical adequacy of the application as well as its completeness. In these cases, the Commission, pursuant to § 2.104(a), will direct that the notice of hearing be issued as soon as practicable after the application has been tendered, and the determination of acceptability will be made generally within a period of sixty (60) days. For docketing and other requirements for applications pursuant to part 61 of this chapter, see paragraph (g) of this section.

* * * * *

6. In § 2.110, paragraph (c) is revised to read as follows:

§ 2.110 Filing and administrative action on submittals for design review or early review of sitesuitability issues.

* * * * *

(c) Upon completion of review by the NRC staff and the ACRS of a submittal of the type described in paragraph (a)(1) of this section, the Director of the Office of Nuclear Reactor Regulation shall publish in the **Federal Register** a determination as to whether or not the design is acceptable, subject to conditions as may be appropriate, and shall make available at the NRC Web site, *http://www.nrc.gov,* a report that analyzes the design.

7. In § 2.206, paragraph (a) is revised to read as follows:

§ 2.206 Requests for action under this subpart.

(a) Any person may file a request to institute a proceeding pursuant to § 2.202 to modify, suspend, or revoke a license, or for any other action as may be proper. Requests must be addressed to the Executive Director for Operations and must be filed either by delivery to the NRC Public Document Room at 2120 L Street, NW, Washington, DC, or by mail or telegram addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The request must specify the action requested and set forth the facts that constitute the basis for the request. The Executive Director for Operations will refer the request to the Director of the NRC office with responsibility for the subject matter of the request for appropriate action in accordance with paragraph (b) of this section.

* * * * *

8. In § 2.701, paragraph (a)(1) is revised to read as follows:

§ 2.701 Filing of documents.

(a) * * *

(1) By delivery to the NRC Public Document Room at 2120 L Street, NW., Washington, DC, or

* * * * *

9. In § 2.740, paragraph (b) (1) is revised to read as follows:

§ 2.740 General provisions governing discovery.

* * * * *

(b) * * *

(1) *In general.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. When any book, document or other tangible thing sought is reasonably available from another source, such as at the NRC Web site, *http://www.nrc.gov,* and/or the NRC Public Document Room, sufficient response to an interrogatory involving such materials would be the location, the title and a page reference to the relevant book, document or tangible thing. In a proceeding on an application for a construction permit or an operating license for a production or utilization facility, discovery begins only after the prehearing conference provided for in § 2.751a and relates only to those matters in controversy which have been identified by the Commission or the presiding officer in the prehearing order entered at the conclusion of that prehearing conference. In such a proceeding, no discovery may take place after the beginning of the prehearing conference held pursuant to § 2.752 except upon leave of the presiding officer upon good cause shown. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

* * * * *

10. In § 2.750, paragraph (a) is revised to read as follows:

§ 2.750 Official reporter; transcript.

(a) A hearing will be reported under the supervision of the presiding officer, stenographically or by other means, by an official reporter who may be designated by the Commission or may be a regular employee of the Commission. The transcript prepared by the reporter is the sole official transcript of the proceeding. Except as limited pursuant to Sec. 181 of the Act or order of the Commission, the transcript will be available for inspection at the NRC Web site, *http://www.nrc.gov,* and/or at the NRC Public Document Room. Copies of transcripts are available to parties and to the public from the official reporter on payment of the specified charges.

* * * * *

11. In § 2.790, the introductory text of paragraph (a) and paragraph (c) are revised to read as follows:

§ 2.790 Public inspections, exemptions, requests for withholding.

(a) Subject to the provisions of paragraphs (b), (d), and (e) of this section, final NRC records and documents, including but not limited to correspondence to and from the NRC regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, or order, or regarding a rulemaking proceeding subject to this part shall not, in the absence of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available for inspection and copying at the NRC Web site, *http://www.nrc.gov,* and/or at the NRC Public Document Room, except for matters that are:

* * * * *

(c) If a request for withholding pursuant to paragraph (b) of this section is denied, the Commission will notify an applicant for withholding of the denial with a statement of reasons. The notice of denial will specify a time, not less than thirty (30) days after the date of the notice, when the document will be available at the NRC Web site, *http://www.nrc.gov.* If, within the time specified in the notice, the applicant requests withdrawal of the document, the document will not be available at the NRC Web site, *http://www.nrc.gov,* and will be returned to the applicant: Provided, that information submitted in a rule making proceeding which subsequently forms the basis for the final rule will not be withheld from public disclosure by the Commission and will not be returned to the applicant after denial of any application for withholding submitted in connection with that information. If a request for withholding pursuant to paragraph (b) of this section is granted, the

Commission will notify the applicant of its determination to withhold the information from public disclosure.

* * * * *

12. In § 2.802, paragraphs (e) and (g) are revised to read as follows:

§ 2.802 Petition for rulemaking.

* * * * *

(e) If it is determined that the petition includes the information required by paragraph (c) of this section and is complete, the Director, Division of Administrative Services, Office of Administration, or designee, will assign a docket number to the petition, will cause the petition to be formally docketed, and will make a copy of the docketed petition available at the NRC Web site, *http://www.nrc.gov*. Public comment may be requested by publication of a notice of the docketing of the petition in the **Federal Register**, or, in appropriate cases, may be invited for the first time upon publication in the **Federal Register** of a proposed rule developed in response to the petition. Publication will be limited by the requirements of Section 181 of the Atomic Energy Act of 1954, as amended, and may be limited by order of the Commission.

* * * * *

(g) The Director, Division of Administrative Services, Office of Administration, will prepare on a semiannual basis a summary of petitions for rulemaking before the Commission, including the status of each petition. A copy of the report will be available for public inspection and copying at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

13. In § 2.804, paragraph (b)(2) is revised to read as follows:

§ 2.804 Notice of proposed rulemaking.

* * * * *

(b) * * *

(2) The manner and time within which interested members of the public may comment, and a statement that copies of comments may be examined will be made available at the NRC Web site, http://www.nrc.gov;

* * * * *

14. In § 2.809, paragraph (a) is revised to read as follows:

§ 2.809 Participation by the Advisory Committee on Reactor Safeguards.

(a) In its advisory capacity to the Commission, the ACRS may recommend that the Commission initiate rulemaking in a particular area. The Commission will respond to such rulemaking recommendation in writing within 90 days, noting its intent to implement, study, or defer action on the recommendation. In the event the Commission decides not to accept or decides to defer action on the recommendation, it will give its reasons for doing so. Both the ACRS recommendation and the Commission's response will be made available at the NRC Web site, *http://www.nrc.gov*, following transmittal of the Commission's response to the ACRS.

* * * * *

15. In § 2.1007, paragraph (a)(3) is removed and reserved and paragraph (a)(2) is revised to read as follows:

§ 2.1007 Access.

(a) * * *

(2) A system to provide electronic access to the Licensing Support Network shall be provided at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room beginning in the pre-license application phase.

* * * * *

16. In § 2.1231, paragraphs (a)(1)(ii), (a)(2), and (b) are revised to read as follows:

§ 2.1231 Hearing file; prohibition on discovery.

(a) * * *

(1) * * *

(ii) Making the file available at the NRC Web site, *http://www.nrc.gov*.

(2) The hearing file also must be made available for public inspection and copying at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

(b) The hearing file will consist of the application and any amendment thereto, any NRC environmental impact statement or assessment relating to the application, and any NRC report and any correspondence between the applicant and the NRC that is relevant to the application. Hearing file documents already available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room when the hearing request is granted may be incorporated into the hearing file at those locations by a reference indicating where at those locations the documents can be found. The presiding officer shall rule upon any issue regarding the appropriate materials for the hearing file.

* * * * *

17. In § 2.1301, paragraphs (a) and (c) are revised to read as follows:

§ 2.1301 Public notice of receipt of a license transfer application.

(a) The Commission will notice the receipt of each application for direct or indirect transfer of a specific NRC license by placing a copy of the application at the NRC Web site, *http://www.nrc.gov*.

* * * * *

(c) Periodic lists of applications received may be obtained upon request addressed to the NRC Public Document Room, US Nuclear Regulatory Commission, Washington, DC 20555–0001.

18. In § 2.1303, the section heading and the introductory text are revised to read as follows:

§ 2.1303 Availability of documents.

Unless exempt from disclosure under part 9 of this chapter, the following documents pertaining to each application for a license transfer requiring Commission approval will be placed at the NRC Web site, *http://www.nrc.gov*, when available:

* * * * *

19. In § 2.1306, paragraph (c)(2) is revised to read as follows:

§ 2.1306 Hearing request or intervention petition.

* * * * *

(c) * * *

(2) 45 days after notice of receipt is placed at the NRC Web site, *http://www.nrc.gov*, for all other applications; or

* * * * *

20. In § 2.1330, paragraph (b) is revised to read as follows:

§ 2.1330 Reporter and transcript for an oral hearing.

* * * * *

(b) Except for any portions that must be protected from disclosure in accordance with law and policy as reflected in 10 CFR 2.790, transcripts will be placed at the NRC Web site, *http://www.nrc.gov*, and copies may be purchased from the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

* * * * *

PART 7—ADVISORY COMMITTEES

21. The authority citation for Part 7 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 92–463, 86 Stat. 770 (5 U.S.C. App.).

22. In § 7.10, paragraph (b)(6) is revised to read as follows:

§ 7.10 The NRC Advisory Committee Management Officer.

* * * * *

(b) * * *

(6) Ensure that, subject to the Freedom of Information Act and NRC's

Freedom of Information Act regulations at 10 CFR part 9, subpart A, copies of the records, reports, transcript minutes, appendices, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by each NRC advisory committee are available for public inspection and copying at the NRC Web site *http://www.nrc.gov,* and/or at the NRC Public Document Room, until the advisory committee ceases to exist.

* * * * *

23. In § 7.11, paragraph (d)(5) is revised to read as follows:

§ 7.11 The Designated Federal Officer.

* * * * *

(d) * * *

(5) Make copies of committee documents required to be maintained for public inspection and copying pursuant to § 7.14(b) available at the NRC Web site, *http://www.nrc.gov,* and/or at the NRC Public Document Room.

24. Section 7.14 is revised to read as follows:

§ 7.14 Public information on advisory committees.

(a) The Nuclear Regulatory Commission shall maintain systematic information on the nature, functions, and operations of each NRC advisory committee. A complete set of the charters of NRC advisory committees and copies of the annual reports required by § 7.17(a) will be maintained for public inspection at either the NRC Web site, *http://www.nrc.gov;* and/or at the NRC Public Document Room.

(b) Subject to the provisions of the Freedom of Information Act (5 U.S.C. 552) and NRC's Freedom of Information Act regulations at 10 CFR part 9, subpart A, copies of NRC advisory committees' records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, and other documents shall be maintained for public inspection and copying at the NRC Web site, *http://www.nrc.gov;* and/or at the NRC Public Document Room.

25. In § 7.17, paragraphs (a) and (b) are revised to read as follows:

§ 7.17 Reports required for advisory committees.

(a) The Commission shall furnish a report on the activities of NRC advisory committees annually to the Administrator and the GSA Secretariat on a fiscal year basis. The report must contain information regarding NRC advisory committees required by Section 6(c) of the Act for the President's annual report to the Congress and be consistent with instructions provided by the GSA Secretariat. A copy of the report is made available at the NRC Web site, *http://www.nrc.gov,* and/or at the NRC Public Document Room.

(b) Any NRC advisory committee holding closed meetings shall issue a report, at least annually, setting forth a summary of its activities consistent with the policy of the Government in the Sunshine Act (5 U.S.C. 552b), as implemented by 10 CFR 9.104. A copy of the report is made available at the NRC Web site, *http://www.nrc.gov,* and/or at the NRC Public Document Room.

* * * * *

PART 9—PUBLIC RECORDS

26. The authority citation for Part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A is also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99–570. Subpart B is also issued under 5 U.S.C. 552a. Subpart C is also issued under 5 U.S.C. 552b.

27. Section 9.21 is revised to read as follows:

§ 9.21 Publicly available records.

(a) Single copies of NRC publications in the NUREG series, NRC Regulatory Guides, and Standard Review Plans can be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161.

(b) For the convenience of persons who may wish to inspect without charge, or purchase copies of a record or a limited category of records for a fee, publicly available records of the NRC's activities described in paragraph (c) of this section are also made available at the NRC Web site, *http://www.nrc.gov,* and/or at the NRC Public Document Room located at 2120 L Street, NW., Washington, DC, open between 7:45 am and 4:15 pm on Monday through Friday, except Federal holidays.

(c) The following records of NRC activities are available for public inspection and copying:

(1) Final opinions including concurring and dissenting opinions as well as orders of the NRC issued as a result of adjudication of cases;

(2) Statements of policy and interpretations that have been adopted by the NRC and have not been published in the **Federal Register**;

(3) Nuclear Regulatory Commission rules and regulations;

(4) Nuclear Regulatory Commission Manuals and instructions to NRC personnel that affect any member of the public;

(5) Copies of records that have been released to a person under the Freedom of Information Act that, because of the nature of their subject matter, the NRC determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(6) A general index of the records released under the FOIA.

(d) The published versions of the records made publicly available under paragraph (c)(1) of this section are available under the title, Nuclear Regulatory Issuances, NUREG–0750, for purchase through the National Technical Information Service.

28. In § 9.23, paragraph (a)(2) is removed and reserved and paragraphs (a)(1), (c), (d)(2), and (e) are revised to read as follows:

§ 9.23 Requests for records.

(a)(1) A person may request access to records routinely made available by the NRC under § 9.21 in person or by telephone, e-mail, fax, or US mail from the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555–0001.

(i) Each record requested must be described in sufficient detail to enable the NRC Public Document Room staff to locate the record.

(ii) In order to obtain copies of records expeditiously, a person may open an account at the NRC Public Document Room with the private contracting firm that is responsible for duplicating NRC records.

* * * * *

(c) If a requested agency record that has been reasonably described is located at a place other than at the NRC Web site, *http://www.nrc.gov,* the NRC Public Document Room, or the NRC headquarters, the NRC may, at its discretion, make the record available for inspection and copying at either of the locations.

(d) * * *

(2) If the requested record has been placed on the NRC Internet Web site, under § 9.21, the NRC may inform the requester that the record is available at the NRC Web site, *http://www.nrc.gov,* and/or at the NRC Public Document Room, and that the record may be obtained in accordance with the procedures set forth in paragraph (a) of this section.

(e) The Freedom of Information Act and Privacy Act Officer will promptly forward a Freedom of Information Act request made under paragraph (b) of this section for an agency record to the head of the office(s) primarily concerned with the records requested, as appropriate. The responsible office will conduct a search for the agency records responsive to the request and compile those agency

records to be reviewed for initial disclosure determination and/or identify those that have already been made publicly available at the NRC Web site, *http://www.nrc.gov,* and/or at the NRC Public Document Room.

29. In 9.35, paragraph (e) is removed, paragraphs (a)(2), (a)(5) and the introductory text of paragraph (b) are revised to read as follows:

§ 9.35 Duplication fees.

(a) * * *

(2) Self-service duplicating machines are available at the NRC Public Document Room for the use of the public. Paper to paper copy is $0.08 per page. Microfiche to paper is $0.10 per page on the reader printers.

* * * * *

(5) Any change in the costs specified in this section will become effective immediately pending completion of the final rulemaking that amends this section to reflect the new charges. The Commission will post the charges that will be in effect for the interim period at the NRC Public Document Room. The Commission will publish a final rule in the **Federal Register** that includes the new charges within 15 working days from the beginning of the interim period.

(b) The NRC will assess the following charges for copies of records to be duplicated by the NRC at locations other than the NRC Public Document Room located in Washington, DC:

* * * * *

30. In § 9.45 paragraph (b) is revised to read as follows:

§ 9.45 Annual reports to the Attorney General of the United States.

* * * * *

(b) The NRC will make a copy of the most recent report available to the public at the NRC Web site, *http://www.nrc.gov.*

31. In § 9.105, paragraph (b) is revised to read as follows:

§ 9.105 Commission procedures.

* * * * *

(b) Within one day of any vote taken pursuant to paragraph (a) of this section, § 9.106(a), or § 9.108(c), the Secretary shall make publicly available at the NRC Web site, *http://www.nrc.gov,* a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Secretary shall, within one day of the vote taken pursuant to paragraph (a) of this section or § 9.106(a), make publicly available at the NRC Web site, *http://www.nrc.gov,* a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

* * * * *

32. In § 9.107, paragraph (d)(1) is revised to read as follows:

§ 9.107 Public announcement of Commission meetings.

* * * * *

(d) * * *

(1) Publicly posting a copy of the document at the NRC Web site, http://www.nrc.gov,; and, to the extent appropriate under the circumstances;

* * * * *

33. In § 9.108, paragraph (b) is revised to read as follows:

§ 9.108 Certification, transcripts, recordings and minutes.

* * * * *

(b) The Commission shall make promptly available to the public at the NRC Web site, *http://www.nrc.gov,* the transcript, electronic recording, or minutes (as required by paragraph (a) of this section) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Commission determines pursuant to paragraph (c) of this section to contain information which may be withheld under § 9.104 or § 9.105(c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person upon payment of the actual cost of duplication or transcription as provided in § 9.14. The Secretary shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

34. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd) and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55 and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Section 50.33am 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Section 50.37 also issued under E.O. 12829, 3 CFR 1993 Comp., p. 570, E.O. 12958, as amended, 3 CFR 1995 Comp., p. 333, E.O. 12968, 3 CFR 1995 Comp., p. 391). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

35. In § 50.30, paragraph (a)(5) is revised to read as follows:

§ 50.30 Filing of application for licenses; oath or affirmation.

(a) * * *

(5) At the time of filing an application, the Commission will make available at the NRC Web site, *http://www.nrc.gov,* a copy of the application, subsequent amendments, and other records pertinent to the facility for public inspection and copying.

* * * * *

36. In § 50.44, paragraph (c)(3)(iv)(C) is revised to read as follows:

§ 50.44 Standards for combustible gas control system in light-water-cooled power reactors.

* * * * *

(c) * * *

(3) * * *

(iv) * * *

(C) Subsubarticle NE–3220, Division 1, and Subsubarticle CC–3720, Division 2, of Section III of the ASME Boiler and Pressure Vessel Code, referenced in paragraphs (c)(3)(iv)(B)(*1*) and (c)(3)(iv)(B)(*2*) of this section, have been approved for incorporation by reference by the Director of the Office of the **Federal Register**. A notice of any changes made to the material incorporated by reference will be published in the **Federal Register**. Copies of the ASME Boiler and Pressure Vessel Code may be purchased from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY. 10017. It is also available for inspection at the NRC Technical Reference Library,

Two White Flint North, Room 2B9, 11545 Rockville Pike, Rockville, MD.

* * * * *

37. In § 50.66, the introductory text of paragraph (a), paragraph (a)(2), the introductory text of paragraph (f)(2), and paragraph (f)(3) are revised to read as follows:

§ 50.66 Requirements for thermal annealing of the reactor pressure vessel.

(a) For those light water nuclear power reactors where neutron radiation has reduced the fracture toughness of the reactor vessel materials, a thermal annealing may be applied to the reactor vessel to recover the fracture toughness of the material. The use of a thermal annealing treatment is subject to the requirements in this section. A report describing the licensee's plan for conducting the thermal annealing must be submitted in accordance with § 50.4 at least three years prior to the date at which the limiting fracture toughness criteria in § 50.61 or appendix G to part 50 would be exceeded. Within three years of the submittal of the Thermal Annealing Report and at least thirty days prior to the start of the thermal annealing, the NRC will review the Thermal Annealing Report and make available the results of its evaluation at the NRC Web site, *http://www.nrc.gov*. The licensee may begin the thermal anneal after:

* * * * *

(2) The NRC makes available the results of its evaluation of the Thermal Annealing Report at the NRC Web site, *http://www.nrc.gov;* and

* * * * *

(f) * * *

(2) Within 15 days after the NRC's receipt of the licensee submissions required by paragraphs (c)(1), (c)(2) and (c)(3)(i) through (iii) of this section, the NRC staff shall make available at the NRC Web site, *http://www.nrc.gov*, a summary of its inspection of the licensee's thermal annealing, and the Commission shall hold a public meeting:

* * * * *

(3) Within 45 days of NRC's receipt of the licensee submissions required by paragraphs (c)(1), (c)(2) and (c)(3)(i) through (iii) of this section, the NRC staff shall complete full documentation of its inspection of the licensee's annealing process and make available this documentation at the NRC Web site, *http://www.nrc.gov*.

38. In Appendix O to Part 50, paragraph 5 is revised to read as follows:

Appendix O to Part 50—Standardization of Design; Staff Review of Standard Designs

* * * * *

5. Upon completion of their review of a submittal under this appendix, the NRC regulatory staff shall publish in the **Federal Register** a determination as to whether or not the preliminary or final design is acceptable, subject to such conditions as may be appropriate, and make available at the NRC Web site, *http://www.nrc.gov*, an analysis of the design in the form of a report. An approved design shall be utilized by and relied upon by the regulatory staff and the ACRS in their review of any individual facility license application which incorporates by reference a design approved in accordance with this paragraph unless there exists significant new information which substantially affects the earlier determination or other good cause.

* * * * *

39. In Appendix Q to Part 50, paragraph 4 is revised to read as follows:

Appendix Q to Part 50—Pre-application Early Review of Site Suitability Issues

* * * * *

4. Upon completion of review by the NRC staff and, if appropriate by the ACRS, of a submittal under this appendix, the NRC staff shall prepare a Staff Site Report which shall identify the location of the site, state the site suitability issues reviewed, explain the nature and scope of the review, state the conclusions of the staff regarding the issues reviewed and state the reasons for those conclusions. Upon issuance of an NRC Staff Site Report, the NRC staff shall publish a notice of the availability of the report in the **Federal Register** and shall make the report available at the NRC Web site, *http://www.nrc.gov*. The NRC staff shall also send a copy of the report to the Governor or other appropriate official of the State in which the site is located, and to the chief executive of the municipality in which the site is located or, if the site is not located in a municipality, to the chief executive of the county.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

40. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended 1244 (42 U.S.C. 5841, 5842). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–954, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L.95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100-203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f) 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

41. In § 51.62, paragraph (a) is revised to read as follows:

§ 51.62 Environmental report—land disposal of radioactive waste licensed under 10 CFR part 61.

(a) Each applicant for issuance of a license for land disposal of radioactive waste pursuant to part 61 of this chapter shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66 of a separate document, entitled ''Applicant's Environmental Report—License for Land Disposal of Radioactive Waste.'' The environmental report and any supplement to the environmental report may incorporate by reference information contained in the application or in any previous application, statement or report filed with the Commission provided that such references are clear and specific and that copies of the information so incorporated are available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

* * * * *

42. Section 51.120 is revised to read as follows:

§ 51.120 Availability of environmental documents for public inspection.

Copies of environmental reports, draft and final environmental impact statements, environmental assessments, and findings of no significant impact, together with any related comments and environmental documents, will be made available at the NRC Web site, http://www.nrc.gov, and/or at the NRC Public Document Room.

43. In § 51.123, paragraph (a) and (b) are revised to read as follows:

§ 51.123 Charges for environmental documents; distribution to public; distribution to governmental agencies.

(a) *Distribution to public.* Upon written request to the Reproduction and Distribution Services Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the extent available, single copies of draft environmental impact statements and

draft findings of no significant impact will be made available to interested persons without charge. Single copies of final environmental impact statements and final findings of no significant impact will also be provided without charge to the persons listed in §§ 51.93(a) and 51.119(c), respectively. When more than one copy of an environmental impact statement or a finding of no significant impact is requested or when available NRC copies have been exhausted, the requestor will be advised that the NRC will provide copies at the charges specified in § 9.35 of this chapter.

(b) *Distribution to governmental agencies.* Upon written request to the Reproduction and Distribution Services Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the extent available, copies of draft and final environmental impact statements and draft final findings of no significant impact will be made available in the number requested to Federal, State and local agencies, Indian tribes, and State, regional and metropolitan clearinghouses. When available NRC copies have been exhausted, the requester will be advised that the NRC will provide copies at the charges specified in § 9.35 of this chapter.

* * * * *

PART 52—EARLY SITE PERMITS; STANDARDS DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

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

Authority: Secs. 103, 104, 161, 182, 183, 186, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

45. In Appendix A to Part 52, Section VI, paragraph E.1.b. is revised to read as follows:

Appendix A to Part 52—Design Certification Rule For the U.S. Advanced Boiling Reactor.

* * * * *

VI. Issue Resolution.

* * * * *

E. * * *

1. * * *

b. The reason why the information currently available to the public at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, is insufficient;

* * * * *

46. In Appendix B to Part 52, Section VI, paragraph E.1.b. is revised to read as follows:

Appendix B to Part 52—Design Certification Rule for the System 80+ Design

* * * * *

VI. Issue Resolution

* * * * *

E. * * *

1. * * *

b. The reason why the information currently available to the public at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, is insufficient.

* * * * *

47. In Appendix O to Part 52, paragraph 5 is revised to read as follows:

Appendix O to Part 52—Standardization of Design; Staff Review of Standard Designs

* * * * *

5. Upon completion of their review of a submittal under this appendix, the NRC regulatory staff shall publish in the **Federal Register** a determination as to whether or not the preliminary or final design is acceptable, subject to such conditions as may be appropriate, and make available at the NRC Web site, *http://www.nrc.gov*, an analysis of the design in the form of a report. An approved design shall be utilized by and relied upon by the regulatory staff and the ACRS in their review of any individual facility license application which incorporates by reference a design approved in accordance with this paragraph unless there exists significant new information which substantially affects the earlier determination or other good cause.

* * * * *

48. In Appendix Q to Part 52, paragraph 4 is revised to read as follows:

Appendix Q to Part 52—Pre-Application Early Review of Site Suitability Issues.

* * * * *

4. Upon completion of review by the NRC staff and, if appropriate by the ACRS, of a submittal under this appendix, the NRC staff shall prepare a Staff Site Report which shall identify the location of the site, state the site suitability issues reviewed, explain the nature and scope of the review, state the conclusions of the staff regarding the issues reviewed and state the reasons for those conclusions. Upon issuance of an NRC Staff Site Report, the NRC staff shall publish a notice of the availability of the report in the **Federal Register** and shall make available a copy of the report at the NRC Web site, *http://www.nrc.gov.* The NRC staff shall also send a copy of the report to the Governor or other appropriate official of the State in which the site is located, and to the chief executive of the municipality in which the site is located or, if the site is not located in a municipality, to the chief executive of the county.

* * * * *

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE IN GEOLOGIC REPOSITORIES

49. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

50. In § 60.2, the definition of *Public Document Room* is removed and the new definitions of *NRC Public Document Room* and *NRC Web site* are added to read as follows:

§ 60.2 Definitions.

* * * * *

NRC Public Document Room means the facility at 2120 L Street, NW., Washington, DC where certain public records of the NRC that were made available for public inspection in paper or microfiche prior to the implementation of the NRC Agencywide Documents Access and Management System, commonly referred to as ADAMS, will remain available for public inspection. It is also the place where computer terminals are available to access the Electronic Reading Room component of ADAMS on the NRC Web site, *http://www.nrc.gov*, where copies can be made or ordered as set forth in § 9.35 of this chapter. The facility is staffed with reference librarians to assist the public in identifying and locating documents and in using the NRC Web site and ADAMS. The NRC Public Document Room is open from 7:45 am to 4:15 pm, Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (202–634–3273 or 800–397–4209) between 8:30 am and 4:15 pm, or by e-mail (*PDR@nrc.gov)*, fax (202–634–3343), or letter (NRC Public Document Room, LL–6, Washington, DC 20555–0001).

NRC Web site, *http://www.nrc.gov* is the Internet uniform resource locator name for the Internet address of the Web site where NRC will ordinarily make available its public records for inspection.

* * * * *

51. In § 60.18, paragraph (f) is revised to read as follows:

§ 60.18 Review of site characterization activities.

* * * * *

(f) The Director shall publish in the **Federal Register** a notice of availability of the site characterization analysis and a request for public comment within a reasonable period, as specified (not less than 90 days). The notice along with copies of the site characterization analysis shall be available at the *NRC Web site, http://www.nrc.gov*, and copies of any comments received will also be made available there.

* * * * *

52. In § 60.61, paragraph (d) is revised to read as follows:

§ 60.61 Provision of information.

* * * * *

(d) Copies of all communications by the Director under this section are available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, and copies are furnished to DOE.

53. In § 60.63, paragraphs (b) and (f) are revised to read as follows:

§ 60.63 Participation in license reviews.

* * * * *

(b) In addition, whenever an area has been approved by the President for site characterization, a State or an affected Indian Tribe may submit to the Director a proposal to facilitate its participation in the review of a site characterization plan and/or license application. The proposal may be submitted at any time and must contain a description and schedule of how the State or affected Indian Tribe wishes to participate in the review, or what services or activities the State or affected Indian Tribe wishes NRC to carry out, and how the services or activities proposed to be carried out by NRC would contribute to such participation. The proposal may include educational or information services (seminars, public meetings) or other actions on the part of NRC, such as employment or exchange of State personnel under the Intergovernmental Personnel Act.

* * * * *

(f) Proposals submitted under this section, and responses thereto, shall be made available at the *NRC Web site, http://www.nrc.gov*, and/or at the NRC Public Document Room.

PART 62—CRITERIA AND PROCEDURES FOR EMERGENCY ACCESS TO NON-FEDERAL AND REGIONAL LOW-LEVEL WASTE DISPOSAL FACILITIES

54. The authority citation for Part 62 continues to read as follows:

Authority: Secs. 81, 161, as amended, 68 Stat. 935, 948, 949, 950, 951, as amended (42 U.S.C. 2111, 2201); secs. 201, 209, as amended, 88 Stat. 1242, 1248, as amended (42 U.S.C. 5841, 5849); secs. 3, 4, 5, 6, 99 Stat. 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, (42 U.S.C. 2021c, 2021d, 2021e, 2021f).

55. In § 62.11, paragraph (b) is revised to read as follows:

§ 62.11 Filing and distribution of a determination request.

* * * * *

(b) Upon receipt of a request for a determination, the Secretary of the Commission shall publish a notice acknowledging receipt of the request in the **Federal Register**. The notice must require that public comment on the request be submitted within 10 days of the publication date of the notice. A copy of the request will be made available for inspection or copying at the NRC Web site, http://www.nrc.gov, and/or at the NRC Public Document Room. The Secretary of the Commission shall also transmit a copy of the request to the U.S. Department of Energy, to the Governors of the States of the Compact region where the waste is generated, to the Governors of the States with operating non-Federal low-level radioactive waste disposal facilities, to the Compact Commissions with operating regional low-level radioactive waste disposal facilities, and to the Governors of the States in the Compact Commissions with operating disposal facilities.

* * * * *

56. In § 62.22, paragraph (c) is revised to read as follows:

§ 62.22 Notice of issuance of a determination

* * * * *

(c) The Secretary of the Commission shall make a copy of the final determination available for inspection at the NRC Web site, *http://www.nrc.gov*.

PART 72 —LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

57. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846), Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Secs. 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1220–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 97–100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

58. In § 72.200, paragraph (c) is revised to read as follows:

§ 72.200 Provision of MRS information.

* * * * *

(c) Copies of all communications by the Director or the Director's designee under this section must be made available at the NRC Web site, http://www.nrc.gov, and/or at the NRC Public Document Room, and must be furnished to DOE.

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

59. The authority citation for Part 75 continues to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

60. In § 75.2, paragraph (b) is revised to read as follows:

§ 75.2 Scope.

* * * * *

(b) The United States eligible list is a list of installations eligible for IAEA safeguards under the US/IAEA Safeguards Agreement which the Secretary of State or his designee files with the Commission. A copy of this list is available for inspection at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room. In accordance with the provisions of the Agreement, the following activities are excluded from the United States eligible list:

(1) Activities having direct national security significance.

(2) Activities involving mining and ore processing.

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

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

Authority: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321–349 (42 U.S.C. 2201, 2297b–11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 234(a), 83 Stat. 444, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(a)).

Sec. 76.7 also issued under Pub. L. 95–601. Sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sec. 76.22 is also issued under sec. 193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(f)). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

62. In § 76.37, paragraph (a) is revised to read as follows:

§ 76.37 Federal Register notice.

* * * * *

(a) A notice of the filing of an application specifying that copies of the application, except for Restricted Data, Unclassified Controlled Nuclear Information, Classified National Security Information, Safeguards Information, Proprietary Data, or other withholdable information will be made available for the public inspection at the NRC Web site, *http://www.nrc.gov*;

* * * * *

PART 100—REACTOR SITE CRITERIA

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

Authority: Secs. 103, 104, 161, 182, 68 Stat. 936, 937, 948, 953, as amended (42 U.S.C. 2133, 2134, 2201, 2232); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

64. In § 100.11 the undesignated paragraph after the note is removed and a new paragraph (c) is added above the note to read as follows:

§ 100.11 Determination of exclusion area, low population zone, and population center distance.

* * * * *

(c) Copies of Technical Information Document 14844 may be obtained at the NRC Web site, *http://www.nrc.gov*, at the NRC Public Document Room, 2120 L Street, NW., Washington, D.C., or by writing the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

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

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841), sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123. 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under (5 U.S.C. 552, 554). Sections 110.130–110.135 also issued under (5 U.S.C. 553). Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 et. seq).

66. In § 110.2 the definition of *Public Document Room* is removed and new definitions of *NRC Public Document Room* and *NRC Web site* are added to read as follows:

§ 110.2 Definitions.

* * * * *

NRC Public Document Room means the facility at 2120 L Street, NW., Washington, DC where certain public records of the NRC that were made available for public inspection in paper or microfiche prior to the implementation of the NRC Agencywide Documents Access and Management System, commonly referred to as ADAMS, will remain available for public inspection. It is also the place where computer terminals are available to access the Electronic Reading Room component of ADAMS on the NRC Web site, *http://www.nrc.gov*, where copies can be made or ordered as set forth in § 9.35 of this chapter. The facility is staffed with reference librarians to assist the public in identifying and locating documents and in using the NRC Web site and ADAMS. The NRC Public Document Room is open from 7:45 am to 4:15 pm, Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (202–634–3273 or 800–397–4209) between 8:30 am and 4:15 pm, or by e-mail (*PDR@nrc.gov*), fax (202–634–3343), or letter (NRC Public Document Room, LL–6, Washington, D.C. 20555–0001).

* * * * *

NRC Web site, *http://www.nrc.gov*, is the Internet uniform resource locator name for the Internet address of the Web site where NRC will ordinarily make available its public records for inspection.

* * * * *

67. In § 110.70, paragraph (d) is removed and paragraph (a) is revised to read as follows:

§ 110.70 Public notice of receipt of application.

(a) The Commission will notice the receipt of each license application for an export or import for which a specific license is required by making a copy available at the NRC Web site, *http://www.nrc.gov*.

* * * * *

68. Section 110.71 is revised to read as follows:

§ 110.71 Notice of withdrawal of an application.

The Commission will notice the withdrawal of an application by making a copy available at the NRC Web site, *http://www.nrc.gov*.

69. In § 110.72, the section heading and introductory text are revised to read as follows:

§ 110.72 Public availability of documents.

Unless exempt from disclosure under part 9 of this chapter, the following documents pertaining to each license and license application for an import or export requiring a specific license under this part will be made available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room:

* * * * *

70. In § 110.112, paragraph (b) is revised to read as follows:

§ 110.112 Reporter and transcript for an oral hearing.

* * * * *

(b) Except for any classified portions, transcripts will be made available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

* * * * *

71. In § 110.113, paragraph (c) is revised to read as follows:

§ 110.113 Commission action.

* * * * *

(c) If the Commission considers information not in the hearing record in reaching its licensing decision, the hearing participants will be informed and, if not classified or otherwise privileged, the information will be made available at the NRC Web site, *http://www.nrc.gov*, and furnished to the participants.

* * * * *

Dated at Rockville, Maryland, this 24th day of August, 1999.

For the Nuclear Regulatory Commission.

Stuart Reiter,

Acting Chief Information Officer.

[FR Doc. 99–23160 Filed 9–8–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 990811216–9216–01]

RIN 0694–AB81

Correction to Editorial Clarifications and Revisions to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: On August 30, 1999 (64 FR 47104), the Bureau of Export Administration published an interim rule revising the Export Administration Regulations (EAR) by making certain editorial revisions and clarifications. Instruction No. 16 of that regulation inadvertently removed Firearms controls from ECCN 0A984.

This regulation amends the Commerce Control List (CCL) by revising ECCN 0A984 to include Firearms controls for the entire entry.

DATES: This rule is effective August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Frank J. Ruggiero, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527) August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 FR 44101).

Rulemaking Requirements

1. This final rule has been determined to be not significant for the purposes of Executive Order 12866.

2. Not withstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collection has been approved by the Office of Management and Budget under control numbers 0694–0088, 0694–0023, and 0694–0106. There are neither additions nor subtractions to these collections due to this rule.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act requiring notice of proposed Rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed Rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed Rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Frank J. Ruggiero, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 774 of the Export Administration Regulations (15 CFR Parts 730–774) is amended as follows:

PART 774—[AMENDED]

1. The authority citation for 15 CFR Part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420, 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 3201 *et seq.*, 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a, 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

2. In Supplement No. 1 to part 774, Category 0—Nuclear Materials, Facilities, and Equipment [And Miscellaneous Items] is amended by revising ECCN 0A984 to read as follows:

Supplement No. 1 to part 774—The Commerce Control List

* * * * *

0A984 Shotguns, barrel length 18 inches (45.72 cm) inches or over; buckshot shotgun shells; except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.

License Requirements

Reason for Control: CC, FC, UN

Control(s)	Country chart
FC applies to entire entry	FC Column 1.
CC applies to shotguns with a barrel length greater than or equal to 18 in. (45.72 cm), but less than 24 in. (60.96 cm) or buckshot shotgun shells controlled by this entry, regardless of end-user.	CC Column 1.
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm), regardless of end-user.	CC Column 2.
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm) if for sale or resale to police or law enforcement	CC Column 3.
UN applies to entire entry.	Rwanda; Federal Republic of Yugoslavia (Serbia and Montenegro).

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value.

Related Controls: This entry does not control shotguns with a barrel length of less than 18 inches (45.72 cm). (See 22 CFR part 121.) These items are subject to the export licensing authority of the Department of State, Office of Defense Trade Controls.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

Dated: September 2, 1999.

Eileen Albanese,

Director, Office of Exporter Services.

[FR Doc. 99–23386 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. FHWA–98–4326]

RIN 2125–AE43

Truck Size and Weight; Definitions; Nondivisible

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the definition of nondivisible load or vehicle to include marked military equipment or materiel. This will allow, but not require, States to issue overweight permits for such vehicles or supplies to move on the Interstate System.

EFFECTIVE DATE: October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Freight Management and Operations (202) 366–2212, or Mr. Charles Medalen, Office of the Chief Counsel (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

States must adopt and enforce Federal weight standards for the Interstate System or risk the loss of certain Federal-aid highway funds. These standards are 20,000 pounds on a single axle, 34,000 pounds on a tandem axle, and the weights specified by the bridge formula, up to a maximum gross vehicle weight of 80,000 pounds. The bridge formula is designed to ensure that a vehicle is sufficiently long and has enough axles to protect bridges by spreading the weight over a large area of bridge decking and supports. Some States also have grandfathered weight limits for divisible loads or vehicles (those that can be easily dismantled or divided) that exceed Interstate System standards. These usually represent limits that were in effect in a State before the Interstate limits were adopted. In addition, all States may issue permits allowing nondivisible loads or vehicles, (those that cannot be easily dismantled or divided) to use Interstate highways at weights above the normal Interstate limits. Prior to this final rule, the FHWA defined nondivisible load or vehicle in 23 CFR 658.5 as follows:

(1) As used in this part, *nondivisible* means any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(i) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(ii) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(iii) Require more than 8 workhours to dismantle using appropriate equipment.

The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(2) A State may treat emergency response vehicles and casks designed for the transport of spent nuclear materials as nondivisible vehicles or loads.

The Department of Defense's Military Traffic Management Command (MTMC) petitioned the FHWA for rulemaking to amend this definition to include marked military vehicles. The MTMC pointed out that since the end of the Cold War, the number of military units deployed overseas has declined, with the result that the bulk of our military forces are based in the continental United States. Current mobility strategy requires the capability to deploy military forces from the United States to any point where they may be needed. The nation's highways, particularly the Interstate System, play a significant role in such actions. Training exercises are essential to the performance of this mission since troops in actual deployments must be familiar with highway operations in order to assure safe and efficient transportation. The FHWA granted the MTMC petition for rulemaking on May 20, 1998, and a notice of proposed rulemaking (NPRM) was published November 20, 1998 (63 FR 64434).

Only three sets of comments, all from State agencies, were received in the docket.

The Illinois State Police (ISP) indicated that the proposal ''appears logical,'' and mirrors the current policy of the Illinois Department of Transportation. In closing, however, the ISP stated that it would ''remain neutral'' on this proposal. No further explanation was provided.

The Wisconsin Department of Transportation (WISDOT) objected to the proposal for several reasons. Summarized, these include the following: (1) the permissive language of the proposal, (''A State *may* treat * * * marked military equipment. * * *.''), does not address the desire for national uniformity posed by MTMC in its petition, because a State could refuse to issue the permit; (2) even if States are willing to issue nondivisible load permits for State highways, local jurisdictions may refuse to issue similar permits if highways under their jurisdiction are required to complete point to point travel; (3) the phrase ''marked military equipment or materiel'' is too broad; (4) because this issue is too complex to be resolved by regulation, the Congress must correct any problem by national legislation; (5) the statement in the preamble to the NPRM, that ''the vehicle or load must be directly related to the military's combat or defense mission,'' is too vague; and (6) the FHWA should postpone action until the agency's Comprehensive Truck Size and Weight Study (see 64 FR 2699, January 15, 1999) is complete.

The Idaho Transportation Department (ITD) indicated ''no concerns'' with treating marked military vehicles as nondivisible, and suggested that the definition be expanded to include military vehicles of other nations acting as training partners. However, the ITD is concerned that the term military materiel needs to be much more narrowly defined if it is to be included in the regulation.

As the preamble to the NPRM stated, the intent of this rulemaking is to accommodate the mobilization needs of the military. The original petition filed by the MTMC asked that marked military vehicles be included in the regulatory definition of nondivisible. The term materiel was included in the NPRM to make it clear that the items carried on the vehicles, as well as the vehicles themselves, are to be considered nondivisible. The reference in the NPRM to combat or defense missions, was included to help distinguish between movements intended to be covered by this rule and other transportation not uniquely

military in purpose. The term ''marked military equipment or materiel'' has two components: (1) markings which openly identify the equipment or materiel as belonging to the U.S. military forces; and (2) equipment or materiel which is directly related to a combat or defense mission. The key term is ''directly related.'' The intent here is to cover military vehicles moving ammunition, medical supplies, food, water, or any other consumable or expendable commodity directly used in carrying out a combat or defense operation, including training exercises. Items that would not normally be directly related to a military or combat mission would be, for example, household furnishings or office equipment moving on military vehicles. To clarify the status of materiel, only items carried on marked military vehicles are covered. Materiel carried on vehicles not directly owned and operated by the military, even though the carriers may be operating under lease or contract to the military, does not qualify under this regulatory action.

The WISDOT expressed concern about the permissive language of the NPRM. The only permit problems MTMC has reported were caused by State concerns that issuing divisible load permits for travel on the Interstate System, for loads or vehicles that do not meet the definition of *Nondivisible vehicle or load* set forth in 23 CFR 658.5, would cause the FHWA to find the State in violation of 23 U.S.C. 127, and withhold its National Highway System (NHS) apportionments. Allowing States to consider these vehicles and loads nondivisible, will resolve this problem. If State law allows local jurisdictions to issue permits, we believe they will nearly always follow the lead of the State in matters of nondivisibility. To date, the MTMC has not reported local permitting problems.

The WISDOT also commented that regulatory action on this issue is inappropriate and that Congress should resolve any problems via national legislation, which would preempt State laws. The problems encountered by MTMC on this issue have been limited to a small number of States. There is every reason to believe that rulemaking will resolve the problem without resort to congressional action. At the same time, the permits issued by States will enable them to track and direct movements in order to protect the infrastructure.

The WISDOT's last comment suggested that the FHWA ''may wish to postpone action'' until the agency's Comprehensive Truck Size and Weight Study is complete. The Study is essentially creating a national modeling mechanism that allows the agency objectively to analyze proposed changes to the current size and weight laws. This final rule is designed to alleviate a specific administrative problem affecting only a few States. This regulatory action is not likely to cause significant nationwide changes in permit movements, though it will alleviate the special problems faced by U.S. military forces.

A regulation that makes it difficult for States to allow the use of the Interstate System for military purposes is indefensible. Amending the definition of a nondivisible load or vehicle in 23 CFR. 658.5 will enable the States to make nondivisible load permits available to military equipment and materiel without risking the loss of Federal-aid highway funds. While the movement of both commercial and military traffic is essential to the national welfare, they serve fundamentally different purposes. Allowing States to issue nondivisible overweight permits for military traffic to use the Interstate System will not compromise the ability of the FHWA to maintain reasonable limits on the use of such permits by commercial traffic. This final rule does not establish a precedent applicable to civilian vehicles.

By this action the FHWA is amending paragraph (2) of the definition of a ''nondivisible load or vehicle'' by adding ''military vehicles transporting marked military equipment or materiel'' to the vehicles and equipment already listed there. This will enable, but not require, States to issue nondivisible load permits to vehicles qualifying as, or transporting, marked military equipment or materiel as discussed earlier. This is not to say that States should issue permits without consideration of the structural limits of their pavements or bridges. But withholding the discretion to accommodate the needs of U.S. military forces would be a disservice to the nation.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action does not constitute a significant regulatory action within the meaning of E.O. 12866, nor is it considered significant under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. This final rule allows States to issue overweight permits for marked military equipment or materiel to travel on the Interstate System. The effect on that System will be negligible and under full control by the States. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this final rule on small entities. This rulemaking affects only States and the Department of Defense.

Based on its evaluation of this rule, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities do not apply to this program.

Paperwork Reduction Act

The proposal in this document does not contain information collection requirements for the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Unfunded Mandates Reform Act of 1995

This rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 12630 (Taking of Private Property)

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Regulation Identification Number

A regulation identification Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grants programs—transportation, Highway and roads, Motor carrier—size and weight.

Issued on: September 2, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, part 658, as set forth below:

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR part 658 is revised to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111—31114 ; 49 CFR 1.48.

2. In § 658.5, revise the definition of ''nondivisible load or vehicle'' to read as follows:

§ 658.5 Definitions.

* * * * *

Nondivisible load or vehicle.

(1) As used in this part, *nondivisible* means any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(i) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(ii) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(iii) Require more than 8 workhours to dismantle using appropriate equipment. The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(2) A State may treat emergency response vehicles, casks designed for the transport of spent nuclear materials, and military vehicles transporting marked military equipment or materiel as nondivisible vehicles or loads.

* * * * *

[FR Doc. 99–23346 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

Land Uses; Noncommercial Group Use Permit Approval

AGENCY: Forest Service, USDA.

ACTION: Interpretive rule.

SUMMARY: The Department is adopting this interpretive rule to make explicit the intended interpretation and application of the term ''public interest'' in 36 CFR § 251.56 as it relates to noncommercial group uses of National Forest System Lands.

EFFECTIVE DATE: This interpretive rule is effective September 9, 1999.

ADDRESSES: Written queries about this interpretive rule may be addressed to Director Recreation, Heritage, and Wilderness Resources Staff, 2720, 4th Floor-Central, Sidney R. Yates Federal Building, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, or via e-mail to dbschor/wo@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Alice Carlton, Recreation, Heritage, and Wilderness Resources Staff, 202–205–1399.

SUPPLEMENTARY INFORMATION:

In August 1995, the Secretary of Agriculture adopted a final rule at 36 CFR part 251, subpart B, governing issuance and administration of permits for groups of 75 or more people who wish to use National Forest System lands for noncommercial activities (60 FR 45258; August 30, 1995). The intent in promulgating the rule was to ensure that authorization procedures for these activities comply with First Amendment requirements of freedom of speech, assembly, and religion, while simultaneously providing a reasonable administrative system for allocating space among scheduled and existing uses of National Forests and Grasslands, for addressing concerns for public health and safety, and for controlling or preventing adverse impacts on forest resources.

The regulation as written is constitutional. It is a content-neutral, narrowly tailored time, place, and manner restriction. In particular, the rule sufficiently limits the discretion of authorized officers to place terms and conditions in noncommercial group use permits. The imposition of term and conditions in noncommercial group use permits is limited to those designed to further the three public interests identified by the Forest Service in promulgating the noncommercial group use rule, i.e., the need to address concerns of public health and safety, to minimize damage to National Forest System resources, and to allocate space among actual or potential uses and activities.

Despite the clarity of the existing regulation, some confusion has persisted with respect to the amount of discretion allowed an authorized officer by 36 CFR 251.56(a)(1)(ii)(G) with regard to placing terms and conditions on noncommercial group uses. Under paragraph (a)(1)(ii) of § 251.56, the authorized officer may place into a special use authorization such terms and conditions as the officer deems necessary for seven purposes. Paragraph (a)(1)(ii)(G) authorizes terms and conditions deemed necessary by the authorized officer that ''otherwise protect the public interest.'' Out of an abundance of caution, the Department is issuing this interpretive rule to make explicit preexisting law and the agency's intent regarding § 251.56(a)(1)(ii)(G) as applied to noncommercial group uses. Therefore, in the context of noncommercial group uses, the reference to ''public interest'' in § 251.56(a)(1)(ii)(G) will be interpreted and applied as allowing only those terms and conditions furthering the three public interests served by the noncommercial group use rule.

This rule qualifies as an interpretive rule under the Administrative Procedure Act because it is a rule or statement issued by an agency to advise the pubic of the agency's preexisting construction of one of the rules it administers, i.e., 36 CFR 251.56(a)(1)(ii)(G) in the context of noncommercial group uses. *See, e.g., Shalala, Secretary of Health and Human Service* v. *Guernsey Memorial Hosp.*, 514 U.S. 87, 99 (1995). Under 5 U.S.C.

553(b)(A), this interpretive rule is exempt from the notice and comment requirements in the Administrative Procedure Act. Under 5 U.S.C. 553(d)(2), this interpretive rule is effective immediately upon publication in the **Federal Register**.

Environmental Impact

This interpretive rule has no direct or indirect effect on the environment, as it merely makes explicit preexisting law regarding a provision related to terms and conditions of special use permits as applied to noncommercial group uses. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions. Based on the nature and scope of this rulemaking, the agency has determined that this interpretive rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

It has been determined that this is not a significant rule. This interpretive rule will not have an annual effect of $100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health, or safety, or State or local governments. This interpretive rule will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, this interpretive rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this interpretive rule is not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

Moreover, this interpretive rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this interpretive rule will not have a significant economic impact on a substantial number of small entities as defined by the Act. This interpretive rule will not impose record keeping requirements; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

No Takings Implications

This interpretive rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the interpretive rule will not pose the risk of a taking of private property, as the rule is limited to approval and administration of noncommercial group uses on Federal lands.

Civil Justice Reform

This interpretive rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this interpretive rule, (1) All State and local laws and regulations that conflict with this interpretive rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this interpretive rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this interpretive rule on State, local, and tribal governments and the private sector. This interpretive rule will not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

This interpretive rule does not contain any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in Part 251

Electric power, Mineral resources, National forests, Rights-of-way, Water resources.

Therefore, for the reasons set forth in the preamble, part 251, of Title 36 of the Code of Federal Regulations is amended as follows:

PART 251—LAND USES

Subpart B—Special Uses

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

Authority: 16 U.S.C. 472, 497b, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

2. In § 251.56, add a note following paragraph (a)(1)(ii)(G) to read as follows:

§ 251.56 Terms and conditions

(a) * * *
(1) * * *
(ii) * * *
(G) * * *

Note to paragraph (a)(1)(ii)(G): The Department is making explicit its preexisting understanding of § 251.56(a)(1)(ii)(G) of this subpart in the context of authorizing noncommercial group uses of National Forest System lands. Section 251.56(a)(1)(ii)(G) provides that each special use authorization shall contain such terms and conditions as the authorized officer deems necessary to otherwise protect the public interest. In the context of noncommercial group uses, the Forest Service interprets the term ''public interest'' found in § 251.56(a)(1)(ii)(G) to refer to the three public interests identified by the Forest Service on August 30, 1995. These public interests include the protection of resources and improvements on National Forest System lands, the allocation of space among potential or existing uses and activities, and public health and safety concerns. Under this construction, § 251.56(a)(1)(ii)(G) allows the Forest Service to impose terms and conditions that are not specifically addressed in § 251.56(a)(1)(ii)(A)–(F) but only those that further these public interests. The Forest Service shall implement and enforce § 251.56(a)(1)(ii)(G) in accordance with this interpretation.

Dated: September 2, 1999.

Dennis E. Bschor,

Acting Deputy Under Secretary, Natural Resources and the Environment.

[FR Doc. 99–23339 Filed 9–8–99; 8:45 am]

BILLING CODE 3410–11–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

RIN 3095–AA69

Researcher Registration and Research Room Procedures

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule confirms without change an interim rule clarifying existing NARA procedures relating to revoking and reinstating research

privileges. This rule will affect individuals who wish to use NARA research rooms in the National Archives Building and College Park facility in the Washington, DC, area, regional records services facilities, and Presidential libraries.

EFFECTIVE DATE: The effective date for this final rule is May 24, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at telephone number 301–713–7360, ext. 226, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: In the final rule document published April 23, 1999, changes to 36 CFR 1254.20 were issued as an interim final rule to allow a 60-day public comment period. No comments were received.

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

Accordingly, the interim rule amending 36 CFR 1254.20 which was published at 64 FR 19899 on April 23, 1999, is adopted as a final rule without change.

Dated: September 2, 1999.

John W. Carlin,

Archivist of the United States.

[FR Doc. 99–23395 Filed 9–8–99; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE101–1025a; FRL–6434–6]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Approval of Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the Delaware State Implementation Plan (SIP). In this action, EPA is approving revisions to various Delaware rules and definitions which have historically been State-enforceable, and which Delaware had formally submitted as SIP revisions, but which EPA had not yet taken formal action. Provisions include control of particulate matter from petroleum refining operations, control of sulfur dioxide emissions from sulfuric acid manufacturing operations, and definitions and provisions associated with source monitoring, recordkeeping and reporting. The intended effect of this approval action is to ensure that the federally-approved versions of these Delaware provisions conform with the state-enforceable provisions. EPA is approving these revisions to the Delaware SIP in accordance with the requirements of the Clean Air Act

DATES: This rule is effective on November 8, 1999 without further notice, unless EPA receives adverse written comment by October 12, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Marcia L. Spink, Associate Director, Air Programs, Mail code 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at frankford.harold@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

What Action is EPA Taking?

We are approving amendments to Delaware Regulations 1,5, 9, and 17 which the State had previously submitted as part of formal SIP revision requests.

What is the Intended Effect?

We are taking this action on Delaware regulations which the State had formally submitted as SIP revisions in past years. Under section 110(h) of the Act, we are required to assemble and publish a comprehensive SIP document at specified intervals for each state and territory listed in 40 CFR part 52. We completed our last review of the Delaware SIP in November 1998. During this review, we discovered that we had not taken final action on portions of three formal Delaware SIP revision requests submitted between 1977 and 1993 which contained multiple revisions to various Delaware air pollution control regulations. In each case, we had approved most of the submitted changes as revisions of the Delaware SIP, but overlooked taking final action on other revised provisions which Delaware had submitted at the same time.

Which Delaware Regulations Are Affected by EPA's Action?

A. Revisions Submitted September 7, 1977

Affected Regulations:

—Regulation 1 (Definitions and Administrative Principles), Section 2 (Definitions)—Definitions for the following new terms: Capacity factor, Continuous monitoring system, Emission standard, Equipment shutdown, Excess Emissions, Sulfuric Acid Plant; Revised definitions of the following terms: Existing Installation, Equipment, Source, or Operation; New Installation, Equipment, Source, or Operation.

—Regulation No. 5, Section 5.1 (Control of Particulate Emissions from Petroleum Refining Operations)—the Chart Unit title in Table 4 (allowable mass emission rate from fluid coking operations) is revised from ''Barrels per Day'' to ''Barrels per Day of Fresh Feed.''

Public Hearings Held: September 27, 1976.

B. Revisions Submitted October 5, 1978

Affected Regulation: Regulation No. 9 (Emissions of Sulfur compounds from Industrial Operations), Section 2 (Restrictions on Sulfuric Acid Manufacturing Operations), revised Section 2.1 and new Sections 2.3 and 2.4.

Public Hearings Held: July 6, 1978.

C. Revisions Submitted January 11, 1993

Affected Regulation: Regulation 17 (Source Monitoring Recordkeeping and Reporting), Section 4 (Performance Specifications) and Section 6 (Data Reduction).

Public Hearings Held: September 29, 1992.

Delaware has submitted documentation showing that the above revisions have no adverse air quality impacts. Both the new and revised terms listed above define words which already exist in the federally-enforceable Delaware regulations. Also, we agree with the State's assertion that the use of the unit ''barrels per day of fresh feed'' in the revised title in Table 4 in Regulation 5, section 5 better defines the process weight rate for fluid coking operations than the unit of ''barrels per day.'' Furthermore, we

agree with Delaware's assertion that the exemption for acid plants used as sulfur dioxide control systems is consistent with requirements set forth in 40 CFR part 60 (New source Performance Standards).

The revisions to sections 4 and 6 of Regulation 17 are administrative in nature, and serve to (1) clarify that any source which is regulated under State Regulation 24 shall be exempt from the provisions of Regulation 17, except for the emissions statement provisions in section 7; (2) clarify the effective date of other federal requirements which are referenced in Delaware's performance specification and data reduction provisions.

II. Final Action

We are approving the revisions to Delaware Regulations 1, 5, 9, and 17 described above.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve this SIP revision if adverse comments are filed. This rule will be effective on November 8, 1999 without further notice unless we receive adverse comment by October 12, 1999. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, 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 EPA complies by consulting, E.O. 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 written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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

E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has 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 final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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 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 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. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

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

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 November 8, 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 to approve revisions to Delaware Regulations 1, 5, 9, and 17 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, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 20, 1999

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

2. In Section 52.420, the entries for Delaware Regulation 1, Section 2; Regulation 5, Section 5; Regulation 9, Section 2; and Regulation 17, Sections 4 and 6 in the ''EPA-Approved Regulations in the Delaware SIP'' table in paragraph (c) are revised to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/Subject	State effective date	EPA approval date	Additional explanation
REGULATION 1—DEFINITIONS AND ADMINISTRATIVE PRINCIPLES				
*	*	*	*	*
Section 2	Definitions	2/8/95	9/9/99	New Definitions: (Effective date: 1/7/77) —Capacity factor —Continuous monitoring system —Emission standard —Equipment shutdown —Excess Emissions (Effective Date: 9/26/78) —Sulfuric Acid Plant Revised Definitions: (Effective date: 1/7/77) —Existing Installation, Equipment, Source, or Operation —New Installation, Equipment, Source, or Operation
*	*	*	*	*
REGULATION 5—PARTICULATE EMISSIONS FROM INDUSTRIAL PROCESS OPERATIONS				
*	*	*	*	*
Section 5	Restrictions on Petroleum Refining Operations.	9/26/78	9/9/99	Process weight rate unit (Table 4) is revised to read ''Barrels Per Day of Fresh Feed

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title/Subject	State effective date	EPA approval date	Additional explanation
* * *	*	*	*	*
REGULATION 9—EMISSIONS OF SULFUR COMPOUNDS FROM INDUSTRIAL OPERATIONS				
* * *	*	*	*	*
Section 2	Restrictions on Sulfuric Acid Manufacturing Operations.	9/26/78	9/9/99	Revised Sections 2.3 and 2.4 Section 2.2 (State effective date: 9/26/80) is federally enforceable as a Section 111(d) plan and codified at 40 CFR 62.1875
* * *	*	*	*	*
REGULATION 17—SOURCE MONITORING, RECORD-KEEPING AND REPORTING				
* * *	*	*	*	*
Section 4	Performance Specifications	1/11/93	9/9/99	Former SIP Sections 1 through 5 respectively; citation revised 2/28/96, 62 FR 7453.
* * *	*	*	*	*
Section 6	Data Reduction	1/11/93	9/9/99	

[FR Doc. 99–23274 Filed 9–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6434–8]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Mason County Landfill Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Mason County Landfill Superfund Site in Michign from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Michigan, because it has been determined that Responsible Parties have implemented all appropriate response actions required. Moreover, EPA and the State of Michigan have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Jeff Gore at (312) 886–6552 (SR–6J), Remedial Project Manager or Gladys Beard at (312) 886–7253, Associate Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: Ludington Public Library, 217 E. Ludington, MI 49431. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Mason County Landfill located in Ludington, Michigan. A Notice of Intent to Delete for this site was published July 26, 1999 (64 FR 142). The closing date for comments on the Notice of Intent to Delete was August 24, 1999. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 30, 1999.

Robert Springer,

Acting Regional Administrator, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site ''Mason County Landfill, Pere Marquette Twp, Michigan.''

[FR Doc. 99–23281 Filed 9–8–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990422103–9209–02; I.D. 031099B]

RIN 0648–AL75

Fisheries of the Northeastern United States; Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Recreational Measures for the 1999 Fisheries

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

ACTION: Final rule.

SUMMARY: SUMMARY: NMFS issues this final rule to implement annual Federal recreational measures for the 1999 summer flounder, scup, and black sea bass fisheries. The purpose of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources. In addition, NMFS issues interim measures to allow states to implement a conservation equivalency provision. This provision allows states to implement measures for the summer flounder recreational fishery that are alternatives to the annual Federal measures, yet achieve a reduction in fishing mortality equivalent to that achieved by the annual Federal measures.

DATES: Effective September 9, 1999, except for § 648.107 which is effective October 12, 1999.

ADDRESSES: Copies of the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA), are available from: Jon C. Rittgers, Acting Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) outlines the process for specifying annual recreational measures. The FMP has established Monitoring Committees (Committees) for each of the three fisheries comprised of representatives from the Atlantic States Marine Fisheries Commission (Commission), the Mid-Atlantic Fishery Management Council (Council), the New England and South Atlantic Fishery Management Councils, and NMFS. The Committees are required to review annually scientific and other relevant information and to recommend measures necessary to achieve the recreational harvest limits for the summer flounder, scup, and black sea bass fisheries. These recommended measures are limited to minimum fish sizes, possession limits, and closed seasons. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) then consider the Monitoring Committees' recommendations and any public comment in making their recommendations. The Council reviews the Demersal Committee recommendations, makes its own decision, in turn, and submits its recommendation to NMFS.

Final specifications for the 1999 summer flounder, scup, and black sea bass fisheries were published on December 31, 1998 (63 FR 72203), and included a recreational harvest limit of 7.41 million lb (3.361 million kg) for summer flounder; 1.24 million lb (0.562 million kg) for scup; and 3.14 million lb (1.42 million kg) for black sea bass. A proposed rule to implement annual Federal recreational measures for the 1999 summer flounder, scup, and black sea bass recreational fisheries was published on April 30, 1999 (64 FR 23256), and contained various combinations of one or more management measures, such as minimum fish size, possession limit, and a closed season. The recreational measures contained in this final rule are unchanged from those that were published in the proposed rule, and are listed below. A complete discussion of the recreational measures appears in the proposed rule and is not repeated here.

1999 Recreational Measures

	Minimum Size (length)	Possession Limit	Closed Season
Summer Flounder	15 inches (38 cm)	8–fish	September 12 of each year, through May 28 of each following year
Scup	7 inches (18 cm)	None	None
Black Sea Bass	10 inches (25 cm)	None	None

Interim Measure on Summer Flounder Conservation Equivalency

The proposed rule for the annual recreational measures included an interim measure that would allow the states to implement recreational measures as alternatives to the annual Federal summer flounder measures that would result in the 40–percent reduction in the summer flounder catch in 1999 compared to 1998. A 40–percent reduction is necessary because the recreational harvest limit for 1999 is the same as it was in 1998, and there was about a 40–percent overage of that harvest limit in 1998. The states may select a combination of minimum fish sizes, possession limits, and closed seasons. States that wish to implement equivalent measures are required to submit proposed management options to the Commission for approval. In anticipation of implementation of the conservation equivalency provision, states have already selected alternative measures designed to achieve the

required 40–percent reduction in the recreational summer flounder harvest. The Commission has reviewed the states' proposed alternative measures and has found through the procedure described in § 648.107(b) that they will achieve the summer flounder harvest reduction. Once the Commission approves a state equivalency proposal, the Commission is required to recommend to NMFS that a notice be published to waive the application of the annual Federal summer flounder measures specified in this rule within a given state, and notify the public of the state's equivalent measures. That recommendation is now being prepared by the Commission, and NMFS will publish a notice shortly after this final rule.

The conservation equivalency provision relies on annual Federal summer flounder measures that are subject to public comment. The conservation equivalency of alternative state measures will be determined in comparison to the annual Federal summer flounder measures. There is no change to the annual Federal summer flounder measures identified in the proposed rule, so no further Commission action is required. No comments were received during the comment period on implementation of the conservation equivalency provision.

The issuance of interim measures is authorized by section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act. The conservation equivalency provision addresses concerns for some states about the inappropriateness of annual Federal summer flounder measures to achieve the 40–percent summer flounder harvest reduction. It addresses overfishing by allowing states to implement conservation equivalent measures for the recreational summer flounder fishery that would result in the 40–percent reduction in catch required to achieve the 1999 harvest limit while not exceeding it. NMFS reminded the Council at its June 1999 meeting that the Council must include the conservation equivalent provision in an FMP amendment or framework action in order to establish it permanently.

Comments and Responses

One comment was received from the Council concerning the summer flounder closed season.

Comment: Council staff stated their belief that the summer flounder closed season proposed by NMFS differed from that adopted by the Council and the Commission; specifically, Council staff stated that the Council and Commission adopted a closed season only for the 1999 calendar year from January 1 through May 28, 1999, and September 12 through December 31, 1999.

Response: NMFS finds that the Council staff mistakenly thought the Council intended to close the recreational summer flounder fishery for only the 1999 calendar year. A review of the administrative record concerning the actions discussed by the Council and Commission during their joint December 1998 meeting shows the following language in the final motion: ''a closure of September 12 through May 28.'' NMFS finds the dates published in the proposed rule reflect the intent of the Council/Commission. Further, if at a later date the Council and Commission decide to recommend only a 1999 closed season, then they may adjust the dates pursuant to the procedures in § 648.100. Therefore, the dates associated with the closed season for the summer flounder recreational fishery will be from September 12 of each year, through May 28 of each following year.

Changes in the Final Rule From the Proposed Rule

In § 648.107, paragraph (b) is revised to improve clarity and by inserting the words ''or greater'' in the second sentence to clarify when conservation equivalent measures may be implemented without Summer Flounder Technical Committee review.

Classification

This final rule is required by 50 CFR part 648.

A review of the administrative record indicates the Council intended that the recreational fishery for summer flounder be closed September 12 through May 28. Continued harvest of summer flounder in the recreational fishery during a 30-day delay in the effective date would reduce the likelihood of attaining the objective of this rule (i.e., a 40–percent reduction in landings in 1999 compared to 1998). Meeting this objective is necessary to comply with the FMP's maximum fishing mortality rate for 1999, and to meet the rebuilding schedule. For these reasons, under 5 U.S.C. 553(d)(3), the AA finds for good cause that a 30-day delay in the effective date of this rule would be contrary to the public interest. Fishermen will be notified of the September 12 recreational fishery closure via NOAA weather radio, Coast Guard announcements, and other available means of notification.

Because prior notice and an opportunity for public comment are not required for the interim measure (i.e., the conservation equivalency provision) by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

NMFS has completed a FRFA for the other provision of this rule (i.e., the September 12 through May 28 closed season for summer flounder), pursuant to 5 U.S.C. 604 of the Regulatory Flexibility Act. The FRFA describes the impact this final rule will have on small entities. A copy of the FRFA can be obtained from the Northeast Regional Office of NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The FRFA discusses (1) the need for, and objectives, of the rule; (2) public comments on the IRFA; (3) the number of small entities to which the rule will apply; (4) reporting and recordkeeping requirements; (5) reasons for selecting the alternatives adopted in the final rule and rejecting the alternatives; and (6) the measures that minimize the economic impact of this action.

The need for, and objectives of, the final measures in the rule are to prevent overfishing of the summer flounder, scup, and black sea bass resources.

There were no public comments on the IRFA.

Data from the Northeast Region's permit application database indicate that 710 vessels were permitted in 1997 to take part in the summer flounder, scup, and/or black sea bass fisheries in the EEZ. Analysis of NMFS Vessel Trip Report data indicates that 348 party/charter vessels participated in the summer flounder, scup, or black sea bass fisheries in 1997. The final recreational measures apply to these entities.

This rule does not propose new reporting or recordkeeping measures. There are no changes to existing reporting or recordkeeping requirements.

Current summer flounder recreational measures are a 15–inch (38–cm) minimum fish size and an 8–fish possession limit. This rule does not change the current 15–inch (38–cm) minimum size and 8–fish possession limit, but implements a closed season from September 12 through May 28. As such, the difference between the summer flounder recreational measures and the status quo is the implementation of a closed season starting September 12, 1999. The three annual Federal measures are intended to reduce landings in 1999 by over 40 percent compared to 1998. States are required to implement the annual Federal recreational management measures or other measures that will achieve a 40–percent reduction in landings. This would allow states to

deal with burden issues associated with the implementation of any component (e.g., seasonal closures) of this measure.

For summer flounder, two alternatives other than the selected alternative were considered. These alternatives were: a) a 15–inch (38–cm) minimum fish size, a 6–fish possession limit, and a closed season from August 1 to August 31; and b) a 15–inch (38–cm) minimum fish size, a 4–fish possession limit, and a closed season from January to June of each year. These alternatives could potentially reduce landings by 45 percent. These restrictive limits (i.e., lower possession limits, greater minimum size limits, and/or shorter seasons) would prevent anglers from exceeding the recreational harvest limit in 1999. However, given the popularity of summer flounder among anglers as the most frequently sought after species in the Mid-Atlantic in 1997, the more limiting time frame proposed in the non-selected alternatives may affect angler satisfaction and/or demand for party/charter trips; therefore, they were rejected.

This rule maintains the status quo for scup for 1999. Therefore, the current recreational management measure remains in effect (7–inch (18–cm) minimum size, no possession limit, and no closed season). The minimum size currently in effect could potentially reduce recreational landings by less than two percent.

For scup, two alternatives other than the selected alternative were considered. These alternatives were: a) an 8–inch (20–cm) minimum fish size, a 25–fish possession limit, and no closed season; and b) an 8–inch (20–cm) minimum fish size, a 35–fish possession limit, and no closed season. Both of these alternatives could potentially decrease landings by 5 percent over the selected alternative. Those alternatives were rejected based on concerns that cancellation of party/charter trips would result and cause adverse economic impacts.

For black sea bass, this rule maintains the current management measures (10–inch (25–cm) minimum size, no possession limit, and no closed season for 1999). This no-change alternative was selected to potentially reduce recreational landings by approximately 14 percent. Two alternatives other than the selected alternative were considered. These alternatives were: a) a 10–inch (25–cm) minimum fish size, no possession limit, and a closed season from August 1 to August 15; and b) a 10–inch (25–cm) minimum fish size, a 20–fish possession limit, and no closed season. These alternatives could decrease landings by 15 percent and 18 percent, respectively. These alternatives could result in a greater reduction in landings of approximately 1 percent and 4 percent, respectively, than the selected alternative. Those alternatives were rejected because of concerns that the additional catch restrictions would result in cancellation of party/charter trips, and cause adverse economic impacts.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 2, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648–FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. Section 648.102 is revised to read as follows:

§ 648.102 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(3) and any person subject to the possession limit may fish for summer flounder only from May 29 through September 11. This time period may be adjusted pursuant to the procedures in § 648.100.

3. Section 648.107 is added to subpart G to read as follows:

§ 648.107 Conservation equivalent measures for the recreational summer flounder fishery.

(a) Through March 9, 2000, states may implement on an annual basis conservation equivalent measures that reduce the recreational catch to the same extent as the annual Federal summer flounder measures specified under § 648.100(c) to achieve the recreational harvest limit in any year. These measures would be a different combination of minimum fish sizes, possession limits, and closed seasons that are the conservation equivalent of those Federal summer flounder measures specified on an annual basis.

(b) A determination of equivalency would be made annually for any state proposing alternative recreational measures by the Summer Flounder Technical Committee of the Commission. Conservation equivalent measures may be implemented by any state without a determination of equivalency by the Summer Flounder Technical Committee review, but only if states use the state-specific tables provided by the Commission and maintain a 15–inch (38–cm) or greater minimum fish size.

(1) Once a state receives a determination of equivalency from the Summer Flounder Technical Committee or a state implements conservation equivalent measures contained in the state-specific table provided by the Commission, the Commission will recommend to the Regional Administrator that a notification be published in the **Federal Register** to waive the annual Federal summer flounder measures specified under § 648.100(c) and to notify vessel permit holders of the equivalent measures approved by the Summer Flounder Technical Committee for landing summer flounder in that state.

(2) States electing not to implement conservation equivalent measures or states that did not receive a determination of equivalency from the Summer Flounder Technical Committee and not implementing conservation equivalent measures contained in the state-specific table provided by the Commission would be required to implement the annual Federal summer flounder measures specified under § 648.100(c) in accordance with the provisions of the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries.

[FR Doc. 99–23444 Filed 9–3–99; 3:44 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 174
Thursday, September 9, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AC28

Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (the FDIC) is publishing for notice and comment a proposed rule regarding the treatment by the FDIC, as receiver or conservator, of financial assets transferred by an insured depository institution in connection with a securitization or in the form of a participation. The purpose of the rule is to resolve issues raised by Statement of Financial Accounting Standards No. 125 (SFAS 125), as promulgated by the Financial Accounting Standards Board (FASB), as to whether the FDIC's statutory authority to repudiate contracts pursuant to section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) would prevent a transfer of financial assets by an insured depository institution in connection with a securitization or in the form of a participation from satisfying the ''legal isolation'' condition of SFAS 125. Failure to satisfy this condition would prevent such a transfer from being accounted for as a sale in financial statements and reports prepared in accordance with generally accepted accounting principles (GAAP).

The proposed rule provides that the FDIC shall not, by exercise of its statutory power to repudiate contracts, recover, reclaim, or recharacterize as property of the institution or the receivership financial assets that were transferred by an insured depository institution in connection with a securitization or in the form of a participation, provided that the transfer meets all conditions for sale accounting treatment under GAAP, other than the ''legal isolation'' condition as it applies to an institution for which the FDIC may be appointed as conservator or receiver, which the proposed rule is intended to address. The proposed rule defines both ''securitization'' and ''participation,'' with ''participation'' specifically limited to participations that are ''without recourse'' to the selling or ''lead'' institution. The proposed rule does not apply unless the insured depository institution received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes. The proposed rule shall not be construed as waiving or limiting any other rights or powers of the FDIC as conservator or receiver of an insured depository institution to take any action or exercise any power not specifically addressed in the rule, including but not limited to any rights or powers of the FDIC regarding any transfer taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution. The proposed rule also provides that the FDIC shall not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by an insured depository institution solely because such agreement does not meet the ''contemporaneous'' requirement of sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act.

The proposed rule may be repealed by the FDIC upon 30 days notice and opportunity for comment provided in the **Federal Register**, but in the event of such repeal, the rule shall continue to be effective with respect to any transfers made before the date of the repeal.

DATES: Written comments must be received by the FDIC on or before November 8, 1999.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand delivered to the guard station located at the rear of the 17th Street building on F Street on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838, Internet address: *comments@FDIC.gov*]. Comments may also be inspected and photocopied at the FDIC Public Information Center, room 100, 801 17th Street, N.W., Washington, D.C. between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Michael Krimminger, Division of Resolutions and Receiverships, (202) 898–8950; Robert Storch, Division of Supervision, (202) 898–8906; or Thomas Bolt, Legal Division, (202) 736–0168, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Under generally accepted accounting principles, a transfer of financial assets is accounted for as a sale if the transferor surrenders control over the assets. One of the conditions for determining whether the transferor has surrendered control is that the assets have been isolated from the transferor, i.e., put presumptively beyond the reach of the transferor, its creditors, and a trustee in bankruptcy or a receiver. This is known as the ''legal isolation'' condition. Where the transferor is an insured depository institution for which the FDIC may be appointed as conservator or receiver, the issue arises whether financial assets transferred by such institution in connection with a securitization or in the form of a participation would be put beyond the reach of the FDIC as conservator or receiver for such institution in light of (i) the statutory authority of the FDIC to repudiate contracts to which such institution is a party and (ii) the provisions of sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act regarding the enforceability of agreements against the FDIC. The specific issues are whether the FDIC might, in the exercise of its authority to repudiate contracts, avoid a transfer of financial assets in connection with a securitization or in the form of a participation, and recover such assets; and whether the FDIC might, with respect to an agreement executed in relation to a transfer of financial assets in connection with a securitization or

with respect to a participation, assert the requirement of sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act that to be enforceable against the FDIC, any agreement that tends to diminish or defeat the FDIC's interest in an asset must be executed contemporaneously with the acquisition of the asset by the institution (the ''contemporaneous'' requirement).

Pursuant to 12 U.S.C. 1821(e)(1), the FDIC, when acting as conservator or receiver of any insured depository institution, has the power to disaffirm or repudiate any contract or lease (i) to which the institution is a party; (ii) the performance of which the conservator or receiver, in the conservator's or receiver's discretion, determines to be burdensome; and (iii) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator's or receiver's discretion, will promote the orderly administration of the institution's affairs. Repudiation of a contract relieves the FDIC from performing any unperformed obligations remaining under the contract. Repudiation also entitles the other party to the contract to a claim for damages, which are limited by statute to actual direct compensatory damages determined as of the date of the appointment of the receiver or conservator. *See* 12 U.S.C. 1821(e)(3).

Pursuant to sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act, no agreement that tends to diminish or defeat the FDIC's interest in an asset acquired from an insured depository institution is enforceable against the FDIC unless such agreement meets certain requirements. One of those requirements is that the agreement be executed by the depository institution and any person claiming an adverse interest thereunder contemporaneously with the acquisition of the asset by the institution.

In order for a transfer of financial assets by an insured depository institution in connection with a securitization or in the form of a participation to be accounted for as a sale, the proposed rule provides that the FDIC shall not, by exercise of its authority to disaffirm or repudiate contracts under 12 U.S.C. 1821(e), reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by an insured depository institution in connection with a securitization or in the form of a participation. Although the repudiation of a securitization or participation will not affect transferred financial assets, repudiation will excuse the FDIC from performing any continuing obligations imposed by the securitization or participation. If the FDIC, in order to terminate such continuing obligations or duties, seeks to disaffirm or repudiate an agreement or contract under which an insured depository institution has transferred financial assets in connection with a securitization or in the form of a participation, the FDIC will not seek to reclaim, recover, or recharacterize as property of the institution or the receivership such financial assets.

The proposed rule applies only to those securitizations or participations in which the transfer of financial assets meets all conditions for sale accounting treatment under generally accepted accounting principles, other than the ''legal isolation'' condition as it applies to institutions for which the FDIC may be appointed as conservator or receiver, which the proposed rule is intended to address.

As part of the definition of ''participation,'' the proposed rule provides that a participation must be ''without recourse,'' that is, the participation must not be subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying obligation. The term ''without recourse'' does not, however, preclude the lead institution from retaining a subordinated interest in the participated obligation, against which losses are initially allocated.

The proposed rule does not apply unless the insured depository institution received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

The proposed rule shall not be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically limited by this section, including, but not limited to any rights, powers or remedies of the FDIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

The proposed rule further provides that the FDIC shall not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by an insured depository institution solely because such agreement does not meet the ''contemporaneous'' requirement of sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act.

The proposed rule is intended to apply to securitizations and participations that are engaged in by insured depository institutions while the rule is in effect, even if the rule is later repealed. Consequently, paragraph (g) provides that the rule will be effective unless repealed by the FDIC upon 30 days notice and opportunity for comment provided in the **Federal Register**, but in the event of such repeal, the rule shall continue to be effective with respect to any transfers made before the date of the repeal.

II. Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is contained in the proposed rule. Consequently, no information was submitted to the Office of Management and Budget for review.

III. Regulatory Flexibility Act

The proposed rule is consistent with the FDIC's current practice and does not represent a change in the law with respect to securitizations and participations. Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed rule will not have a significant economic impact on a substantial number of small business entities.

IV. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 360

Banks, banking, Savings associations.

For the reasons set out in the preamble, the FDIC Board of Directors proposes to amend 12 CFR part 360 as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority citation for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1821(d)(1), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i),

1823(c)(4), 1823(e)(2); Sec. 401(h), Pub.L. 101–73, 103 Stat. 357.

2. Section 360.6 is added to part 360 to read as follows:

§ 360.6 Treatment by the Federal Deposit Insurance Corporation as conservator or receiver of financial assets transferred in connection with a securitization or participation.

(a) *Definitions.* (1) *Beneficial interest* means debt or equity (or mixed) interests or obligations of any type issued by a special purpose entity that entitle their holders to receive payments that depend primarily on the cash flow from financial assets owned by the special purpose entity.

(2) *Financial asset* means cash or a contract or instrument that conveys to one entity a contractual right to receive cash or another financial instrument from another entity.

(3) *Participation* means the transfer or assignment of an undivided interest in all or part of a loan or a lease from a seller, known as the ''lead'', to a buyer, known as the ''participant'', without recourse to the lead, pursuant to an agreement between the lead and the participant. *Without recourse* means that the participation is not subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying obligation.

(4) *Securitization* means the issuance by a special purpose entity of beneficial interests:

(i) The most senior class of which at time of issuance is rated in one of the four highest categories assigned to long-term debt or in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating relative standing) by one or more nationally recognized statistical rating organizations; or

(ii) Which are sold in transactions by an issuer not involving any public offering for purposes of section 4 of the Securities Act of 1933, as amended, or in transactions exempt from registration under such Act pursuant to Regulation S thereunder (or any successor regulation).

(5) *Special purpose entity* means a trust, corporation, or other entity with a distinct standing at law separate from the insured depository institution that is primarily engaged in acquiring and holding (or transferring to another special purpose entity) financial assets, and in activities related or incidental thereto, in connection with the issuance by such special purpose entity (or by another special purpose entity that acquires financial assets directly or indirectly from such special purpose entity) of beneficial interests.

(b) The FDIC shall not, by exercise of its authority to disaffirm or repudiate contracts under 12 U.S.C. 1821(e), reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by an insured depository institution in connection with a securitization or participation, provided that such transfer meets all conditions for sale accounting treatment under generally accepted accounting principles, other than the ''legal isolation'' condition as it applies to institutions for which the FDIC may be appointed as conservator or receiver, which is addressed by this section.

(c) Paragraph (b) of this section shall not apply unless the insured depository institution received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

(d) Paragraph (b) of this section shall not be construed as waiving, limiting, or otherwise affecting the power of the FDIC, as conservator or receiver, to disaffirm or repudiate any agreement imposing continuing obligations or duties upon the insured depository institution in conservatorship or receivership.

(e) Paragraph (b) of this section shall not be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically limited by this section, including, but not limited to, any rights, powers or remedies of the FDIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

(f) The FDIC shall not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by an insured depository institution solely because such agreement does not meet the ''contemporaneous'' requirement of sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act.

(g) This section may be repealed by the FDIC upon 30 days notice and opportunity for comment provided in the **Federal Register**, but in the event of such repeal, the section shall continue to be effective with respect to any transfers made before the date of the repeal.

By order of the Board of Directors.

Dated at Washington, DC this 31st day of August, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–23384 Filed 9–8–99; 8:45 am]

BILLING CODE 6714–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ35–2–196; FRL–6434–1]

Approval and Promulgation of Air Quality Implementation Plans; New Jersey; Approval of Carbon Monoxide State Implementation Plan Revision; Determination of Carbon Monoxide Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In today's action, the EPA is determining that the New York-Northern New Jersey-Long Island carbon monoxide nonattainment area has attained the carbon monoxide National Ambient Air Quality Standards. As a consequence of this determination, EPA is proposing to approve a State Implementation Plan revision submitted by the State of New Jersey on August 7, 1998. That revision removes New Jersey's oxygenated gasoline program as a carbon monoxide control measure from the State's SIP.

DATES: Comments must be received on or before October 12, 1999.

ADDRESSES: All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, NY 10007–1866.

Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment, at the following addresses:

Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866.

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Air Programs

Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3710.

SUPPLEMENTARY INFORMATION:

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1. What Action is EPA Taking Today?

EPA is determining that the New York-Northern New Jersey-Long Island carbon monoxide (CO) nonattainment area [1] (''the New York City CO nonattainment area'', ''the New York City area,'' or ''the area'') has attained the CO National Ambient Air Quality Standards (NAAQS). EPA is also determining that New Jersey's oxygenated gasoline (oxyfuel) program is no longer needed to maintain the CO NAAQS. As a consequence of these determinations, EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Jersey on August 7, 1998. That revision removes New Jersey's oxyfuel program as a CO control measure from the State's CO SIP. In today's action, EPA is proposing to approve removal of the oxyfuel program because it has been determined that the program is no longer necessary to keep ambient CO concentrations below the CO NAAQS.

Under Clean Air Act (CAA) section 211(m), states with certain CO nonattainment areas are required to implement oxyfuel programs. Under section 211(m)(6), once such an area subsequently attains the CO NAAQS, oxyfuel requirements may be removed if it is demonstrated that the program is not needed for maintaining attainment in that area. Air quality trends show that CO concentrations throughout the New York City area have been below the CO NAAQS for more than four years. Complete monitoring data for the area demonstrating this trend can be found in the technical support document for this notice.

EPA has determined, through use of EPA's MOBILE computer model and air quality dispersion modeling, that the oxyfuel program is no longer necessary for New Jersey because it has been demonstrated through technical analyses that the CO NAAQS will not be violated anywhere in the area if the program is removed as a control strategy. By using these modeling tools, EPA and New Jersey have determined that improved CO levels are attributable primarily to three sources of emission reductions: (1) turnover of vehicle fleets in the area to more sophisticated cleaner technology vehicles; (2) implementation of reformulated gasoline year round; and (3) the recent implementation of the enhanced vehicle inspection and maintenance (I/M) program in New York (enhanced I/M in New Jersey is anticipated to begin this winter). This modeling, which is discussed in section 5. C of this notice and detailed in the technical support document, supports the conclusion that levels of CO meeting the NAAQS are able to be maintained without the wintertime oxyfuel program in place.

2. What is the Oxygenated Gasoline Program and How Does it Apply to New Jersey?

The oxygenated gasoline (oxyfuel) program is designed to reduce CO pollution from gasoline powered vehicles including passenger cars, sport utility vehicles and light trucks, which, combined, are significant contributors of CO emissions. EPA established a NAAQS for CO for the protection of human health. *See* 40 CFR 50.8; 50 FR 37501 (Sept. 13, 1985). Inhalation of CO results in inhibition of the blood's capacity to carry oxygen to organs and tissues. Persons with heart disease, infants, elderly persons, and individuals with respiratory diseases are particularly sensitive to CO. Effects of CO on healthy adults include impaired exercise capacity, visual perception, manual dexterity, learning functions, and ability to perform complex tasks.

The Clean Air Act (CAA) sets forth a number of SIP requirements for states with areas designated as nonattainment for the CO NAAQS. Section 211(m) of the CAA requires states with CO nonattainment areas, having design values of 9.5 parts per million (ppm) CO or above for any two-year period after 1989, to implement oxyfuel programs. The requirement for an oxyfuel program is to apply during the high CO season, which is generally during the colder winter months when cars tend to have higher tailpipe CO emissions. Oxyfuel programs require that, during the high CO season, gasoline contain at least 2.7% oxygen by weight. This requirement was intended to assure more complete gasoline combustion, thus achieving a reduction in tailpipe emissions.

The requirement for an oxyfuel program applies to certain areas in New Jersey because portions of the State are included in the New York City CO nonattainment area which had a design value for CO above 9.5 ppm. The New Jersey nonattainment area includes the counties of Bergen, Essex, Hudson, Union, and parts of Passaic. Specifically in Passaic County it includes the cities of Clifton, Paterson, and Passaic. Because the CAA section 211(m) requirement applies to the larger of the Consolidated Metropolitan Statistical Areas (CMSA) or the metropolitan statistical area in which the nonattainment area is located, the oxyfuel requirement for the area applies throughout the larger CMSA. New Jersey's portion of the larger CMSA, within which the sale of oxyfuel is required, consists of the following counties: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic (the entire county), Somerset, Sussex, Union and Warren.

On November 15, 1992, New Jersey submitted to EPA its oxyfuel program contained in New Jersey Administrative Code Title 7, chapter 27, subchapter 25, ''Control and Prohibition of Air Pollution by Vehicular Fuels'' (adopted September 1, 1992, and operative November 1, 1992). EPA proposed to approve this submission, along with a number of other revisions to New Jersey's CO SIP, on November 10, 1994 (59 FR 56019). On February 7, 1995, New Jersey modified its oxyfuel regulations to shorten the length of the control period to four months each year—from November 1 through the last day of February. 27 N.J.R. 787(a), February 21, 1995. On February 12, 1996, EPA approved New Jersey's oxyfuel program into the SIP for the control period November 1 through the last day of February. 61 FR 5299. On July 25, 1996, EPA approved oxyfuel programs for Connecticut and New York at 61 FR 38574 and 61 FR 38594, respectively. EPA approved those oxyfuel programs for the New York City area for the same four-month period. At the same time, EPA made a final determination that November 1 through the end of February is the control period when the New York City area is prone to high ambient CO concentrations. 61 FR 38594.

3. What is the Purpose and Content of New Jersey's SIP Revision?

New Jersey submitted a proposed CO SIP revision to EPA on August 7, 1998. That submittal proposed to revise the SIP to remove New Jersey's oxyfuel program as a CO control measure. The

[1] This area is comprised of counties in Northern New Jersey, downstate New York and Southwestern Connecticut. The Connecticut portion of the area was redesignated to attainment on March 10, 1999 at 64 FR 12005. The remainder of the area is still designated nonattainment.

SIP revision documents that the New Jersey Department of Environmental Protection (NJDEP) held a public hearing on August 11, 1997 to take comment on the State's proposed rulemaking to remove the State requirements for its oxyfuel program in Northern New Jersey. On July 17, 1998, the NJDEP filed the adoption of its rulemaking proposal with the State's Office of Administrative Law. The adopted rulemaking was published in the New Jersey Register on August 17, 1998. 30 N.J.R. 3025.

The August 7, 1998 CO SIP revision contains the following elements, on which EPA is proposing action today:

(1) Air quality and ''hot spot'' modeling data demonstrating that the New Jersey portion of the New York City nonattainment area attains the NAAQS for carbon monoxide;

(2) The removal of the requirements for the oxyfuel program in Northern New Jersey.

That submittal also contained an update to the State's carbon monoxide attainment demonstration and an update to the carbon monoxide emission inventory. EPA is not taking action on these updates at this time because they are not directly related to, or required for, the action EPA is proposing today. Rather, these updates will be more appropriately included in an eventual SIP change to redesignate Northern New Jersey for attainment of the CO NAAQS. New Jersey's August 7, 1998 SIP submittal does not request redesignation, although the State has expressed an interest in redesignating the nonattainment area to attainment in the future. EPA will act on these updates after New Jersey formally requests redesignation.

New Jersey's SIP revision and today's action primarily concern the removal of requirements for the oxyfuel program in Northern New Jersey. Removal of the oxyfuel program is supported by the State's demonstration, using monitored air quality data and vehicle emission and air dispersion modeling data, that the area is attaining the CO NAAQS, and will continue to attain even without implementation of the oxyfuel program in Northern New Jersey. In addition New Jersey's submittal provides analysis of multi-state air quality and impacts of oxyfuel removal in New Jersey on the New York portion of the New York City area. This includes an analysis by New Jersey of certain congested intersections in New York City. EPA has supplemented this analysis, specifically with respect to the New York intersection analysis, to confirm that the area will continue to attain the CO NAAQS with the removal of oxyfuel. Based on the analyses, the area has been demonstrated to attain the CO NAAQS without oxyfuel in New Jersey. For further detail regarding analysis of the technical demonstration, the reader is referred to section 5 below and also to the technical support document for this proposal.

Based on EPA's determination that the New York City area is attaining the CO NAAQS, and the demonstration of maintenance for the area, EPA is proposing to approve New Jersey's SIP revision, submitted on August 7, 1998, which removes the State's oxyfuel program from its CO SIP.

4. What is EPA's Authority for Approving Oxyfuel Removal?

Section 211(m) of the Clean Air Act (CAA) generally requires states to adopt oxygenated gasoline programs for certain areas that, as of 1990, failed to meet the National Ambient Air Quality Standard (NAAQS) for carbon monoxide (CO). Section 211(m)(6) adds, however, that, ''Nothing in this subsection shall be interpreted as requiring an oxygenated gasoline program in an area which is *in attainment* for carbon monoxide. * * *'' (emphasis added).

In EPA's redesignation of the Camden County, New Jersey CO nonattainment area, EPA elaborated on its interpretation of section 211(m)(6). 60 FR 62741 (Dec. 7, 1995). In that rulemaking, EPA explained, ''Whether an area is 'in attainment' depends solely on a determination of whether an area is attaining the NAAQS (a determination based on the air quality of the area) * * *.'' 60 FR 62744. EPA concluded that once it determines that a CO nonattainment area is actually attaining the CO NAAQS, and the area demonstrates that it does not need oxyfuel to maintain the NAAQS, section 211(m) no longer requires a state to adopt an oxyfuel program into its state implementation plan (SIP) so long as the area continues to maintain the CO standard. Thus, New Jersey was not required in the first instance to adopt an oxyfuel program for Camden County because the area was attaining the CO NAAQS, and the State demonstrated that the area could maintain the standard without additional emissions reductions.

In the Camden rulemaking, EPA also briefly addressed the applicability of section 211(m)(6) to those areas attaining the CO NAAQS that had already adopted an oxyfuel program:

> Where a state that is in fact attaining the CO NAAQS has an oxygenated gasoline program as part of an approved SIP, the program would remain in the SIP; section 211(m)(6) only would allow the state to submit a SIP revision to remove the program, and then only if it is not needed for maintenance and its removal complied with section 110(l). Also the entire nonattainment area must be actually achieving the CO NAAQS before oxygenated gasoline would not be required in any portion of the MSA or CMSA in which an area is located. Furthermore, unless the area is redesignated to attainment, the oxygenated gasoline program requirement would again become effective upon a subsequent violation of the standard.

60 FR 62745.

New Jersey has already adopted an oxyfuel program for the Northern New Jersey nonattainment area. In order to remove the program, the above criteria must be met. The following section evaluates New Jersey's request to drop the oxyfuel program for the Northern New Jersey nonattainment area against these criteria.

5. How Have the Criteria for Oxyfuel Removal Been Met?

To determine if a state can remove its oxyfuel program prior to redesignation for attainment, certain criteria must be met. These criteria, which are derived directly from our policy for section 211(m)(6) (discussed above in section 4.), are stated below. Following each is a brief discussion of how New Jersey has met these criteria. A more detailed technical discussion can be found in the technical support document for this **Federal Register** document.

A. Is the entire designated nonattainment area actually attaining the CO NAAQS?

The entire New York City CO nonattainment area has attained the CO NAAQS since 1995. The applicable CO NAAQS is 9.0 ppm averaged over an eight-hour period. The last CO NAAQS violation occurred in 1994.[2] A summary and short discussion of the air quality monitoring data which shows that the entire three-state area attained the CO NAAQS follows for each state. Complete data and a detailed discussion of it can be found in the technical support document for this notice.

1. Monitored Air Quality in New Jersey

Six carbon monoxide (CO) monitors meeting EPA siting criteria are maintained in the Northern New Jersey portion of the New York City CO nonattainment area. Locations for these monitors were selected to assure good representation of both CO exposure to

[2] A violation occurs when two non-overlapping exceedances are recorded at the same monitoring site during the same calendar year. An exceedance occurs when an average CO concentration greater than or equal to 9.5 ppm is recorded over an eight-hour period.

people and the maximum CO concentrations which would occur. Monitoring stations (one each) are located in the following cities and towns: Fort Lee, Hackensack, Newark, Jersey City, North Bergen and Elizabeth.

Monitoring data from these locations is collected and quality-assured in accordance with 40 CFR part 58. In 1994 New Jersey experienced two violations of the CO NAAQS. These violations were recorded at monitoring stations in North Bergen and Elizabeth in Northern New Jersey (see table 5.1). Since 1995, no subsequent violations were recorded in Northern New Jersey. In accordance with EPA's protocol for determining CO violations, the following table lists the second highest recorded CO concentrations, in parts per million (ppm), at each monitoring station for the calendar years 1994 through 1998:

TABLE 5.1—NEW JERSEY CO AIR QUALITY DATA SUMMARY (SECOND MAXIMA)

[Parts per million CO]

	Fort Lee	Hackensack	Newark	Jersey City	North Bergen	Elizabeth
1994	5.3	7.0	6.0	5.9	*10.7	*11.3
1995	5.0	4.8	5.3	6.2	8.1	7.7
1996	3.5	4.0	3.8	4.9	6.7	6.0
1997	3.4	6.1	3.8	4.3	6.7	5.1
1998	3.7	3.7	2.6	4.1	5.6	5.1

*Indicates the second highest concentration exceeded the CO NAAQS, triggering a violation.

2. Monitored Air Quality in New York

Eight CO monitors meeting EPA siting criteria have been maintained over the period 1994 to 1998 in the New York portion of the New York City CO nonattainment area. Locations for these monitors were selected to assure good representation of both CO exposure to people and the maximum CO concentrations which would occur. Monitoring stations are located at the following areas: Manhattan (4), Bronx (1), Brooklyn (2) and Nassau County (1).

Monitoring data from these locations is collected and quality-assured in accordance with 40 CFR 58. Since 1994, no violations of the CO NAAQS were recorded in the New York portion of the area. In accordance with EPA's protocol for determining CO exceedances, the following table lists the second highest recorded CO concentrations, in ppm, at each monitoring station for the calendar years 1994 through 1998:

TABLE 5.2—NEW YORK CO AIR QUALITY DATA SUMMARY (SECOND MAXIMA)

[Parts per million CO]

	Bot. Gardens Bronx	Downtown Brooklyn	Park Slope Brooklyn	Nassau County	E 57th St. Manhattan	Canal St. Manhattan	E 59th St. Manhattan	E 34th St. Manhattan
1994	(‡)	6.4	4.5	5.4	4.9	7.2	7.3	6.7
1995	3.6	7.9	5.8	5.0	5.4	7.0	7.9	6.5
1996	3.3	6.1	3.4	4.9	3.9	4.4	6.3	5.0
1997	3.5	4.3	2.7	4.7	3.2	4.2	6.1	3.8
1998	3.2	4.1	2.4	4.0	4.0	4.2	5.8	3.9

‡ No data was available at this site for this year.

3. Monitored Air Quality in Connecticut

Two CO monitors meeting EPA siting criteria are maintained in the Southwest Connecticut portion of the New York City CO nonattainment area. Locations for these monitors were selected to assure good representation of both CO exposure to people and the maximum CO concentrations which would occur. Monitoring stations are located in the following cities: Bridgeport and Stamford.

Monitoring data from these locations are collected and quality-assured in accordance with 40 CFR part 58. Since 1994, no violations of the CO NAAQS were recorded in the Southwest Connecticut portion of the area. In accordance with EPA's protocol for determining CO exceedances, the following table lists the second highest recorded CO concentrations, in ppm, at each monitoring station for the calendar years 1994 through 1998:

TABLE 5.3—CONNECTICUT CO AIR QUALITY DATA SUMMARY (SECOND MAXIMA)

[Parts per million CO]

	Bridgeport	Stamford
1994	5.8	6.2
1995	4.9	5.4
1996	3.0	4.1
1997	4.0	5.1
1998	2.8	3.8

B. Is the program to be removed already approved into the SIP? If so, has the state submitted a SIP revision request, which complies with CAA section 110(l), to remove the oxyfuel program from the SIP?

The oxyfuel program was approved into the New Jersey SIP on February 12, 1996. Subsequently, New Jersey submitted a SIP revision on August 7, 1998 to remove New Jersey's oxyfuel program as a CO control measure from the SIP. CAA section 110(l) requires that a state's SIP revision cannot interfere with a state's attainment or rate of progress toward attainment. EPA has determined that New Jersey's August 7, 1998 SIP revision meets the requirements of section 110(l) because it demonstrates that removal of the oxyfuel program from the SIP will not interfere with any state's CO attainment (see discussion in the following

subsection). This action will also not interfere with any state's attainment of any other criteria pollutants.

C. Is maintenance of the CO NAAQS, without implementation of oxyfuel, demonstrated for the entire area?

Attainment has been demonstrated in the entire area without the use of oxygenated fuels. New Jersey submitted an attainment demonstration which shows that each of their previously modeled SIP intersections attains the CO standard even if oxyfuel is removed. In addition, New Jersey performed an analysis for certain congested intersections in New York City demonstrating attainment of the CO standard at those intersections without the oxyfuel program in Northern New Jersey. A summary and discussion of the modeled air quality findings for the New Jersey, New York and Connecticut portions of the area follows. Additional details regarding these analyses can be found in the technical support document for this notice.

1. Modeled Air Quality in New Jersey

New Jersey's 1998 CO SIP submittal included an updated attainment demonstration showing how the State can attain the CO standard without the oxyfuel program in New Jersey. This demonstration included all of the locations which were originally modeled in New Jersey's 1992 CO SIP, submitted on November 15, 1992. All modeling procedures employed by New Jersey in its current analysis are the same as those followed in the State's 1992 CO SIP. The modeling protocol employed by the State includes use of a vehicle emissions model and an ambient air dispersion model.

In-use automobile emissions were determined through the use of the most recent EPA-approved mobile emissions computer model, ''MOBILE5b.'' This model takes into account local area parameters such as elevation and temperature, and vehicle information including registration distribution, mileage accumulation fractions, fuel type, vehicle operation modes, and type of inspection program, if any. Data results from this modeling analysis are then used as input to an ambient air dispersion model. CAL3QHC, which is the most current EPA-approved plume dispersion model, uses this information as well as street intersections, traffic signal timing, road type, and monitored background information as data inputs. Based on these inputs, CAL3QHC predicts maximum CO concentrations, in parts per million, for ''worst case'' meteorological conditions at the locations of concern. Additional details regarding this and additional modeling demonstrations considered in EPA's proposed approval can be found in the technical support document for this notice.

Twenty-five locations in five counties in the Northern New Jersey portion of the New York City area were modeled. The results of modeling done for Northern New Jersey demonstrate no violations of the CO NAAQS at any of the modeled locations when oxyfuel is removed. Results show only 3 intersections had modeled CO concentrations above 7.2 ppm. The maximum predicted concentration was 8.0 ppm. Additional details regarding these results can be found in the technical support document.

2. Modeled Air Quality in New York

In order to demonstrate that removal of oxyfuel in Northern New Jersey would not cause or contribute to exceedances of the CO NAAQS in the New York portion of the New York City area, New Jersey analyzed certain locations in New York. These locations were chosen by EPA, and agreed upon by both New York, New Jersey, Connecticut and EPA Regions 1 and 2 during several meetings, to be traffic intersections which have historically demonstrated the highest modeled CO concentrations (see New York's November 15, 1992 CO SIP submittal), and which are representative of CO exposure in New York's portion of the area. Confirmation of agreement to this protocol was detailed in a letter dated August 22, 1997, from EPA Regional Administrator Jeanne M. Fox to NJDEP Commissioner Robert C. Shinn. The agencies ultimately agreed upon a total of 11 intersections located over six counties. Additional detail on these analysis locations can be found in the technical support document.

New Jersey's 1998 CO SIP revision could not fully demonstrate attainment at all 11 New York locations under then-current conditions. Since that analysis was performed, New York's enhanced I/M program began being implemented. As mentioned previously, this program can contribute significantly to reductions of CO. Consequently, EPA chose to reconsider New Jersey's 1998 submittal to take into account the effects of New York's enhanced I/M program on predicted CO concentrations at the New York locations originally predicted to exceed the CO NAAQS. The results of this re-analysis show that all 11 New York locations will now continue to attain the CO NAAQS once oxyfuel is removed. Details regarding the analyses for New York can be found in the technical support document.

3. Modeled Air Quality in Connecticut

Prior to today's action, EPA approved the redesignation of the Southwest Connecticut portion of the New York City CO nonattainment area. As part of its action to approve Connecticut's redesignation, EPA reviewed a maintenance demonstration for Southwest Connecticut. EPA determined that CO maintenance is demonstrated in Southwest Connecticut without reliance on oxyfuel implementation anywhere in the New York City CMSA. Additional detail on the CO maintenance demonstration analysis for Connecticut can be found at 63 FR 58637 (November 2, 1998) and 64 FR 12005 (March 10, 1999).

6. Conclusion

EPA is determining that the New York-Northern New Jersey-Long Island carbon monoxide nonattainment area has attained the carbon monoxide National Ambient Air Quality Standards. As a consequence of this determination, and our determination that the criteria listed in section 5 of this notice have been adequately met, EPA is proposing to approve New Jersey's August 7, 1998 SIP revision to remove the State's oxygenated gasoline program from the federally approved State Implementation Plan. EPA's authority to approve removal of a state's oxyfuel program is set forth at Clean Air Act section 211(m)(6). EPA has determined that the criteria of section 211(m)(6) have been satisfied and removal of the oxyfuel program at this time is appropriate.

EPA can only approve removal of the oxyfuel program in New Jersey, pursuant to CAA section 211(m)(6), because of EPA's determination that the area is actually attaining the CO NAAQS. In the unlikely event that the New York City CO nonattainment area subsequently records a violation of the CO NAAQS, EPA's basis for approval of oxyfuel removal would no longer exist and the requirements of section 211(m) would again become effective for New Jersey. This means that the State would need to implement an oxyfuel program in accordance with the requirements of CAA section 211(m).

7. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Orders on Federalism

Under Executive Order 12875, 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 Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999)), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987)), on federalism still applies. This rule will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612.

The rule affects only two states, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed SIP revision is not subject to E.O. 13045 because it proposes approval of a state program revision, and it is not economically significant under E.O. 12866.

D. Executive Order 13084

Under Executive Order 13084, 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 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 Executive Order 13084 do not apply to this rule.

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 proposed 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 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 Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The 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 proposed approval action 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 proposes to approve amendments to 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

Dated: August 31, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–23279 Filed 9–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE101–1025b; FRL–6434–7]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Proposed Approval of Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Delaware to various State rules and definitions which have historically been State-enforceable, and which Delaware had formally submitted as SIP revisions, but which EPA had not yet taken formal action. Provisions include control of particulate matter from petroleum refining operations, control of sulfur dioxide emissions from sulfuric acid manufacturing operations, and definitions and provisions associated with source monitoring, recordkeeping and reporting. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 12, 1999.

ADDRESSES: Written comments should be addressed to Marcia L. Spink, Associate Director, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, at the EPA Region III address above, or by e-mail at frankford.harold@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: August 20, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–23275 Filed 9–8–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR 151

[USCG–1999–5117]

RIN 2115–AF77

Barges Carrying Bulk Liquid Hazardous Material Cargoes

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard requests comments on the type and scope of any necessary revisions to the barges carrying bulk liquid hazardous material cargoes regulations. The regulations are almost 30 years old and do not include current safety issues, technology standards, and industry practices. At this early stage of the rulemaking process we need information to help us identify potential regulatory revisions.

DATES: Comments and related material must reach the Docket Management Facility on or before March 7, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–1999–5117), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

A copy of the Chemical Transportation Advisory Committee's (CTAC) recommended changes to the Coast Guard carriage regulations for barges carrying bulk liquid hazardous material cargoes is available in the public docket at the above address, on the Internet at http://dms.dot.gov, or you may obtain a copy by contacting the project manager at the number in **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: For questions on this advance notice of proposed rulemaking, call Mr. Thomas Felleisen, Hazardous Materials Standards Division, Coast Guard, telephone 202–267–0085. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this advance notice (USCG–1999–5117), indicate the specific section or question in this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by

mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period when developing our proposed changes to the regulations.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Purpose

We need your comments and information on the issues contained in this advance notice to help us define the scope of any necessary revisions to the barges carrying bulk liquid hazardous material cargoes regulations in 46 CFR part 151. The regulations are almost 30 years old and do not include current safety issues, technology standards, and industry practices. At this early stage of the rulemaking process we need information to help us identify potential regulatory revisions.

Background

The existing barges carrying bulk liquid hazardous material cargoes regulations were published in 1970 and only minor changes have been made to them since then. In 1993, the Chemical Transportation Advisory Committee (CTAC) submitted recommended regulatory changes to the Coast Guard and requested that we revise our regulations accordingly. A complete copy of their 1993 recommendations is available in the public docket. These recommendations included changes to the regulations to—

- Reduce chemical spills;
- Formalize policy;
- Reflect changes to industry practices; and
- Clarify regulatory text.

Since these recommendations are over five years old the Coast Guard will request CTAC to review them. The Coast Guard will consider these recommendations when developing its proposed revisions to the barges carrying bulk liquid hazardous material cargoes regulations, but would like to receive your comments on CTAC's recommendations. A copy of CTAC's recommendations is also available by contacting the Coast Guard project manager under **FOR FURTHER INFORMATION CONTACT** or on the Internet at http://dms.dot.gov.

The Louisiana Governor's Maritime Task Force has identified a need for revised cargo identification signs on barges carrying hazardous liquid cargoes in bulk. Louisiana emergency responders have indicated a preference for the placarding system used by trucking and rail transportation. The current warning sign system used on barges might not be satisfactory for emergency responders who have been trained to recognize the trucking and rail placarding system. Also, the current signs might not assist responders to rapidly identify contents and compatibility of barge cargoes from remote locations. The Coast Guard would like to receive your comments about whether we should require placarding used by trucking and rail transportation on barges carrying bulk liquid hazardous material.

Preliminary Regulatory Assessment

This rulemaking is not likely to be classified as a significant regulatory action under section 3(f) of Executive Order 12866 and is not likely to be significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). A draft regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation would be prepared to support any future Notice of Proposed Rulemaking (NPRM).

The Coast Guard will not prepare a benefit-cost analysis until we have identified the regulatory changes we wish to propose. We do not have any cost figures on CTAC's recommendations, however, if you have cost data concerning CTAC's recommendations, as well as other relevant cost data, please forward it to the Docket Management Facility listed under **ADDRESSES**.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether a potential rulemaking would have significant economic impacts on a substantial number of small entities. The term ''small entities'' comprises 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.

Some barge companies subject to our regulations may be small entities. Because we have not yet proposed specific revisions and because the number of affected small entities has not been identified, we cannot accurately estimate the potential impact on small entities at this time. As part of the required 5 U.S.C. 610 review of regulations affecting small entities, we are requesting information at this early stage about the aspects of this rulemaking which may affect small entities, so we can evaluate and minimize the impact of proposed changes on them.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–21), we want to assist small entities in understanding this advance notice so they can better evaluate the potential effects of any future rulemaking on them and participate in the rulemaking process. If you believe this rulemaking may affect your small business, organization, or agency, please explain how you could be affected, and tell us what flexibility or compliance alternatives the Coast Guard should consider to minimize the burden on you while promoting safety measures for barges carrying bulk liquid hazardous material cargoes. If you have questions concerning this advance notice, you may call the Coast Guard project manager designated in **FOR FURTHER INFORMATION CONTACT**. We also maintain a small business regulatory assistance Web Page at http://www.uscg.mil/hq/g-m/regs/reghome.html that has current information on small entity issues and proposed Coast Guard regulations. To help small entities become more involved in this rulemaking, we will mail copies of this advance notice to Small Business Development Center (SBDC) State Directors nationwide for distribution to local SBDC offices and interested small businesses.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501–3520), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, record-keeping, monitoring, posting, labeling, and other, similar actions. Current collection of information requirements, approved under OMB Control Number 2115–0541, are shown in the following table.

Rule cite	Type of document submitted	Frequency
151.01–10(c)	For tank barges. Application for inspection	Every 2 years.
151.01–10(c)(1)	For new vessels > 300′. Loading information	Prior to first voyage.
151.10–15	For new or modified barges. Stability calculations	As needed.
151.15–3(b)(8)	For new pressure vessel tank barges. Calculations showing stress level in tanks under dynamic loading condition or grounding conditions.	As needed.
151.15–3(d)(4)	For barges. Heat transmission tests and studies	As needed.
151.45–2(e)	For barges. Warning signs and cargo info cards	When brought into service and replaced when needed.
151.45–3	For personnel who will man barges. Letter	As needed.
151.45–4(a)(2)	For qualified personnel. Letter that person on duty qualified to handle cargo	As needed.
151.45–7	For all vessels. Shipping papers for all cargoes	Per trip.
151.50–6(d)	For barges. Notification of internally inspecting tanks used for Motor fuel antiknock compounds (MKAFC).	As needed.
151.50–12(b)	For barges. Chemical composition of all steel used in construction of tanks that will carry ethylene oxide.	As needed.
151.50–20(i)	For barges. Notification tanks approved for acid cargoes to be used for other cargoes.	As needed.
151.50–22 and 23	For responsible personnel. Request to ship spent hydrochloric acid, phosphoric acid adulterates by other chemicals, inhibitors, etc.	As needed.
151.50–30(e)	For responsible personnel. Request to deviate from filling density limits in requirements for compressed gasses.	As needed.
151.50–31(d)	For company. Request to use welded or other unions for chlorine transfer lines	As needed.
151.50–50(n)	For owner/operator. Request to transport cargo other than phosphorous in phosphorous cart tanks or another cargo when transporting phosphorous in another tank.	As needed.

We will review these collection requirements to validate, reduce, or eliminate existing burdens that are no longer necessary. We request comments on how we may reduce or eliminate any of the current information collection requirements.

Questions

We request your comments and any data or information that would answer the following questions, as well as comments on any other part of the current regulations that should be revised. In responding to a question, please explain your reasons for each answer so that we can carefully weigh the consequences and impacts of any future requirements we may propose. In addition, please provide relevant data (data on operational incidents resulting in personal injury, property damage, or pollution would be particularly useful), if possible, that will support the need for a revision to the barges carrying bulk liquid hazardous material cargoes regulations.

1. The Coast Guard is considering a major update of the regulations in 46 CFR part 151, which are almost 30 years old. Do you think those regulations are adequate to protect against hazards to life and property, to ensure navigation and vessel safety, or to protect the marine environment? If not, why are they not adequate and which sections in 46 CFR part 151 need to be changed? How should these sections be changed? How can the sections in 46 CFR part 151 be clarified?

2. The recommendations from the Chemical Transportation Advisory Committee (CTAC) mentioned in the Background section of the preamble, if adopted, would change the organization of the regulations for tank barges carrying hazardous cargoes. Should 46 CFR part 151 be organized differently than it is now? If so, how should it be organized? Should 46 CFR parts 151 and 153 (Ships Carrying Bulk Liquid, Liquefied Gas, or Compressed Gas Hazardous Materials) be organized similarly? What benefit(s) would there be if these parts were organized similarly?

3. The United States is attempting to convert regulations to the metric system. What measurement system should be used in the regulations? Standard? Metric? Or both? What benefits are there to using one measurement system instead of the other or both?

4. The following incorporation by reference standards are cited in 46 CFR 151.01–2:

a. ASNT Recommended Practice No. SNT–TC–1A (1998), Personnel Qualification and Certification in Nondestructive Testing (§ 151.04–7(c)(2)).

b. ASME Boiler and Pressure Vessel Code section V, Nondestructive Examination (1986) (§ 151.04–7(a)(1)). Are these standards still useful? Should either be updated? Are there any new standards that should be incorporated into these regulations? If so, what are they? Why should they be used?

5. The current regulations may include terms that are unclear or define terms that are no longer used. Which definitions in 46 CFR 151.03 should be updated or deleted? Please explain. Are there other terms that the Coast Guard should define in that section? Please explain.

6. Barges transferring hazardous cargoes have traditionally been required to display the red flag under 46 CFR 151.45–9. Should the Coast Guard continue to require the red flag to indicate cargo transfer operations?

7. The Louisiana Governor's Maritime Task Force has identified a need for cargo identification signs on barges carrying hazardous liquid cargoes in bulk. We would like your comments about whether we should require placarding used by trucking and rail transportation on barges carrying bulk liquid hazardous material. What other considerations apply to placarding on barges carrying bulk liquid hazardous material for purposes of identifying cargoes?

8. Certain waterways may have special needs. Are there any geographic or seasonal concerns that are not currently addressed in 46 CFR part 151? If so, please explain.

9. The current rules in 46 CFR part 151 have requirements for cargo-specific materials of construction. Do the following sections still represent engineering practices adequate to protect against hazards to life and property, to ensure navigation and vessel safety, or to protect the marine environment:

a. 46 CFR 151.55—Special Requirements for Materials of Construction?

b. 46 CFR 151.56—Prohibited Materials of Construction?

c. 46 CFR 151.58—Required Materials of Construction?

If not, how should they be changed to meet adequate engineering practices?

10. Currently, the Commandant of the Coast Guard approves carriage of new types of cargoes. Should the Coast Guard improve its procedures for assigning requirements for chemical cargoes in 46 CFR 151.01–5? Please explain.

11. Should the Coast Guard exempt existing barges carrying bulk liquid hazardous material from possible revisions to these regulations? Please explain. Should retrofitting any equipment to existing barges carrying liquid hazardous material be required? If so, what equipment should be retrofitted? Why? Should the regulations include a phase-in period for any new requirements? If so, how long should the period be?

12. The Coast Guard expresses no opinion regarding the merit of CTAC's recommendations discussed in the preamble. However, based on your review of CTAC's submission to the Coast Guard, which recommendations should the Coast Guard include in a proposed rule? Which CTAC recommendations should the Coast Guard not include in a proposed rule? Which CTAC recommendations should the Coast Guard revise and include in a proposed rule? Why?

13. The Coast Guard seeks information about the following subjects to assist in evaluating CTAC's recommendations and developing the most appropriate revisions to 46 CFR part 151:

a. Accident data detailing deaths.

b. Injuries.

c. Property damage.

d. Environmental damage.

e. Cost estimates of new barge construction.

14. What are the costs of the following CTAC recommended equipment modifications:

a. Changes in construction standards.

b. Addition of high level alarms.

c. Installation of tanks with high velocity vents.

d. Perforation of ullaging tubes.

15. The Coast Guard seeks cost data associated with recent technological improvements in the barge industry for carriage of liquid hazardous material. Those recent technological improvements may be proposed by this rulemaking. Please identify the improvements and their associated costs.

16. For almost three decades current rules in 46 CFR part 151 have had no change in their recordkeeping burden. These recordkeeping requirements are discussed in the Collection of Information section of the preamble. Should the current collection of information requirements be reduced or revised? If so, how should the requirements be changed? Should the Coast Guard allow for electronic submissions and/or recordkeeping?

17. If you believe a small entity will be affected by potential changes to the barges carrying bulk liquid hazardous material cargoes regulations, then please explain what flexibility or compliance options the Coast Guard should consider and how these options would minimize the burden on small entities.

Dated: September 1, 1999.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–23421 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register
Vol. 64, No. 174
Thursday, September 9, 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 COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of September 1999, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

	Period
Antidumping Duty Proceedings	
Argentina: Silicon Metal, A–357–804	9/1/98–8/31/99
Canada:	
Steel Jacks, A–122–006	9/1/98–8/31/99
New Steel Rail, Except Light Rail, A–122–804	9/1/98–8/31/99
Germany: Newspaper Printing Presses, A–428–821	9/1/98–8/31/99
Italy: Stainless Steel Wire Rod, A–475–820	3/5/98–8/31/99
Japan:	
Flat Panel Displays, A–588–817	9/1/98–8/31/99
Newspaper Printing Presses, A–588–837	9/1/98–8/31/99
Stainless Steel Wire Rod, A–588–843	9/1/98–8/31/99
South Korea: Stainless Steel Wire Rod, A–580–829	3/5/98–8/31/99
Spain: Stainless Steel Wire Rod, A–469–807	3/5/98–8/31/99
Sweden: Stainless Steel Wire Rod, A–401–806	3/5/98–8/31/99
Taiwan:	
Chrome-Plated Lug Nuts, A–583–810	9/1/98–8/31/99
Stainless Steel Wire Rod, A–583–828	3/5/98–8/31/99
The People's Republic of China:	
CDIW Fittings & Glands, A–570–820	9/1/98–8/31/99
Freshwater Crawfish Tail Meat, A–570–848	9/1/98–8/31/99
Greige Polyester/Cotton Printcloth, A–570–101	9/1/98–8/31/99
Chrome-Plated Lug Nuts, A–570–808	9/1/98–8/31/99
Countervailing Duty Proceedings	
Canada: New Steel Rail, Except Light Rail, C–122–805	1/1/98–12/31/98
Italy: Stainless Steel Wire Rod, C–475–821	1/1/98–12/31/98
Suspension Agreements	
Argentina: Carbon Steel Wire Rod, C–357–004	9/1/98–8/31/99
Peru: Cotton Shop Towels, C–333–401	9/1/98–8/31/99

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27494 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular

producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with § 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of September 1999. If the Department does not receive, by the last day of September 1999, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 2, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Group II, AD/CVD Enforcement.

[FR Doc. 99–23437 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above (DRAMs) From the Republic of Korea: Postponement of Final Results of Antidumping Duty Administrative Review.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the administrative review of the antidumping duty order on DRAMs from the Republic of Korea, covering the period May 1, 1997, through April 30, 1998, since it is not practicable to complete the review within the time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION: John Conniff, Antidumping Duty and Countervailing Duty Enforcement, Office Four, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue , NW, Washington DC 20230, telephone 202/482–1009.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act.

In addition, unless stated otherwise, all citations to the Department's regulations are to the current regulations codified at 19 CFR Part 351 (1998).

Background

On June 29, 1998 (63 FR 35188), the Department initiated an administrative review of the antidumping order on DRAMs from the Republic of Korea, covering the period May 1, 1997 through April 30, 1998. On June 8, 1999, the Department published the preliminary determination in this review (64 FR 30481).

Postponement of Final Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to 180 days after the date on which the preliminary determination is published.

We determine that it is not practicable to complete the final results of this review within the original time frame because of the complexity of the legal and methodological issues involved in this review (*see* Memorandum from Bernard T. Carreau, Deputy Assistant Secretary to Richard Moreland, Acting Assistant Secretary, September 1, 1999). Accordingly, the deadline for issuing the final results of this review will be no later than 180 days (December 5, 1999) from the publication of the preliminary determination.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A)).

Dated: September 1, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group.

[FR Doc. 99–23434 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–331–602]

Certain Fresh Cut Flowers From Ecuador: Initiation and Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review and Intent To Revoke Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed-circumstances antidumping duty administrative review and intent to revoke order.

SUMMARY: In response to a request from Timothy Haley, the Floral Trade Council, and the Floral Trade Council's Committees on Standard Carnations, Standard Chrysanthemums, and Pompom Chrysanthemums, the Department of Commerce is initiating a changed-circumstances antidumping duty review and is issuing this notice of intent to revoke the antidumping duty order on certain fresh cut flowers from Ecuador with respect to all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after March 1, 1997.

Interested parties are invited to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Suzanne Flood or Edythe Artman, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0665 or (202) 482–3931, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

On August 27, 1999, Timothy Haley, the Floral Trade Council (FTC), and the FTC's Committees on standard carnations, standard chrysanthemums, and pompom chrysanthemums (the FTC and its Committees) requested that the Department of Commerce (the Department) conduct a changed-circumstances administrative review to revoke the antidumping duty order on certain fresh cut flowers from Ecuador retroactive to March 1, 1997. The FTC was the petitioner in the less-than-fair-value investigation and its Committees are composed of domestic producers of the like product. The FTC and its Committees stated that circumstances have changed such that they no longer have an interest in maintaining the antidumping duty order, and it is their expectation that all interested parties will agree to revocation.

The FTC and its Committees also requested that, due to the pendency of the ongoing administrative reviews of the order, the Department initiate and complete the changed-circumstances review on an expedited basis.

Scope of Review

The products covered by this changed-circumstances review are certain fresh cut flowers from Ecuador including standard carnations, standard chrysanthemums, and pompon chrysanthemums. These products are currently classifiable under item numbers 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS item numbers are provided for convenience and for customs purposes, the Department's written description of the scope remains dispositive.

Initiation and Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review and Intent To Revoke Order

Pursuant to section 751(d)(1) of the Act, the Department may revoke, in whole or in part, an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed-circumstances administrative review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

The Department's regulations at 19 CFR 351.216(d) provide that the Department will conduct a changed-circumstances administrative review in accordance with 19 CFR 351.221, if it decides that changed circumstances exist that are sufficient to warrant a review. Section 782(h) of the Act and section 351.222(g)(1)(i) of the Department's regulations provide further that the Department may revoke an order, in whole or in part, if it concludes that the order is no longer of interest to domestic interested parties. Therefore, an expression of no interest by domestic producers constitutes sufficient evidence of changed circumstances to warrant review. In addition, in the event that the Department concludes that expedited action is warranted, section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and of preliminary results.

The FTC and its Committees are domestic interested parties as defined by section 771(9)(E) of the Act and 19 CFR 351.102(b). Therefore, based on the affirmative statement by the FTC and its Committees of no interest in the continued application of the antidumping duty order on certain fresh cut flowers from Ecuador, we are initiating this changed-circumstances review. Further, based on the affirmative statement of no interest by the FTC and its Committees, we have determined that expedited action is warranted, and we are therefore combining the notices of initiation and of preliminary results.

Based on the affirmative statement of no interest by the FTC and its Committees, we preliminarily determine that there are changed circumstances sufficient to warrant revocation of the entire order. We are hereby notifying the public of our intent to revoke the antidumping duty order on certain fresh cut flowers from Ecuador absent objections by domestic producers sufficient to establish that the criteria of section 782(h) of the Act have not been met.

In the event that we make a final determination to revoke, the Department will terminate the administrative reviews covering the following periods: March 1, 1997, through February 28, 1998 (initiated on April 24, 1998 (63 FR 20378)); March 1, 1998, through February 28, 1999 (initiated on April 30, 1999 (64 FR 23269)).

If final revocation of the order occurs, we intend to instruct the Customs Service to end the suspension of liquidation and to refund any estimated antidumping duties collected for all unliquidated entries of certain fresh cut flowers from Ecuador entered, or withdrawn from warehouse, for consumption on or after March 1, 1997. We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties will continue until further notice.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 24 days after the date of publication of this notice. Written comments from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal comments to written comments, which are limited to issues raised in those comments, may not be filed later than 20 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed-circumstances review, including the results of its analysis of issues that are raised in any written comments.

We are issuing and publishing this notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and sections 351.216 and 351.222 of the Department's regulations.

Dated: September 3, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23629 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–817]

Oil Country Tubular Goods From Mexico: Preliminary Results of Antidumping Duty Administrative Review and Partial Recission of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and partial rescission of administrative review.

SUMMARY: In response to a request from respondents, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on oil country tubular goods (''OCTG'') from Mexico. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period August 1, 1997 through July 31, 1998. We preliminarily determine that sales of subject merchandise have not been made below normal value. (''NV''). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties based on the difference between export price (''EP'') or constructed export price (''CEP'') and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes).

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: John Drury, Nancy Decker or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0195 (Drury), (202) 482–0196 (Decker), (202) 482–3833 (Ludwig).

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (April 1998).

Background

The Department published a final determination of sales at less than fair value for OCTG from Mexico on June 28, 1995 (60 FR 33567), and subsequently published the antidumping duty order on August 11, 1995 (60 FR 41056). The Department published a notice of ''Opportunity To Request Administrative Review'' of the antidumping order for the 1997/1998 review period on August 11, 1998 (63 FR 42821). Upon receiving requests for administrative review from two respondents, Hylsa S.A. de C.V. (''Hylsa'') and Tubos de Acero de Mexico, S.A. (''TAMSA''), we initiated a review on September 23, 1998 (63 FR 51893, September 29, 1998).

On November 2, 1998, Hylsa timely withdrew its request for review. Therefore, this review has now been terminated as to Hylsa as a result of the withdrawal of Hylsa's request for review.

Under Section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On April 14, 1999, the Department extended the time limits for these preliminary results to August 31, 1999. *See Oil Country Tubular Goods from Mexico; Extension of Time Limits for Antidumping Duty Administrative Review* (64 FR 24370, May 6, 1999).

Scope of the Review

Imports covered by this review are oil country tubular goods, hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers:

7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Review

The review covers the period August 1, 1997 through July 31, 1998. The Department is conducting this review in accordance with section 751 of the Act, as amended.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, covered by the description in the Scope of the Review section, above, and sold in the home market during the period of review (POR), to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in the Department's October 16, 1998 questionnaire, or to constructed value (''CV'').

Normal Value Comparisons

To determine whether sales of the subject merchandise by TAMSA were made at less than NV, we compared the CEP to the NV, as described in the CEP and NV sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared CEPs to weight-averaged NVs.

United States Price

In its response to the Department, TAMSA claimed that its sales to the United States were EP sales. After careful examination of the record, and

based upon our analysis using the three-pronged test defined below, the Department has preliminarily determined to treat TAMSA's U.S. sales as CEP sales, as defined in section 772(b) of the Act. *See* Analysis Memorandum for TAMSA for a further discussion.

Pursuant to section 772(a) and (b) of the Act, an EP sale is a sale of merchandise for export to the United States made by a foreign producer or exporter outside the United States prior to importation. A CEP sale is a sale made in the United States before or after importation by or for the account of the exporter/producer or by a party affiliated with the exporter or producer. In determining whether the sales activity of a U.S. affiliate rises to such a level that CEP methodology is warranted, the Department has examined the following criteria: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer (rather than being introduced into the inventory of the U.S. affiliate), (2) whether this was a customary commercial channel between the parties involved, and (3) whether the function of the U.S. affiliate is limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unaffiliated U.S. buyer. *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Review (''Canadian Steel'')*, 63 Fed. Reg. 12725, 12738 (March 16, 1998).

In the *Canadian Steel* case, the Department clarified its interpretation of the third prong of this test, as follows. ''Where the factors indicate that the activities of the U.S. affiliate are ancillary to the sale (*e.g.*, arranging transportation or customs clearance, invoicing), we treat the transactions as EP sales. Where the U.S. affiliate has more than an incidental involvement in making sales (*e.g.*, solicits sales, negotiates contracts or prices) or providing customer support, we treat the transactions as CEP sales.'' *Id.*

Our examination of the record with respect to this administrative review indicates that the fact pattern for sales to the United States is substantially identical to the pattern for sales in the previous administrative review. In *Oil Country Tubular Goods From Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 13962 (March 23, 1999), the Department stated in part:

As an initial matter, the selling agreement between TAMSA and Siderca Corp. is quite clear with respect to the services that Siderca Corp. performs. Siderca Corp. is the exclusive selling agent for TAMSA products in the United States and other parts of the world, and has certain rights affecting the price for any sales under the agreement. In exchange for providing marketing and selling functions, and for providing other services, such as paying for brokerage and importer duties, Siderca Corp. is entitled to receive compensation under the agreement. The record indicates that Siderca Corp. did receive, in connection with this sale, the compensation provided for under the agreement.

In addition, Siderca Corp. played the primary role in generating this sale by bringing the customer to TAMSA. The record shows that Siderca Corp. has a longstanding working relationship with the United States customer, is in frequent contact with that customer, and that sales of other TAMSA products to this and other customers occur because of these contacts. Conversely, TAMSA itself appears to have little, if any, contact outside of Mexico with regard to the sale of its products in the United States. Indeed, under the terms of the agreement, TAMSA is precluded from soliciting or negotiating sales directly in the United States. The agreement places the rights and responsibilities of selling and marketing TAMSA products in the United States squarely on Siderca Corp.

Based on this fact pattern, it appears that, * * * the sale to the United States of subject merchandise was within the framework of the agreement between TAMSA and Siderca Corp. Evidence on the record indicates that, consistent with its rights and responsibilities under the selling agreement, Siderca Corp. maintained contacts with the United States customer and, through these contacts, was able to match that customer's requirements with subject merchandise available from TAMSA. The fact that Siderca Corp. may not have fully exercised its rights with regards to price negotiation, deferring to TAMSA with respect to the final approval, neither negates the substance and importance of the agreement nor diminishes the importance of Siderca Corp.'s role in arranging this sale. Simply put, under the current agreement, it appears that TAMSA would be precluded from seeking sales in the United States directly. Sales of TAMSA products in the United States must, as a condition of the agreement, begin with Siderca Corp. The fact that Siderca Corp. performed other functions as specified in the agreement, even if these were ancillary services, and received compensation according to the terms of the agreement, reinforces the conclusion that Siderca Corp.'s activities under the agreement were the primary factors in creating the sale to the United States.

Based on our examination of the record, the selling agreement between TAMSA and its U.S. affiliate (Siderca Corp.) has not changed. Furthermore, Siderca Corp. has longstanding ties to the United States customer and is in frequent contact with that customer concerning sales of TAMSA products worldwide. Conversely, TAMSA does not communicate directly with the customer and, under the agreement, appears to be precluded from contacting United States customers. Based on these facts, it is clear that the U.S. affiliate has more than an incidental involvement in making these sales. Since the sales in question do not meet the third prong of the test for indirect EP sales described above, we need not consider the other two prongs. Based on our analysis, we are treating TAMSA's U.S. transactions as CEP sales.

We based CEP on the delivered price to unaffiliated customers in the United States. We made adjustments, where applicable, for movement expenses (U.S. inland freight, U.S. brokerage and handling expenses, and U.S. customs duties), credit expenses, and other selling expenses that were associated with economic activity in the United States, in accordance with section 772(d) of the Act. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

Normal Value

In order to determine whether there were sufficient sales of OCTG in the home market (''HM'') to serve as a viable basis for calculating NV, we compared the volume of home market sales of subject merchandise to the volume of subject merchandise sold in the United States, in accordance with section 773(a)(1)(C) of the Act.

TAMSA's aggregate volume of HM sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Therefore, for TAMSA, we have based NV on HM sales. We made adjustments to NV for HM inland freight, discounts, credit expenses, warehousing expenses, packing, and warranty expenses.

Cost of Production Analysis

Because the Department disregarded sales below cost for TAMSA in the comparison market during the last completed segment of the proceeding, we initiated a cost of production (''COP'') analysis in accordance with section 773(b) of the Act. We conducted the COP analysis as described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of the cost of materials, fabrication and general expenses, and packing costs. We relied on the submitted COPs.

B. Test of Home Market Prices

We used respondent's weighted-average COP for the period August 1, 1997 to July 31, 1998. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home-market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and discounts.

C. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of TAMSA's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. Because we compared prices to POR-average costs, we also determined that such sales were also not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act; therefore, we disregarded the below-cost sales.

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of TAMSA's cost of materials, fabrication, SG&A, including interest expenses, and U.S. packing costs, as reported and a calculated profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). (*See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).)

As the Department explained in *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review (''Cement from Mexico'')*, 62 FR 17156 (April 9, 1997), for both EP and CEP the relevant transaction for the LOT analysis is the sale from the exporter to the importer. While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the construction of the CEP results in a price that would have been charged by the exporter to the importer if the importer had not been affiliated. We calculate the CEP by removing from the first resale to an unaffiliated U.S. customer the expenses referenced in section 772(d) of the Act and the profit associated with these expenses. These expenses represent activities undertaken by the affiliated importer in making the sale to the unaffiliated customers. Because the expenses deducted under section 772(d) of the Act are incurred for selling activities in the United States, the deduction of these expenses may yield a different LOT for the CEP than for the later resale (which we use for the starting price). Movement charges, duties, and taxes deducted under section 772(c) of the Act do not represent activities of the affiliated importer, and we do not remove them to obtain the price on which the CEP LOT is based.

To determine whether some or all home market sales are at a different LOT than U.S. sales, we examined both the chain of distribution and the selling functions in both markets. An analysis of the chain of distribution and of the selling functions substantiates or invalidates the claimed LOTs. Our analysis revealed that while all sales in the home market were in the same chain of distribution, there were substantial differences in selling functions between certain types of customers.

Some of the home market sales were made on a Just In Time (''JIT'') basis. As in the prior review, the Department preliminarily determines that the infrastructure required to support the selling functions involving JIT sales results in these sales being made at a different LOT than non-JIT sales. Some sales in the home market, which would match to the U.S. sale, were not made on a JIT basis. The Department examined the selling functions provided by TAMSA to these customers to determine if these sales were at the same LOT as sales to the United States.

In *Stainless Steel Sheet and Strip in Coils from the United Kingdom, Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination*, 64 FR 85 (January 4, 1999), the Department determined that some of the items listed by respondent were not selling functions relevant to the Department's LOT analysis because they did not characterize significant services provided to customers. Based on this analysis, we conclude that customer solicitation is not a selling function. Therefore, we are disregarding this item in our LOT analysis.

Of the remaining 13 selling functions listed by TAMSA, all but one were provided in both the home market and the United States to non-JIT customers. Only customer visits are listed by TAMSA as a selling function provided in the home market, but not in the United States. However, TAMSA does not quantify or otherwise describe the nature of these visits. Given the absence of evidence, we preliminarily determine that the actual differences in selling functions in connection with sales to non-JIT customers in the home market, and sales to the United States, are relatively minor.

Based on this determination, we preliminarily determine that sales to home market customers which do not receive JIT services are at the same level of trade as CEP sales. As a result, we have based our margin analysis on the

comparison of CEP sales to these non-JIT home market sales.

Because we have preliminarily determined that there are sales in the home market at the same level of trade as the sale to the United States, and because we have used only these same LOT sales as matching in calculating the margin, we are not making an LOT adjustment or a CEP offset.

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period August 1, 1997 through July 31, 1998:

TAMSA—0.00%

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by taking the dumping margin calculated for the U.S. sale to the importer and dividing this amount by the total entered value of the sale. This specific rate calculated will be used for the assessment of antidumping duties on the entry of the subject merchandise during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of OCTG from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for reviewed firms will be the rate established in the final results of administrative review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(d)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original fair value investigation, the cash deposit rate will be 23.79%, the ''all other'' rate from the original investigation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1)of the Act.

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23433 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Certain Stainless Steel Wire Rod From India: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of the antidumping administrative review on certain stainless steel wire rod from India.

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Rick Johnson, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0413 or (202) 482–3818, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351 (1998).

Background

On October 20, 1993, the Department published in the **Federal Register** (58 FR 54110) the antidumping duty order on certain stainless steel wire rod from India. On December 8, 1998, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this antidumping duty order (63 FR 67646).

On December 29, 1998, Viraj, an Indian producer, requested an administrative review of the antidumping duty order on certain stainless steel wire rod from India. In accordance with 19 CFR 351.221(b), we initiated the review of Viraj on January 25, 1999 (64 FR 3682), covering the period of December 1, 1997 through November 30, 1998.

Extension of Time Limits for Preliminary Results

Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results 120 days to January 3, 2000 (for a further discussion, *see Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limit for the Preliminary Results of Antidumping Administrative Reviews: Certain*

Stainless Steel Wire Rod from India, dated August 25, 1999).

The final results continue to be due 120 days after the publication of the preliminary results.

Dated: August 31, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–23432 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of California at Santa Barbara, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 99–018. *Applicant:* University of California at Santa Barbara, Santa Barbara, CA 93106. *Instrument:* Electron Microscope, Model JEM–1230. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 64 FR 39972, July 23, 1999. *Order Date:* June 17, 1999.

Docket Number: 99–019. *Applicant:* National Institutes of Health, Hamilton, MT 59840. *Instrument:* Electron Microscope, Model H–7500. *Manufacturer:* Nissei Sangyo Ltd., Japan. *Intended Use:* See notice at 64 FR 42091. *Order Date:* May 19, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–23436 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Purdue University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 99–016. *Applicant:* Purdue University, W. Lafayette, IN 47907–1393. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad 3. *Manufacturer:* VG Elemental, United Kingdom. *Intended Use:* See notice at 64 FR 36338, July 6, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) Determination of six radionuclides (^{10}Be, ^{14}C, ^{26}Al, ^{36}Cl, ^{41}Ca, ^{129}I) for NSF Accelerator Mass Spectrometry Facility, (2) a high sensitivity quadrupole and (3) measurement of more elements than other ICP-mass spectrometers as determined by testing of standard specimen samples. The Department of Energy advised on August 18, 1999 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–23435 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082799B]

National Plan of Action for the Reduction of Incidental Catch of Seabirds in Longline Fisheries

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

ACTION: Public notice.

SUMMARY: The United States, through a collaborative effort of NMFS and the U.S. Fish & Wildlife Service (FWS), is developing a National Plan of Action (NPOA) pursuant to the endorsement of the International Plan of Action (IPOA) for the Reduction of Incidental Catch of Seabirds in Longline Fisheries by the United Nations Food and Agriculture Organization (UN FAO) Committee on Fisheries (COFI) Ministerial Meeting in March 1999. Noting the increased numbers of incidental seabird catch in longline fisheries, this IPOA calls on COFI member states to voluntarily develop national plans on reducing this incidental seabird catch. The United States has committed itself to developing this national plan, and reporting on its implementation to COFI, no later than 2001. This notice provides a time frame for the completion of this project and an outline of the contents of this NPOA. The public is invited to provide written comments and suggestions for items to be incorporated or addressed within the NPOA.

DATES: Comments will be accepted on the Seabird NPOA from September 9, 1999 until September 30, 1999.

ADDRESSES: Written comments should be sent to David Kerstetter, NOAA-Fisheries/SF, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: David Kerstetter, 301–713–2337, ext. 107, or FAX 301–713–2313.

SUPPLEMENTARY INFORMATION: The ''International Plan of Action (IPOA) for Reducing Incidental Catch of Seabirds in Longline Fisheries'' was endorsed in principle at the 23rd FAO COFI session in February 1999 and approved at the Fisheries Ministerial in March 1999. As with the two other IPOAs on sharks and capacity reduction, the Seabird IPOA calls on members to voluntarily develop an NPOA on this issue.

The FAO Fisheries Department has a draft budget for the 1999–2001 biennium of US$ 304,000 to assist with implementation of the seabird Plan by its Members. These funds have been allocated primarily to staff time, consultants, and publication costs. FAO anticipates the following three major actions from this budget toward its members: (1) Providing technical assistance while preparing NPOAs, (2) providing assistance in coordinating research and training, and (3) assisting in the reporting process to COFI.

The U.S. Government agencies did not wait for the passage of the IPOA to begin the work of seabird protection and management. Many measures have already been taken to reduce the incidental catch of these seabird species under such statutes as the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act (ESA), and the Migratory Bird Treaty Act (MBTA). The U.S. NPOA is currently under development as a collaborative effort between NMFS and the Fish and Wildlife Service (FWS), with a draft Seabirds NPOA tentatively due for **Federal Register** notice in November 1999 and full completion of the Plan by January 2000.

Written comments on the Seabirds NPOA are encouraged (See **ADDRESSES**).

PROPOSED SCHEDULE

Date	Item
September 1999	Release approved schedule and outline to public via a FEDERAL REGISTER notice.
October 1999	Collect and incorporate review comments.
November 1999	Release Draft NPOA for public comment.
January 2000	Respond to public comments and release final version of Seabirds NPOA.

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Longline Fisheries of the United States: Descriptions, Regulations, and Current Mitigation Efforts, by Fishery Management Councils and/or International Agreements
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3. South Atlantic (SA) FMC: SA Snapper-Grouper (FMP); SA Coastal Migratory Pelagics (CMP) (FMP),
4. Caribbean FMC: Caribbean Shallow Water Reef Fish (FMP); Caribbean Pelagics (non-FMP),
5. Gulf of Mexico (GOM) FMC: GOM Reef Fish (FMP); GOM Snapper/Grouper (FMP); GOM CMP (FMP),
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9. Secretary of Commerce Control: Atlantic Swordfish (FMP); Atlantic Sharks (FMP); Atlantic Tunas (non-FMP).
b. U.S. State and State Cooperative Fisheries Management Agreements.
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1. International Convention for the Conservation of Atlantic Tunas (ICCAT),
2. Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR), and
3. International Pacific Halibut Commission (IPHC).
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References
Appendices
I. International Plan of Action for the Reduction of Incidental Catch of Seabirds in Longline Fisheries
II. Seabird Interaction Minimization Methods for Longline Fisheries
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Dated: September 1, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23359 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990902244-9244-01; I.D. 042699A]

Vessel Monitoring Systems; List of Approved Mobile Transmitting Units and Communications Service Providers

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

ACTION: Notice of vessel monitoring systems; approval.

SUMMARY: This document provides notice of the vessel monitoring systems (VMS) approved by NOAA for use by pelagic longline vessels in the Atlantic Highly Migratory Species (HMS) Fisheries and sets forth relevant features of each VMS.

ADDRESSES: To obtain copies of the list of NOAA approved VMS mobile transmitting units and NOAA approved VMS communications service providers, write to NOAA Office for Law Enforcement (OLE), 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

To obtain information regarding the status of VMSs being evaluated by NOAA for approval, write to NOAA Office for Law Enforcement, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

For more addresses regarding approved VMSs, see the SUPPLEMENTARY INFORMATION section, under the heading VMS Provider Addresses.

FOR FURTHER INFORMATION CONTACT:

Current listing information: Linda Taylor, Outreach Specialist, phone 301–427–2010, fax 301–427–2055.

Installation and activation checklists: For a copy of the checklist, contact Sandra Yin, VMS Specialist, phone 301–427–2300. For questions regarding the checklist, contact Fred Kyle, Special Agent, NOAA Enforcement, Southeast Division, phone 727– 570–5344. To submit a completed and signed checklist, mail or fax it to NOAA Enforcement, 9721 Executive Center Drive North, Koger Building, St. Petersburg, FL 33702, fax 727–570–5355.

Status of evaluations: Sandra Yin, VMS Specialist, phone 301–427–2300, fax 301–427–2055.

SUPPLEMENTARY INFORMATION:

I. The VMS Requirement

The NMFS has issued a regulation, codified at 50 CFR part 635, requiring the use of VMS by pelagic longline vessels in the HMS Fisheries. This requirement becomes effective January 1, 2000. The placement of VMS units on the fishing vessels in this fishery will enable NMFS to determine vessel locations and will complement the Agency's efforts to monitor and enforce compliance with applicable regulations.

This document provides notice of the VMS mobile transceiver units and the mobile communications service providers that have been approved by NOAA for use in the HMS Fisheries. The VMS consists of both the mobile transceiver unit placed on the vessel and the communications service provider that supplies the wireless link between the unit on the vessel and the shoreside data user. In the HMS Fisheries, the vessel owner is required to procure both VMS components. The two VMS components may, or may not, be provided by a single vendor, depending on the mobile transceiver unit selected. Thus, the vessel owner may be required to procure the mobile transceiver unit and the mobile communications service separately.

To the extent that the use of VMS is required by applicable regulations, NMFS is considered to be the operator and user of the VMS mobile transceiver unit and the user of any required data, regardless of who is required to pay for the mobile transceiver unit onboard a vessel and for the associated communications services. Accordingly, NMFS will specify how the VMS mobile transceiver units must be configured, installed, and activated. This does not, however, preclude the vessel owner from procuring a VMS that provides additional services and capabilities used exclusively by the vessel owner and operator.

On September 23, 1993, NMFS published proposed VMS standards at 58 FR 49285. On March 31, 1994, NMFS published final VMS standards at 59 FR 15180. These notices stated that NMFS endorses the use of VMS and defined specifications and criteria for VMS use.

On September 8, 1998, NOAA published a request for information (RFI) in the Commerce Business Daily in which it stated the minimum VMS specifications necessary for NOAA's approval. The RFI requested that responses from interested VMS providers include supporting information which would demonstrate that the VMS could meet the minimum specifications established by OLE. The submitted supporting information was used as the basis for approving the mobile transceiver units and communications service providers specified in this document.

This notice lists each currently approved VMS and sets forth the features of each VMS. The list of VMS mobile transceiver units and communications service providers approved by NOAA will be updated and revised as others are approved. The list will be published in the *Federal Register* upon each revision.

Implementation of required VMS usage in the HMS fisheries has been delayed until January 1, 2000; however, fishing vessel owners and operators should not delay their purchase and installation of a VMS mobile transceiver unit. Vendors may require extended periods of time to deliver a mobile transceiver unit and to complete its installation.

II. VMS Mobile Transceiver Units

A. ArgoNet Mar GE Approval

Argos is approved for the HMS fisheries based on its cost effectiveness and on its ability to meet other specified VMS elements. Fishing vessel owners and operators should be aware that Argos approval for the HMS fisheries is limited to 3 years from July 23, 1999, and this approval may or may not be extended at the end of the 3-year period.

The approved Argos mobile transceiver unit for the HMS Fisheries is the ArgoNet Mar GE for which North American Collection and Location by Satellite, Inc. (NACLS) is the sole service provider. The NACLS provides (a) the ArgoNet MAR GE mobile transceiver unit installed on the vessel, (b) the ArgoNet satellite service, (c) delivery of position reports to the NOAA Office for Law Enforcement and to the vessel owner, and (d) optional software to display vessel positions. The NACLS address is listed under the heading for VMS Provider Addresses.

The ArgoNet MAR GE uses NOAA polar-orbiting satellites, and, as such, it is considered a NOAA Data Collection and Location System (DCS). The use of any NOAA DCS is governed by 15 CFR part 911. Pursuant to those regulations, use of a NOAA DCS can be authorized only if it is determined that there are no commercial space-based services available that meet the user's requirements. At this time, Argos is the only space-based DCS that meets NMFS' important requirement of cost effectiveness to the Government. Therefore, the use of Argos has been authorized, pursuant to the DCS regulations, for a 3-year period. The regulations provide that, at the end of the 3-year period, approval of Argos must be reconsidered using the regulatory criteria at which time it may be renewed for a subsequent 3-year period, if appropriate.

ArgoNet MAR GE Features: The ArgoNet MAR GE utilizes a single mobile transmitting unit mounted atop the vessel. The unit contains an Argos transmitter, an integrated global positioning system (GPS) receiver, a battery, and an antenna. The mobile transceiver unit is connected to a power junction box in the wheelhouse, which can be installed in less than 1 hour.

The GPS position reporting starts automatically when the power is connected. The unit is configured for automatic reduced position transmissions when the vessel is stationary (i.e., in port). When the vessel is in port, position transmissions are automatically reduced to one per week. This allows for port stays without significant power drain or power shut-down. The unit restarts normal position transmissions automatically when the vessel goes to sea.

The unit requires 18 to 32 volts direct current (VDC) at 375 milliamp during normal operations at sea, and 18 to 32 VDC at 350 milliamp while the vessel is in reduced position transmission mode (i.e., in port). Operation continues for 48 hours on the internal battery if external power is lost. Operation resumes automatically when external power is restored.

The unit contains a protected push button to request assistance from United States search and rescue authorities. However, search and rescue authorities can not use the MAR GE transmitter to communicate with the vessel because ArgoNet communications are one way, i.e., from the vessel to the control center.

Optional reports can be transmitted with the purchase of a low-cost, handheld keypad.

A vessel owner wishing to purchase this system may contact the provider listed for ArgoNet Mar GE under the VMS Provider Addresses heading. The owner should identify himself or herself as a vessel owner in the ''United States HMS Fishery.''

The vessel owner purchasing the system will need to complete an ArgoNet contract with NACLS and establish credit with ArgoNet. The MAR GE transceiver the vessel owner purchases will be pre-configured to meet the HMS Fisheries' VMS requirement. The NACLS will notify the NOAA Office for Law Enforcement that the vessel is VMS registered.

Pursuant to 50 CFR 635.69(d), the Agency will provide an installation and

activation checklist, which the vessel owner must follow and then return to NMFS having signed a statement certifying compliance with the installation procedures on the checklist. Installation may be performed by experienced crew or by an electronics specialist. The owner pays installation costs.

The owner may confirm that position reports are being received by calling the NOAA Office for Law Enforcement in St. Petersburg, FL, at 727–570–5344, approximately 8 hours after installation.

B. INMARSAT-C Transceivers

While Argos has been type-approved based on its cost effectiveness and its ability to meet other specified VMS elements, there are other VMS mobile transceiver units and communications service providers that NMFS has determined meet the minimum technical requirements necessary pursuant to regulations implementing the fishery management plan, but which do not meet the user's (i.e., NMFS) cost-effectiveness requirements. These VMSs may be used at the discretion of the vessel owners.

The Inmarsat-C satellite communications VMS transmitting units that meet the minimum technical requirements for the HMS Fisheries are as follows: Thrane & Thrane Fishery ''Capsat'' (part number TT–3022D-NMFS); Trimble Galaxy TNL7005 (part number 17760–45) with software v5.1; and Trimble Galaxy Courier TNL8005 (part number 30090–45) with software v5.1. Both Trimble units use antenna part number 25132–01 and must run software version 5.1, or later. Those vessels using earlier versions of Trimble software (5.0, and earlier) must contact their Trimble-Authorized Support Dealer to perform an upgrade to firmware version 5.10 or 5.10a, and set the parameters equivalent to software version 5.1, or later. The addresses for the Thrane & Thrane distributor (LandSea Systems) and the Trimble dealer contact are provided under the heading VMS Provider Addresses.

Thrane & Thrane TT–3022D-NMFS Features: The transceiver consists of an integrated GPS/Inmarsat-C unit in the wheelhouse and an antenna mounted atop the vessel. The unit is factory pre-configured for NMFS VMS operations (non-Global Maritime Distress & Safety System (non-GMDSS)). Satellite commissioning services are provided by LandSea Systems personnel.

Automatic GPS position reporting starts after transceiver installation and power activation onboard the vessel. The unit is a car-radio-sized transceiver using a floating 10 to 32 VDC power supply. The unit is configured for automatic reduced position transmissions when the vessel is stationary (i.e., in port). It allows for port stays without power drain or power shut down. The unit restarts normal position transmission automatically when the vessel goes to sea.

The outside antenna, model TT–3005M, is a compact omni-directional Inmarsat-C/GPS antenna, providing operation down to +/-15° angles. Although the unit contains push buttons to request emergency assistance from United States search and rescue authorities, search and rescue authorities can use the transceiver to communicate with the vessel only when additional equipment not required by NMFS is purchased (i.e., a message terminal display).

A configuration option is available to automatically send position reports to a private address, such as a fleet management company. Another available option is the ability to send and receive private e-mail and other messages with the purchase and installation of an input device such as a laptop or personal computer.

A vessel owner wishing to purchase this system may contact the entity identified under the heading VMS Provider Addresses for Thrane & Thrane TT–3022D-NMFS. The owner should identify himself or herself as a vessel owner in the ''United States HMS Fishery.'' The Thrane & Thrane transceiver and antenna the vessel owner purchases will be configured for the HMS Fisheries.

To use this transceiver, the vessel owner will need to establish an Inmarsat-C system use contract with an approved Inmarsat-C communications service provider. The owner will be required to complete the Inmarsat-C ''Registration for Service Activation for Maritime Mobile Earth Station.'' The owner should consult with LandSea when completing this form.

LandSea Systems personnel will perform the following before shipment: (a) Configure the TT–3022D-NMFS according to NOAA OLE specifications for the HMS Fisheries; (b) download the predetermined NMFS position reporting and broadcast command identification numbers into the transceiver; (c) test the transceiver to ensure operation when installation has been completed on the vessel; and (d) forward the Inmarsat service provider and transceiver identifying information to the NOAA Office for Law Enforcement.

Pursuant to 50 CFR 635.69(d), the Agency will provide an installation and activation checklist which the vessel owner must follow. The vessel owner must sign a statement on the checklist certifying compliance with the installation procedures and return the checklist to NMFS. Installation can be performed by experienced crew or by an electronics specialist, and the installation cost is paid by the owner.

The owner may confirm that automated position reports are being received by calling the NOAA Office for Law Enforcement in St. Petersburg, FL, at 727–570–5344.

Trimble Galaxy TNL7005 part number 17760–45, Software v5.1, Features: The transceiver consists of an integrated GPS/Inmarsat-C unit in the wheelhouse and an antenna mounted atop the vessel. The unit is factory pre-configured for NMFS VMS operations (non-GMDSS). The installation will be performed by Trimble-authorized support dealers and must be paid for by the owner.

Automatic GPS position reporting starts after coordination with the communications service provider. Although the unit contains push buttons to request emergency assistance from United States search and rescue authorities, search and rescue authorities can use the transceiver to communicate with the vessel only when additional equipment not required by NMFS is purchased (i.e., a message terminal display).

A configuration option is available to automatically send position reports to a private address, such as a fleet management company. Another available option is the ability to send/receive private e-mail and other messages with the purchase and installation of an input device, such as a laptop or personal computer.

Trimble Galaxy Courier TNL8005 part number 30090–45, Software v5.1 Features: The Trimble Galaxy Courier TNL8005 transceiver has the same features as the Trimble Galaxy TNL7005, except that it also includes an integrated computer for messaging, including Internet e-mail. The unit is factory pre-configured for NMFS VMS operations, and it is GMDSS.

Trimble Galaxy—General Features: A vessel owner wishing to purchase this system should contact the entity identified under VMS Provider Addresses for Trimble Galaxy Information. The owner should identify himself or herself as a vessel owner in the ''United States HMS Fishery.''

In addition to purchasing an approved Trimble transceiver (TNL7005 or TNL8005) and an antenna for the HMS fishery, the vessel owner will need to establish an Inmarsat-C system use contract with an approved Inmarsat-C communications service provider. The

transceiver will need to be commissioned with the service provider.

The installation of the transceiver and antenna must be performed by Trimble-trained and Trimble-authorized support dealers and must be paid for by the owner. To set up the transceiver for NMFS VMS operations, the owner will (a) turn on the power of the vessel transceiver; (b) contact the Inmarsat-C system communications service provider; (c) have the service provider's Customer Service download the pre-determined NMFS position reporting and broadcast commands from the provider's control center to the vessel transceiver via satellite; and (d) confirm with Customer Service that periodic position reports are now automatically being sent to NOAA. Customer Service will confirm service activation by forwarding to the Office for Law Enforcement the following identifying information: (a) Trimble transceiver serial number; (b) Inmarsat Identification number; (c) Data Network Identification (DNID) and member numbers; (d) Enhanced Network Identification (ENID) numbers; (e) owner name; (f) vessel name; and (g) Vessel documentation or registration number.

Pursuant to 50 CFR 635.69(d), the Agency will provide an installation and activation checklist which the vessel owner must follow. The vessel owner must sign a statement on the checklist certifying compliance with the installation procedures and return the checklist to NMFS. The installation cost is paid by the owner.

The owner may confirm that automated position reports are being received by calling the NOAA Office for Law Enforcement in St. Petersburg, FL, at 727–570–5344.

III. Communications Service Providers

A. NACLS

NACLS is the sole provider of Argos satellite services. Selecting to use the approved Argonet MAR GE transceiver unit also requires using NACLS as the service provider. For more information, refer to Section II.A Argonet MAR GE Approval.

B. COMSAT-C

COMSAT-C is a store-and-forward data messaging service. COMSAT C allows users to send and receive information virtually anywhere in the world - on land, at sea, and in the air. COMSAT-C supports a wide variety of applications including Internet e-mail, position and weather reporting, a free daily news service, and remote equipment monitoring and control. Mariners can use COMSAT-C free of charge to send critical safety at sea messages as part of the U.S. Coast Guard's Automated Mutual-Assistance Vessel Rescue system and of the NOAA Shipboard Environmental Acquisition System programs. For the COMSAT address, look under the heading VMS Provider Addresses.

COMSAT-C Features: Vessel owners wishing to use COMSAT-C will need to purchase an Inmarsat-C transceiver and antenna approved for the fishery. The owner will need to complete an Inmarsat-C system use contract with COMSAT, including a provision for a mobile earth station license (FCC requirement). The transceiver will need to be commissioned with Inmarsat according to COMSAT instructions. The owner should refer to and follow the configuration, installation, and service activation procedures for the specific transceiver purchased.

It is recommended that the vessel owner keep for his or her records and that COMSAT have on record the following identifying information: (a) Signed and dated receipts and contracts; (b) transceiver serial number; (c) COMSAT customer number, user name and password; (d) E-mail address of transceiver; (e) Inmarsat identification number; (f) Data Network Identification numbers (DNID and ENID), including the member number; (g) owner name; (h) vessel name; (i) vessel documentation or registration number; and (j) mobile earth station license (FCC license).

The owner may confirm transceiver operation and communications service to ensure that position reports are automatically sent to and received by the Office for Law Enforcement before leaving on a fishing trip under VMS. The NOAA Office for Law Enforcement does not regard the fishing vessel as participating in VMS until position reports are automatically received. For confirmation purposes, contact the NOAA Office for Law Enforcement in St. Petersburg, FL, at 727–570–5344.

C. Station 12

Station 12 is a provider of Inmarsat satellite communications services. Station 12 offers seamless, global Inmarsat-C coverage. Station 12 is approved for VMS use with Inmarsat-C services. For the Station 12 address, look under the heading VMS Provider Addresses.

Station 12 Features: Customer Service supports the security and privacy of vessel accounts and messages with the following: (a) Password authentication for vessel owners or agents and for the NOAA Office for Law Enforcement to prevent unauthorized changes or inquiries; and (b) separation of private messages from Office for Law Enforcement messages. (The Office for Law Enforcement receives VMS-related position reports, only.)

Billing is separated between accounts for the vessel owner and the NOAA Office for Law Enforcement. VMS position reports and vessel-initiated messaging are paid for by the vessel owner. Messaging initiated from the Office for Law Enforcement operations center is paid for by NOAA.

Customer Service supports and establishes a two-way transmission of transceiver unit configuration commands between the transceiver and land-based control centers. This supports the Office for Law Enforcement's message needs and, optionally, fishermen's private message needs.

When the transceiver transmits a message requesting emergency assistance (GMDSS alert), Station 12 (through Inmarsat) forwards the information to the United States Coast Guard. However, unless non-NMFS required equipment is purchased (i.e., an addition of a message terminal display), the United States Coast Guard can not use the transceiver to communicate with the vessel.

The vessel owner can configure automatic position reports to be sent to a private address, such as to a fleet management company. The vessel can send and receive private e-mail and other messages when the transceiver has such an input device as a laptop or personal computer attached.

Vessel owners wishing to use Station 12 will need to purchase an Inmarsat-C transceiver and antenna approved for the fishery. The owner will need to complete an Inmarsat-C system use contract with Station 12, including a mobile earth station license (FCC requirement). The transceiver will need to be commissioned with Inmarsat according to Station 12's instructions. The owner should refer to and follow the configuration, installation, and service activation procedures for the specific transceiver purchased.

It is recommended that the vessel owner keep for his or her records and that Station 12 have on record the following: identifying information: (a) Signed and dated receipts and contracts; (b) transceiver serial number; (c) Station 12 customer number, user name, and password; (d) E-mail address of transceiver; (e) Inmarsat identification number; (f) Data Network Identification numbers (DNID and ENID), including the member number; (g) owner name;

(h) vessel name; (i) vessel documentation or registration number; and (j) mobile earth station license (FCC license).

The owner may confirm transceiver operation and communications service to ensure that position reports are automatically sent to and received by the Office for Law Enforcement before leaving on a fishing trip under VMS. The NOAA Office for Law Enforcement does not regard the fishing vessel as participating in VMS until position reports are automatically received. For confirmation purposes contact the NOAA Office for Law Enforcement in St. Petersburg, FL, at 727–570–5344.

VMS Provider Addresses

For ArgoNet Mar GE information, contact North American CLS, Inc., 9200 Basil Court, Suite 306, Largo, MD 20774; voice: 301–341–1814; fax: 301–341–2130; e-mail: info@nacls.com.; website: http://www.nacls.com.

For Thrane & Thrane TT–3022D-NMFS information, contact Doug Price, Marine Products, LandSea Systems, Inc., 849 Seahawk Circle, Suite 103, Virginia Beach, VA 23452–7809; voice: 757–468–0448; fax: 757–468–0625, e-mail: DSP@LandSeaSystems.com.; website: http://www.landseasystems.com.

For regional dealer information about the Trimble Galaxy transceiver units, contact Dayna Woodward at 1–800–477–1207, or a Trimble-Authorized Support Dealer, based at local marine electronics outlets.

For COMSAT information, contact COMSAT Mobile Communications, 6560 Rock Spring Drive, Bethesda, MD 20817; COMSAT Customer Care, phone: 301–214–3100; fax: 301–214–7284; e-mail: cmc.customercare@comsat.com.; website: www.comsat.com. Alternate Contact: Al Labbe, Manager Business Development, COMSAT-C, 6560 Rock Spring Drive, Room 4502, Bethesda, MD 20817; phone: 301–214–3214; fax: 301–214–7113; pager: 800–5COMSAT (800–526–6728); e-mail: al.labbe@comsat.com.

For Station 12 information, contact Station 12, KPN-Netherlands, Andre Cortese, 2000 L Street, NW., Suite 200, Washington, DC 20036; U.S. telephone number: 202–416–1828; e-mail: Acortese@kpnus.com.; Customer Service, Netherlands, toll free: 1–888–440–8988; e-mail: station12@wxs.nl.; website: www.station12.com.

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

Dated: September 2, 1999.

Andrew A. Rosenberg,

Deputy Assistant Adminstrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23353 Filed 9–2–99; 5:00 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Notice of Meeting, Spectrum Planning and Policy Advisory Committee (SPAC)

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. Appendix, notice is hereby given that the Spectrum Planning and Policy Advisory Committee (SPAC) will meet on September 17, 1999 from 9:00 a.m. to 5:00 p.m. in Room 1605 at the United States Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC.

The Committee was established on July 19, 1965 as the Frequency Management Advisory Council (FMAC). The name was changed in April, 1991, and in July, 1993, to reflect the increased scope of its mission. The objective of the Committee is to advise the Secretary of Commerce on radio frequency spectrum planning matters and means by which the effectiveness of Federal Government frequency management maybe enhanced. The Committee consists of nineteen members, fifteen from the private sector, and four from the Federal Government, whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Ultra-Wideband (UWB) Systems;

(2) Critical Infrastructure Protection (CIP) Private Sector Participation;

(3) Recent Spectrum Legislation; and

(4) Public Safety Program update.

The meeting will be open to public observations. Public entrance to the building through the main entrance is on 14th Street midway between Pennsylvania Avenue and Constitution Avenue. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before 10 September, 1999. Other public statements regarding Committee affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to the Federal Information Relay Service (FIPS) on 1–800–877–8339.

Copies of the minutes will be available upon request 30 days after the meeting.

FOR FURTHER INFORMATION, CONTACT: Inquiries may be addressed to the Executive Secretary, SPAC, Mr. Richard A. Lancaster, National Telecommunications and Information Administration, Room 4082, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, telephone 202–482–4487.

Dated: September 1, 1999.

Richard A. Lancaster,

Executive Secretary, Spectrum Planning and Policy Advisory Committee, National Telecommunications and Information Administration.

[FR Doc. 99–23360 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–60–M

DEPARTMENT OF COMMERCE

Technology Administration Performance Review Board Membership

September 1999.

The Technology Administration Performance Review Board reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and reviews performance-related pay increases for ST–3104 employees. The Board makes recommendations to the appropriate appointing authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

The following is the full membership of the Board:

Kelly H. Carnes (NC), Deputy Assistant Secretary for Technology Policy, Technology Administration, Washington, DC 20230, Appointment Expires: 12/31/01

B. Stephen Carpenter (C), Director, Office of International & Academic Affairs, Office of International and Academic Affairs, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/00

Gordon W. Day (C), Chief, Optoelectronics Division, Optoelectronics Division (815), National Institute of Standards &

Technology, Boulder, CO 80303, Appointment Expires: 12/31/01

Stephen W. Freiman (C), Chief, Ceramics Division, Materials Science and Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/99

Dale E. Hall (C), Deputy Director, Materials Science and Engineering Laboratory, Materials Science and Engineering Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/01

Marilia A. Matos (C), Deputy Director for Management Services, Director of Administration and Chief Financial Officer, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/01

Alan Neuschatz (C), Associate Director for Finance and Administrative, National Technical Information Service, Springfield, VA 22161, Appointment Expires: 12/31/01

Gregory Rosasco (C), Chief, Process Measurement Division, Chemical Science & Technology Laboratory, Gaithersburg, MD 20988, Appointment Expires: 12/31/01

Rosalie T. Ruegg (C), Director, Economic Assessment Office, Advanced Technology Program, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/99

Barry N. Taylor (C), Manager, Fundamental Constants Data Center, Physics Laboratory Office, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/00

Cynthia Clark (C), Associate Director for Methodology & Standards, Census Bureau, Washington, DC 20233, Appointment Expires: 12/31/01

Lois Gajdys (C), Director, Office of Operations Management & Information, National Marine Fisheries Service, Silver Spring, MD 20910, Appointment Expires: 12/31/01

Dated: September 2, 1999.

Gary R. Bachula,

Acting Under Secretary for Technology, Technology Administration, Department of Commerce.

[FR Doc. 99–23401 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–18–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, September 16, 1999, 2:00 p.m..

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye B. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: September 7, 1999.

Todd A. Stevenson,

Deputy Secretary.

[FR Doc. 99–23632 Filed 9–7–99; 3:46 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), U.S. Army, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 8, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the United Sates, Total Army Personnel Command, 200 Stoval Street ATTN: TAPC–OPD–C, (Annette Bush) Alexandria, Virginia 22332–0413. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title, Associated Form, and OMB Number: Application and Contract for Establishment of a National Defense Cadet Corps Unit.

Needs and Uses: Educational institutions desiring to host a National Defense Cadet Corps Unit (NDCC) may apply by using a DA Form 3126–1. The DA Form 3126–1 documents the agreement and becomes a contract signed by both the institution and the U.S. Government. The DA Form 3126–1 provides information on the school's facilities and states specific conditions if a NDCC unit is placed at the institution.

Affected Public: Not for profit institutions; State, Local or Tribal Government.

Annual Burden Hours: 35.

Number of Respondents: 35.

Responses Per Respondent: 1.

Average Burden per Response: 1 hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The DA Form 3126–1 will be initiated by the school desiring to host a unit and countersigned by a representative of the Secretary of the Army. The contract (DA Form 3126–1) is necessary to establish a mutual agreement between the secondary institution and the U.S. Government while keeping within the parameters of the law. The data provided on the applications is used to determine which school will be selected.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–23357 Filed 9–8–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting Notice (Historical Advisory Committee)

AGENCY: U.S. Army Center of Military History, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Department of Defense Historical Advisory Committee.

Date: 28 October 1999.

Place: U.S. Army Center of Military History, Building 35, 103 Third Avenue, Fort McNair, DC 20319–5058.

Time: 0900–1600.

Proposed Agenda: Review and discussion of the status of historical activities in the United States Army.

Purpose of the Meeting: The committee will review the Army's historical activities for FY 1999 and those projected for FY 2000 based upon reports and manuscripts received throughout the period and formulate recommendations through the Chief of Military History to the Chief of Staff, Army, and the Secretary of the Army for advancing the use of history in the U.S. Army.

For further information contact: All communications regarding this advisory committee should be addressed to Dr. Jeffrey J. Clarke, U.S. Army Center of Military History, ATTN: DAMH–ZC, 103 Third Avenue, Fort McNair, DC 20319–5058; telephone number (202) 685–2709.

Supplementary information: Meeting of the advisory committee is open to the public. Because of restricted meeting space, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend the 28 October 1999 meeting.

Any members of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentations of oral statements at the meeting.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–23355 Filed 9–8–99; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare Draft Environmental Impact Statement (DEIS), Centralia-Chehalis Flood Damage Reduction Study, Lewis County Washington

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Seattle District, U.S. Army Corps of Engineers is proposing to prepare an Environmental Impact Statement (EIS) for the Centralia-Chehalis Flood Damage Reduction Study. The government of Lewis County (Washington) requested this study because of significant flooding on the Chehalis River and its tributaries. An EIS is being prepared because of the potential for impacts on environmental resources, including the human environment. Potential impacts include those to wetlands, fish and wildlife habitat, cultural and historical resources, downstream flooding, and water quality. There is also intense public interest in addressing the flooding problems.

DATES: Persons or organizations wishing to submit scoping comments should do so by September 30, 1999. Public comment may also be made at the scoping meetings (dates and locations to be determined later). Notification of scoping meetings times and locations will be sent to all agencies, organizations and individuals on the project mailing list.

ADDRESSES: Requests for documents and all comments should be sent to: Kathleen Kunz, NEPA Coordinator, Seattle District, U.S. Army Corps of Engineers, P.O. Box 3755 Seattle, Washington 98124–2255. ATTN: CENWS–PM–PL–ER, telephone (206) 764–3708.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and the Draft EIS can be directed to: Kathleen Kunz, NEPA Coorinator or Forest Brooks, Project Manager, Seattle District, U.S. Army Corps of Engineers, P.O. Box 3755, Seattle, Washington 98124–2255, ATTN: CENWS–PM–PL–ER, telephone (206) 764–3708.

SUPPLEMENTARY INFORMATION:

Background

The Chehalis River basin is located in west central Washington, south of Olympia. The focus of the flood damage reduction study encompasses the cities of Centralia and Chehalis and the urbanizing areas immediately adjacent to the cities.

The cities of Centralia and Chehalis have been subject to repeated flooding for many years. This flooding has caused extensive damage to private and public property and periodic closure of critical transportation routes resulting in significant economic losses. Flood closures of the transportation routes have also significantly disrupted emergency response actions by local governments. Stream habitat functions of the Chehalis River and its tributaries have been affected from long-term development throughout the Chehalis Basin. This has resulted in the diminishment of the remaining habitat resources to adequately support sustainable fish and wildlife resources. The losses of wetlands, riparian areas, and back channels have also contributed to increased flooding in the area. The purpose of the Centralia-Chehalis Flood Damage Reduction study is to reduce flood hazards in the project area, the cities of Centralia and Chehalis and the urbanizing area immediately adjacent, and to incorporate appropriate fish and wildlife habitat improvements. Flood hazards are defined as significant damage to existing structures, high risk to life, and extended closures of transportation corridors.

Authority for this study is contained in Section 401(a) of the 1986 Flood Control Act (PL–99–662). This section provided authorization for the construction of ''works of improvement'' substantially in accordance with the Report of the Chief of Engineers dated 20 June 1984.

Alternatives

The Corps has currently identified 6 alternative courses of action for analysis. This is a preliminary assessment of alternatives. We believe the scoping process and the study process will also identify additional alternatives:

1. *No Action.* Allow current conditions and programs to remain as currently planned.

2. *Authorized Project.* The project identified in the 1984 Chief of Engineers Report only included modifications at Skookumchuck Dam to provide flood storage. These included a 12-foot diameter, 1,200-foot-long low-level discharge tunnel and a steel gate on top of the spillway.

3. *Lewis County Alternative.* Lewis County has developed a plan that consists of three major elements: modifications at Skookumchuck Dam to provide flood storage (sluices through the spillway and a rubber weir-type gate on top of the spillway), overbank excavation near Centralia, and flood bypass measures near Chehalis.

4. *Check Dam Alternative.* This alternative that would consist of a series of flow restriction structures, strategically located on the mainstream and/or tributaries of the Chehalis River. These would temporarily store flood water on selected areas of the existing rural/agricultural floodplain and reduce flood peaks downstream. This alternative would not interfere with fish

passage during non-flood flows. Some possible sites include Chehalis River near Mellen Street, Salzer Creek, Chehalis River downstream of the South Fork, the lower South Fork, and Chehalis River upstream of the South Fork.

5. *Levee Alternative.* This alternative consists of a levee system to protect Bucoda, Centralia, Chehalis, and the immediate urbanized area.

6. *Non-Structural Alternative Measures.* This alternative would include such measures as such as flood warning system improvements, structure relocation, structure floodproofing, structure raising, bridge/road/railroad modifications, etc.

Scoping

Public involvement will be sought during scoping and preparation of the EIS in accordance with NEPA procedures. A public scoping process has been started to clarify issues of major concern, identify any information sources that might be available to analyze and evaluate impacts, and obtain public input on the range and acceptability of alternatives. This Notice of Intent formally commences the scoping process under NEPA. As part of the scoping process, all affected Federal, State and local agencies, Native American Nations, and other interested private organizations, including environmental groups, are invited to comment on the scope of the EIS. Comments are requested concerning project alternatives, probable significant environmental impacts, and permits or other approvals that may be required.

The Corps has identified the following key areas so far to be analyzed in depth in the draft EIS:

(1) Flooding Characteristics
(2) Impacts to Fish and Wildlife Habitat
(3) Impacts to Wetlands
(4) Impacts to Riparian Areas
(5) Impacts to Cultural and Historical Resources
(6) Social and Economic Concerns
(7) Transportation
(8) Hazardous Materials

Scoping Meeting

Opportunity to comment will also be available at the project scoping meeting that has yet to be scheduled. Details of the meeting time and location will be announced in the local media. Notices will be sent to all agencies, organizations and individuals on the EIS mailing list.

Availability of the Draft EIS

The Corps expects to complete preparation of the draft EIS and have review copies of it available by December 2000.

James M. Rigsby,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 99–23354 Filed 9–8–99; 8:45 am]

BILLING CODE 3701–ER–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) for the Kennedy-Bechara Segment of the Authorized Río Puerto Nuevo (Puerto Rico) Flood Control Project

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers, is finalizing the design for the Kennedy-Bechara segment of the existing Federal flood control project at Río Puerto Neuvo, located in San Juan and Guaynabo, Puerto Rico, and is considering several alternatives to provide the authorized 100 year level of protection in this area. New alternatives have been developed that may eliminate the need for pumps or other mechanical drainage. A Draft Supplemental Environmental Impact Statement (D–SEIS) will be prepared for the project.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS can be answered by Ms. Barbara Cintron, U.S. Army Corps of Engineers, Jacksonville District, Planning Division, P.O. Box 4970, Jacksonville, Florida 32232–0019; Telephone 904–232–1692.

SUPPLEMENTARY INFORMATION:

1. The proposed action consists of design changes to one segment of the Congressionally authorized Rio Puerto Nuevo Federal flood control project, located in San Juan, Puerto Rico. This large project was documented in a Final Environmental Impact Statement in 1984, and has been under construction since 1995. Detailed construction design is completed in stages, following the guidance of the General Design memorandum (GDM) published in 1991, and an Environmental Assessment and Finding of No Significant Impact (EA/FONSI) published in 1993. At this time alternative detailed designs are being considered for the Kennedy-Bechara area. New data and a re-evaluation of previous designs for the area led to development of new alternatives for this segment. Alternatives so far developed include the ''base plan'' as discussed in the GDM, and three additional options, two involving gravity drainage and one involving pumped drainage.

2. Alternatives under consideration involve spatial and structural variations in project features that would convey storm runoff to the receiving body (San Juan Bay). Associated with each alternative, there may be tradeoffs in the project cost, operation and maintenance requirements, and adverse effects on natural and manmade features of the environment, including effects on wetlands and other natural and cultural resources.

3. A scoping letter will be used to invite comments on alternatives and issues from Federal, Commonwealth and local agencies, and other interested private organizations and individuals. A public scoping meeting has not been scheduled at this time but may be requested and will be scheduled if the degree of public interest appears to warrant it.

4. The D–SEIS will analyze issues related to flood reduction potential, water quality, wetlands impacts, excavated material disposal alternatives, infrastructure effects, cultural resources impacts, socio-economic impacts and effects on the San Juan Bay Estuary System.

5. The alternative flood control features will be reviewed under the provisions of appropriate laws and regulations, including the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, Clean Air Act, and the Magnuson-Stevens Fishery Management and Conservation Act.

6. The D–SEIS is expected to be available for public review in the last quarter of Calendar Year 1999.

James C. Duck,

Chief, Planning Division.

[FR Doc. 99–23356 Filed 9–8–99; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF ENERGY

Determination to Establish the Advanced Scientific Computing Advisory Committee

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, and Title 41, Code of Federal Regulations, Subpart 101–6, Final Rule on Federal Advisory Committee Management), I hereby certify the Advanced Scientific Computing Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed on the Department of

Energy by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR subpart 101–6.10.

The purpose of the Committee is to provide the Secretary of Energy and the Director of the Office of Science with advice, information, and recommendations on national research needs and priorities. The Committee will provide an organized forum for the scientific community to conduct an in-depth assessment of the Advanced Scientific Computing Research programs.

Committee members will be chosen to ensure an appropriately balanced membership to bring into account a diversity of viewpoints, including representatives from universities, industry, Department of Energy programs, Department of Energy operating contractors, affected Federal agencies, and others who may significantly contribute to the deliberations of the committee. All meetings of this Committee will be noticed ahead of time in the **Federal Register**.

Further information regarding this Advisory Committee may be obtained from Dr. Patricia Dehmer, Acting Associate Director of Science for Advanced Scientific Computing Research, SC–30, 19901 Germantown Road, Germantown, MD 20874, phone (301) 903–7486.

Issued in Washington, D.C., on September 3, 1999.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 99–23418 Filed 9–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of Public Hearings.

SUMMARY: On August 13, 1999, the U.S. Department of Energy (DOE) published a Notice of Availability (64 FR 44200) of its Draft Environmental Impact Statement (EIS) for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS–0250–D) and announced a 180-day public comment period ending February 9, 2000. The Draft EIS provides information on potential environmental impacts that could result from a proposed action to construct, operate and monitor, and eventually close a repository for the disposal of spent nuclear fuel and high-level radioactive waste at Yucca Mountain in Nye County, Nevada.

The public is invited to submit written and oral comments at the 16 public hearings listed at the end of this notice.

DATES: DOE will consider all comments transmitted or postmarked by February 9, 2000. Comments submitted after this date will be considered to the extent practicable.

ADDRESSES: Written comments should be directed to: Ms. Wendy R. Dixon, EIS Project Manager, M/S 010, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 30307, North Las Vegas, NV 89036–0307.

Written comments may be transmitted by facsimile to 1–800–967–0739 and should include the following identifier: ''Yucca Mountain Draft EIS.''

Written comments may be submitted over the Internet via the Yucca Mountain Project website at *http://www.ymp.gov*, under the listing ''Environmental Impact Statement.''

FOR FURTHER INFORMATION CONTACT: Ms. Wendy R. Dixon, EIS Project Manager, M/S 010, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 30307, North Las Vegas, NV 89036–0307, Telephone 1–800–967–3477, Facsimile 1–800–967–0739.

SUPPLEMENTARY INFORMATION: Copies of the Draft EIS have been provided to federal, state, tribal, and local government agencies and interested parties. In addition, the Draft EIS is available on the internet via the DOE National Environmental Policy Act (NEPA) website at *http://www.tis.eh.doe.gov/nepa* under the listing DOE NEPA Analyses, the Yucca Mountain Project website at *http://www.ymp.gov* under the listing Environmental Impact Statement, and at 38 public reading rooms across the country. Copies of the Draft EIS may be requested by calling 1–800–967–3477.

A complete set of all hard copy references used in the preparation of the Draft EIS are available for review at four public reading rooms: University of Nevada—Las Vegas, Nevada; University of Nevada—Reno, Nevada; Yucca Mountain Science Center—Pahrump, Nevada; and the DOE Headquarters Office in Washington, DC. Noncopyrighted references are available in the Yucca Mountain Science Center in Beatty, Nevada, as well as on CD-ROMs in an additional 33 public reading rooms across the nation. Noncopyrighted references are also available on the Yucca Mountain Project website at *http://www.ymp.gov*.

The public is invited to submit written and oral comments at the 16 public hearings listed at the end of this notice. The first hour of each hearing will include a brief overview presentation on the Draft EIS and a question and answer session. The remainder of the hearing will be an opportunity to provide comments for the record. To schedule a time to provide oral comments during the hearings, please call 1–800–967-3477. Persons wishing to provide oral comments who have not registered in advance may register at each hearing.

Public hearings will be held on the following dates at the following locations:

1. September 27, 1999, 11:00 am–2:00 pm, 6:00 pm–10:00 pm, Amargosa Valley Community Center, 821 East Farm Road, Amargosa Valley, Nevada 89020.

2. September 30, 1999, 11:00 am–2:00 pm, 6:00 pm–10:00 pm, Bob Ruud Community Center, 150 North Highway 160, Pahrump, Nevada 89048.

3. October 4, 1999, 10:00 am–1:00 pm, 6:00 pm–10:00 pm, Goldfield Community Center, 403 Crook Street, Goldfield, Nevada 89013.

4. October 5, 1999, 10:00 am–1:00 pm, 6:00 pm–10:00 pm, Boise Centre on the Grove, 850 West Front Street, Boise, Idaho 83702.

5. October 19, 1999, 10:00 am–1:00 pm, 4:00 pm–8:00 pm, Bristlecone Convention Center, 150 Sixth Street, Ely, Nevada 89301.

6. October 21, 1999, 12:00 pm–3:00 pm, 6:00 pm–10:00 pm, Georgia International Convention Center, 1902 Sullivan Road, College Park, Georgia 30337.

7. October 26, 1999, 11:00 am–2:00 pm, 6:00 pm–10:00 pm, Hall of States, 444 North Capitol Street, N.W., Washington, DC 20001.

8. November 4, 1999, 12:00 pm–3:00 pm, 7:00 pm–10:00 pm, Statham Hall, 138 North Jackson Street, Lone Pine, California 93545.

9. November 9, 1999, 12:00 pm–3:00 pm, 6:00 pm–10:00 pm, Caliente Youth Center, U.S. Highway 93 North, Caliente, Nevada 89008.

10. November 16, 1999, 11:00 am–2:00 pm, 6:00 pm–10:00 pm, Denver

Convention Complex, 700 14th Street, Denver, Colorado 80202.

11. December 1, 1999, 12:00 pm–3:00 pm, 6:00 pm–10:00 pm, Lawlor Events Center, 1664 North Virginia Street, Reno, Nevada 89557.

12. December 7, 1999, 11:00 am–2:00 pm, 5:30 pm–9:30 pm, Austin Town Hall, 137 Court Street, Austin, Nevada 89310.

13. December 9, 1999, 10:00 am–1:00 pm, 6:00 pm–10:00 pm, Crescent Valley Town Hall, 5045 Tenabo Avenue, Crescent Valley, Nevada 89821.

14. January 11, 2000, 11:00 am–2:00 pm, 6:00 pm–10:00 pm, Grant Sawyer State Building, 555 East Washington, Las Vegas, Nevada 89101.

15. January 13, 2000, 10:00 am–1:00 pm, 6:00 pm–10:00 pm, Salt Lake City Hilton Inn, 150 West 500 South, Salt Lake City, Utah 84101.

16. January 20, 2000, 11:00 am–2:00 pm, 6:00 pm–10:00 pm, America's Center, 701 Convention Plaza, St. Louis, Missouri 63101.

Issued in Washington, DC, Sept. 2, 1999.

Ronald A. Milner,

Acting Deputy Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 99–23420 Filed 9–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, October 12, 1999; 9:00 a.m. to 6:00 p.m.; Wednesday, October 13, 1999; 9:00 a.m. to 6:00 p.m; and Thursday, October 14, 1999; 8:30 a.m. to 12:00 p.m.

ADDRESS: Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, Maryland 20879.

FOR FURTHER INFORMATION CONTACT: John E. Metzler, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: 301–903–2979.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda:

Tuesday, October 12, 1999, Wednesday, October 13, 1999, and Thursday, October 14, 1999.

- Discussion of Department of Energy High Energy Physics Programs.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Discussion of High Energy Physics University Programs.
- Reports on and Discussion of the Use of Networks and Computing in High Energy Physics.
- Reports on and Discussion of U.S. Large Hadron Collider Activities.
- Reports on and Discussions of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John E. Metzler at 301–903–5079 (fax) or john.e.metzler@science.doe.gov (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, S.W.; Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on September 3, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–23419 Filed 9–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC–800 IC99–800–000]

Proposed Information Collection and Request for Comments

September 3, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Request for Office of Management and Budget Emergency Processing of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3507(j)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), and 5 CFR 1320.13 of the Office of Management and Budget (OMB) regulations, the Federal Energy Regulatory Commission (Commission) is providing notice of its request to OMB for emergency processing of a proposed collection of information request on the specific aspects of the information collection described below. OMB approval has been requested by September 8, 1999. A copy of this information collection request (ICR), with applicable supporting documentation, may be obtained by calling the Commission's Information Clearance Officer, Michael Miller at (202)208–1415. Comments and questions about the ICR listed below should be directed to the Office of Information and Regulatory Affairs, Attn: FERC Desk Officer, Office of Management and Budget, Room 10202 NEOB, Washington, D.C. 20503.

Agency: Federal Energy Regulatory Commission.

Title: Pilot Project for Electronic Filing of Documents.

OMB Number: 1902-new.

Frequency: Monthly.

Affected Public: Business or other for profit; State, Local or Tribal Governments.

Number of Respondents: 100.

Estimated Time Per Respondent: 20 minutes.

Total Burden Hours: 150.

Description: The challenges facing the Commission over the next few years are substantial, particularly in light of the changing and more competitive electric and gas industries. To ensure that the Commission's decisions are based on accurate, complete and timely information, an information technology initiative was developed to create a comprehensive information management system to minimize filing burdens, generate better information for use by industries and reduce the

processing times for Commission workload. The goal of this comprehensive information management system will be the development of a common, multipurpose, standards-based infrastructure that accepts electronic filings and maintains all Commission data in a data repository accessible electronically by Commission staff and eventually the public. Electronic filing pilots through the Commission's Web Site will assist in the development of standards, minimize the number of filing types and streamline filing requirements. When completed, electronic filing will substantially reduce the cost of paper, copying, postage, and messenger services for those who file at the Commission.

The initial pilot will allow the following categories of documents to be submitted electronically with the Commission in accordance with its regulations in 18 CFR Part 385:

- Motions to Intervene and Notices to Intervene § 385.214;
- Protests filed pursuant to §§ 385.208 and 385.211;
- Comments filed in rulemaking proceedings and in connection with Environmental Impact Statements;
- Comments on pleadings other than those set for hearing under Subpart E of the regulations and settlement comments;
- Answers to pleadings and rulemaking comments filed in accordance with § 385.213, other than those in proceedings set for hearing under Subpart E of the regulations;
- Withdrawals of comments in pleadings and rulemakings in accordance with § 385.206, other than those in proceedings set for hearing under Subpart E of the regulations;
- Amendments to such pleadings and rulemaking comments pursuant to § 385.215, other than those in proceedings set for hearing under Subpart E of the regulations;

These documents were selected for this pilot because of the lack of complexity in the information that is submitted to the Commission. During the pilot phase, participants will still be required to file paper copies in accordance with the Commission's current regulations in addition to filing the electronic submission.

Further impetus for expanding the use of electronic filing at the Commission is to ensure its compliance with the Paperwork Reduction Act of 1995 (PRA) (Pub. L. 104–13) and its commitment to the provisions of OMB's regulations at 5 CFR 1320 and corresponding guidance in OMB Circular A–130. The PRA calls upon agencies to ''promote the use of information technology by the Federal Government to improve productivity, efficiency, and effectiveness of Federal Programs, including through dissemination of public information and the reduction of information collection burdens on the public.'' (44 U.S.C. 3504(h)(5)). The goal is to have regulated entities file with the Commission fewer, and ultimately no, paper documents, as appropriate. The electronic submission also creates a transaction where documents can be accessed and retrieved faster and, as a result, the Commission response will be measurably faster.

The Commission is seeking emergency clearance for this pilot because the normal clearance procedures would disrupt the Commission's planned implementation of an electronic filing program and the Commission's strategic goal of reducing the regulatory burden on industries through the generation of better and more timely information for use by industries, minimizing the filing burden and reducing workload processing times for both industries and Commission staff.

David P. Boergers,

Secretary.

[FR Doc. 99–23468 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–148–000]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

September 2, 1999.

Take notice that on August 27, 1999, Garden Banks Gas Pipeline, LLC (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 6, to become effective October 1, 1999.

GBGP states that the purpose of this filing is to implement the tracking of the ACA Unit Surcharge authorized by the Commission to be applied to rates in 1999 for recovery of 1999 current year annual charges. The ACA Unit Surcharge authorized by the Commission for fiscal year 1999 is $0.0022 per Dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23374 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. RP99–486–000]

Granite State Gas Transmission, Inc.; Notice of Tariff Filing

September 2, 1999.

Take notice that on August 27, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 the following tariff sheets, with an effective date of August 1, 1999:

Third Revised Sheet No. 202
Second Revised Sheet No. 210
First Revised Sheet No. 276A
Second Revised Sheet No. 278
Tenth Revised Sheet No. 289
First Revised Sheet No. 330

Granite State states that the purpose of this filing is to comply with Order No. 587–K issued on April 2, 1999. The revised tariff sheets reflect certain Version 1.3 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in Commission's Regulations. Granite State also proposes to reflect in its FERC Gas Tariff several GISB standards that were erroneously omitted from previous GISB compliance filings.

Granite State requests waiver of the Commission's regulations to permit the proposed tariff sheets to become effective on August 1, 1999.

According to Granite State, copies of the filing have been mailed to all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23371 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–4–000]

Granite State Gas Transmission, Inc; Notice of Proposed Changes in FERC Gas Tariff

September 2, 1999.

Take notice that on August 30, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below for effectiveness on October 1, 1999.

Twenty-First Revised Sheet No. 21
Twenty-Second Revised Sheet No. 22

According to Granite State, the foregoing tariff sheets propose a revised Power Cost Adjustment (PCA) surcharge applicable to its firm transportation services during the third quarter of 1999 to reimburse Granite State for certain electric power costs that it is obligated to pay Portland Pipe Line Corporation pursuant to the terms of a lease of a pipeline from Portland Pipe Line.

Granite State further states that the total surcharge of $0.5238 consists of the sum of two components: the Quarterly Forecast PCA factor of $0.0000 which is based on projected incremental electric power costs to be billed to Granite State during the third quarter of 1999 and the Reconcilable PCA factor of $0.5238 which reconciles the accumulated over/under past surcharge collections in the Deferred Account on a quarterly basis. The method for developing the surcharge in the foregoing manner was approved by the Commission in orders issued in Docket Nos. RP98–155–003, *et al.* and TM98–4–4–000, *et al.*, according to Granite State.

Granite State further states that copies of its filing have been served on its firm and interruptible customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23373 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–159–000]

Nautilus Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

September 2, 1999.

Take notice that on August 27, 1999, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 9, with an effective date of October 1, 1999.

Nautilus states that the purpose of this filing is to implement the tracking of the ACA Unit Surcharge authorized by the Commission to be applied to rates in 1999 for recovery of 1999 current year annual charges. The ACA Unit Surcharge authorized by the Commission for fiscal year 1999 is $0.0022 per Dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23375 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–191–001]

Northern Natural Gas Company; Notice of Amendment

September 2, 1999.

Take notice that on August 26, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–191–001 a request pursuant to Section 7(c) of the Natural Gas Act for the issuance of an expedited certificate of public convenience and necessity for phased in construction of the Elk River Loop 1999 Project, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

Communications concerning this filing should be addressed to: Mary Kay Miller, Vice President of Rates & Certificates, Northern Natural Gas Company, Post Office Box 3330, Omaha, Nebraska 68103–0330, Telephone: 402–398–7060, Fax: 402–398–7006, or Keith L. Peterson, Director of Certificates and Reporting, Northern Natural Gas Company, Post Office Box 3330, Omaha, Nebraska 68103–0330, Telephone: 402–398–7421, Fax: 402–398–7592.

On February 2, 1999, Northern filed a prior notice request to install and

operate approximately 15 miles of 16-inch pipeline, with appurtenances, to loop the Elk River branchline located in Anoka and Sherburne Counties, Minnesota. Northern stated that the loop line is necessary to meet third through fifth year Peak Day 2000 firm obligations for Minnegasco, and (NSP–NM). A number of protests were filed, including one filed by Commission staff that offered an alternative route, all of which resulted in the request being converted to a Section 7(c) application.

In this filing, Northern specifically states that unless it is given authority to construct a six mile section of the Elk River Loop, by September 20, 1999, that it will not be able to serve the third year Peak Day 2000 firm entitlement during the upcoming heating season. Phase I of the Elk River Loop 1999 is needed to serve Northern's local distribution company (LDC) customer's incremental markets by November 1, 1999. Northern, therefore, requests approval to construct and operate, in Phase I, approximately six miles of 16-inch pipeline between milepost 8.48 and milepost 14.7, along its proposed route in order to serve the Peak Day 2000 firm entitlement for the third year for—Reliant Energy Minnegasco, a Division of Reliant Energy Resources Corp. (Minnegasco) and Northern States Power Company-Minnesota (NSP).

Northern states that it would follow the construction procedures and mitigation measures described in its original application, supplements, and responses to staff data requests during the construction of the subject facilities.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before September 17, 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 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

David P. Boergers,

Secretary.

[FR Doc. 99–23368 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–608–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

September 2, 1999.

Take notice that on August 31, 1999, Southern Natural Gas Company (Southern), filed a request with the Commission in Docket No. CP99–608–000, pursuant to §§ 157.205, 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point for service to Interconn Resources, Inc. (Interconn) authorized in blanket certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request 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 transportation service to Interconn at the Marglen Industries Plant in Floyd County, Georgia (Plant). Such service will be provided at a new delivery point to be located at approximately Mile Post 54.481 on Southern's 12″ Chattanooga Branch Loop Line in Floyd County, Georgia. The estimated cost of the construction and installation of the facilities is approximately $189,900. Interconn. has complied with all of the requirements under Section 36 of the General Terms and Conditions of Southern's FERC Gas Tariff for the installation of the direct delivery connection by Southern and will reimburse Southern for the cost of constructing and installing the proposed facilities.

Southern states that it will transport gas on behalf of Interconn under its Rate Schedule IT. Southern states that the installation of the proposed facilities will have no adverse effect on its ability to provide its firm deliveries.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, 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 NGA.

David P. Boergers,

Secretary.

[FR Doc. 99–23367 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–487–000]

Southern Natural Gas Company; Notice of Tariff Filing

September 2, 1999.

Take notice that on August 30, 1999, Southern Natural Gas Company (Southern) tendered for filing, pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering service that will apply to gathering service provided by J. R. Pounds, Inc. (Pounds) upon the transfer by Southern to Pounds of certain gathering facilities located in Dexter Field, Marion and Walthall Counties, Mississippi. Southern proposes the effective date of such termination of gathering services to be September 30, 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be file in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://

www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23372 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP88–391–024 and RP93–162–009]

Transcontinental Gas Pipe Line Corporation; Notice of Annual Cash-Out Report

September 2, 1999.

Take notice that on August 17, 1999, Transcontinental Gas Pipe Line Company (Transco) filed its annual report of cash-out purchases for the period August 1, 1998, through July 31, 1999. The report was filed to comply with the cash-out provisions in Section 15 of the General Terms and Conditions of Transco's FERC Gas Tariff.

Pursuant to the requirements of the Commission's order issued December 3, 1993, in Docket No. RP–93–162–002, Transco also submitted a summary of activity showing the volumes and amounts paid under each Pipeline Interconnect Balancing Agreement during the aforementioned period.

Transco states that the report shows that for the cash-out period ending July 31, 1999, Transco had a net underrecovery of $2,243,115. Transco has carried forward a net underrecovery of $11,103,133 from the previous twelve-month period. This results in a net underrecovery cash-out balance of $13,346,248 as of July 31, 1999. Transco states that in accordance with Section 15 of its tariff it will carry forward such net underrecovery to offset any net overrecovery that may occur in future cash-out periods.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or filed before September 9, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23366 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–107–000, et al.]

Connecticut Light and Power Company, et al.; Electric Rate and Corporate Regulation Filings

September 1, 1999.

Take notice that the following filings have been made with the Commission:

1. The Connecticut Light and Power Company and Western Massachusetts Electric Company

[Docket Nos. EC99–107–000 and ER99–4114–000]

Take notice that on August 27, 1999, The Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO) and Northeast Generation Company (collectively, Applicants) tendered for filing technical amendments to the Interconnection Agreements included in their August 17, 1999 application under sections 203 and 205 of the Federal Power Act relating to the transfer of certain jurisdictional facilities associated with the sale of generating facilities by CL&P and WMECO.

The Applicants state that copies of this filing have been sent to persons designated for service in the above-captioned proceeding and to the Connecticut Department of Public Utility Control, the Massachusetts Department of Telecommunications and Energy and the New Hampshire Public Utilities Commission.

Comment date: September 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Enterprises, Inc. and Southern Union Company

[Docket No. EC99–109–000]

Take notice that on August 27, 1999, pursuant to section 203 of the Federal Power Act and part 33 of the Commission's regulations, Pennsylvania Enterprises, Inc., PEI Power Corporation (PEI Power), PG Energy Power Plus (incorporated under the name PG Energy Services Inc.) (PG Plus) and Southern Union Company, filed a joint application for approval of the disposition of Pennsylvania Enterprises, Inc.'s interest in PEI Power and PG Plus, as a result of a proposed merger. PEI Power and PG Plus have been granted market-based rate authority by this Commission and PEI Power holds exempt wholesale generator status.

This Application has been served upon the Florida Public Service Commission, the Missouri Public Service Commission and the Pennsylvania Public Utility Commission.

Comment date: October 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. EML Power, L.L.C., EO Power, L.L.C., EP Power, L.L.C., and El Paso Power Services Company

[Docket No. EC99–110–000]

Take notice that on August 27, 1999, pursuant to section 203 of the Federal Power Act (FPA), 16 U.S.C. 824 (1998), and part 33 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 33, et seq., EML Power, L.L.C., EO Power, L.L.C., EP Power, L.L.C., and El Paso Power Services Company, (collectively, Applicants), filed an Application for Commission approval for the disposition (and acquisition, if necessary) of a certain Master Agreement to Amend and Restate Contracts for the Purchase of Firm Capacity and Energy, dated May 19, 1999, between Florida Power Corporation and El Paso Power Services Company (Master Agreement). Applicants have requested that such authorization be granted on an expedited basis.

The principal place of business of the Applicants will be in the state of Florida with their current business offices in care of El Paso Power Services Company, 350 Indiana Street, Suite 300, Golden, CO 80401. The Applicants seek Commission authorization for the assignment of the Master Agreement in conjunction with the proposed restructuring of the ownership, commercial arrangements and financing of two power generation projects, the Orange Facility and the Mulberry Facility located in the state of Florida. The Applicants state that EML, Power, L.L.C. will be the seller of power at wholesale to Florida Power Corporation under the Master Agreement.

Comment date: September 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Power Authority of the State of New York and New York Power Pool

[Docket Nos. ER97–1523–013, OA97–470–012, and ER97–4234–010] (not consolidated)

Take notice that on August 26, 1999, the Member Systems of the New York Power Pool (Member Systems), tendered for filing certain revised tariff sheets to their ISO Open Access Transmission and ISO Services Tariffs. The Member Systems state that these tariff sheets are in compliance with the Commission's July 29 Order in these dockets. *Central Hudson Gas & Electric Corp., et al.,* 88 FERC ¶ 61,138 (1999).

The Member Systems request that the above-referenced tariff sheets become effective October 12, 1999.

A copy of this filing was served upon all persons on the Commission's official service list(s) in the captioned proceeding(s), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. California Power Exchange Corporation

[Docket No. ER99–3148–000]

Take notice that on August 20, 1999, California Power Exchange Corporation tendered for filing revised tariff sheets in compliance with the Commission's July 28, 1999, order in this proceeding.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER99–4089–000]

Take notice that on August 16, 1999, Cinergy Services, Inc. (Cinergy) and Phibro Power LLC (Power), tendered for filing a Notice of Assignment that Power will replace Phibro Inc. of Cinergy's Cost-Based Power Sales Tariff Original Volume No. 6–CB, Service Agreement No. 123, dated October 29, 1997.

Cinergy and Power are requesting an effective date of one day after this filing.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER99–4214–000]

Take notice that Commonwealth Edison Company (ComEd) on August 25, 1999, tendered for filing pursuant to § 35.15 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.15, a Notice of Cancellation of Service Agreement No. 117 between ComEd and Duke Energy Trading and Marketing L.L.C. (formally NP Energy, Inc.) (DETM) under ComEd's Power Sales and Reassignment of Transmission Rights PSRT–1 Tariff (FERC Electric Tariff, First Revised Volume No. 2) and a Notice of Cancellation of Service Agreement No. 16 between ComEd and DETM under ComEd's Market-Based Rate Schedule (FERC Electric Tariff, Original Volume No. 6).

ComEd requests an effective date of August 26, 1999, for the cancellations and accordingly requests waiver of the Commission's notice requirements.

ComEd served copies of the filing upon DETM.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Tampa Electric Company

[Docket No. ER99–4215–000]

Take notice that on August 25, 1999, Tampa Electric Company (Tampa Electric) tendered for filing a service agreement with Aquila Energy Marketing Corporation (Aquila) under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on July 26, 1999, and gives notice of its termination as of August 1, 1999.

Copies of the filing have been served on Aquila and the Florida Public Service Commission.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4217–000]

Take notice that on August 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4218–000]

Take notice that on August 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4219–000]

Take notice that on August 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4220–000]

Take notice that on August 25, 1999 Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4221–000]

Take notice that on August 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Constellation Power Source, Inc. (CPS).

Con Edison states that a copy of this filing has been served by mail upon CPS.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4222–000]

Take notice that on August 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to PG&E Energy Trading—Power, L.P. (PG&E).

Con Edison states that a copy of this filing has been served by mail upon PG&E.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. PJM Interconnection, L.L.C.

[Docket No. ER99–4227–000]

Take notice that on August 25, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to certain emergency service schedules of interconnection agreements between PJM and the APS Group, Virginia Electric and Power Company, Cleveland Electric Illuminating Company (CEI) and the NYPP Group and two additional schedules to be included in the CEI and NYPP Group agreements in order to apply locational marginal pricing to PJM's provision of emergency service consistent with the PJM Open Access Transmission Tariff and to set forth the rate for the sale of energy in the event of a minimum generation emergency in the PJM control area.

PJM requests a waiver of the Commission's notice requirements and an effective date of August 26, 1999 for the amendments to the interconnection agreements.

Copies of this filing were served upon all parties to the interconnection agreements and the electric regulatory commissions in the PJM Control Area.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. CP Power Sales Nineteen, L.L.C.

[Docket No. ER99–4228–000]

Take notice that, on August 25,1999, CP Power Sales Nineteen, L.L.C. tendered for filing initial FERC electric service tariff, Rate Schedule No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. CP Power Sales Seventeen, L.L.C.

[Docket No. ER99–4229–000]

Take notice that, on August 25,1999, CP Power Sales Seventeen, L.L.C. tendered for filing initial FERC electric service tariff, Rate Schedule No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. CP Power Sales Eighteen, L.L.C.

[Docket No. ER99–4230–000]

Take notice that, on August 25,1999, CP Power Sales Eighteen, L.L.C. tendered for filing initial FERC electric service tariff, Rate Schedule No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. CP Power Sales Twenty, L.L.C.

[Docket No. ER99–4231–000]

Take notice that, on August 25,1999, CP Power Sales Twenty, L.L.C., tendered for filing initial FERC electric service tariff, Rate Schedule No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. FirstEnergy System

[Docket No. ER99–4232–000]

Take notice that on August 25, 1999, FirstEnergy System filed a Service Agreement to provide Firm Point-to-Point Transmission Service for Consumers Energy Company, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is August 23, 1999 for the above mentioned Service Agreement in this filing.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. FirstEnergy System

[Docket No. ER99–4233–000]

Take notice that on August 25, 1999, FirstEnergy System filed a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for Consumers Energy Company, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is August 23, 1999.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Avista Corporation

[Docket No. ER99–4234–000]

Take notice that on August 25, 1999, Avista Corporation (AVA), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an amended Mutual Netting with Sovereign Power, Inc. to replace the Mutual Netting Agreement filed under FERC Docket No ER99–802–000 on December 2, 1998.

AVA requests that the amended agreement replace the previously filed agreement with the same effective date of October 1, 1998.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange & Rockland Utilities, Inc., Rochester Gas & Electric Corp., Power Authority of the State of New York, and New York Power Pool

[Docket No. ER99–4235–000]

Take notice that on August 25, 1999, the New York Independent System Operator, Inc. (NYISO) and the Member Systems of the New York Power Pool (NYPP), tendered for filing a request for the recovery of costs associated with the start-up and formation of the NYISO. The NYISO requests as an effective date the first day of the first month that begins after the later of: (i) Sixty (60) days after the date this filing is made or (ii) the date following completion of an initial operating period, on which the NYPP assets and employees are formally transferred to the NYISO, the ISO Related Agreements are executed and the NYISO accepts the software systems, operating procedures and communications systems.

A copy of this filing was served upon all persons on the Commission's official service lists in Docket Nos. ER97–1523–

000, OA97–470–000 and ER97–4234–000 (not consolidated), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Public Service Company of Colorado

[Docket No. ER99–4243–000]

Take notice that on August 26, 1999, New Century Services, Inc., on behalf of Public Service of Colorado (PSCo), tendered for filing an executed Master Power Purchase and Sales Agreement under PSCo's market-based sales tariff with and PG&E Energy Trading—Power, L.P., (PG&E Energy Trading). This service agreement provides for PSCo's sale and purchase of capacity and energy with PG&E Energy Trading at market-based rates pursuant to PSCo's market-based sales tariff.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company

[Docket No. ER99–4244–000]

Take notice that on August 26, 1999, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies), tendered for filing service agreements establishing Austin Energy, Brazos Electric Power Cooperative, Inc., Calpine Power Services Co., Citizen Power Sales, City of Bryan, Texas, City Public Service (San Antonio) Control Area, Columbia Power Marketing Corporation, Constellation Power Source, Inc., The Cities of Denton, Garland and Greenville, Texas, Enron Power Marketing, LG&E Power Marketing, Lower Colorado River Authority, Morgan Stanley Capital Group, Inc., ONEOK Power Marketing, PanCanadian Energy Services, Inc., PECO Energy Company—Power Team, PG&E Energy Trading-Power, L.P., Reliant Energy Services, Inc., Southern Company Energy Marketing, L.P., Texas Utilities Generation, Vitol Gas & Electric, Tractebel Energy Marketing, Inc., and Williams Energy Services Company (collectively, Customers) as customers under the CSW Operating Companies' market-based rate power sales tariff.

The CSW Operating Companies request an effective date of July 26, 1999 for the agreements and, accordingly, seek waiver of the Commission's notice requirements.

The CSW Operating Companies state that a copy of the filing was served on each of the Customers.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Sithe Pennsylvania Holdings, LLC, Sithe New Jersey Holdings, LLC, Sithe Maryland Holdings, LLC, and York Haven Power Company

[Docket No. ER99–4245–000]

Take notice that on August 26, 1999, Sithe Pennsylvania Holdings, LLC (SPH), Sithe New Jersey Holdings, LLC (SNJH), Sithe Maryland Holdings (SMH), and York Haven Power Company (York Haven) (collectively, the Applicants), petitions the Commission for acceptance of the Applicants proposed FERC Rate Schedule(s) No. 2. Applicants request certain authority to make sales of specified ancillary services at market based rates, requests certain blanket authorizations, and waiver of certain of the Commission's regulations.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Central Illinois Light Company

[Docket No. ER99–4246–000]

Take notice that on August 26, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements with one new customer, West Penn Power Company d/b/a Allegheny Energy, a revised Service Agreement with Corn Belt Energy Corporation, and termination of service agreement with NP Energy, Inc.

CILCO requested an effective date of August 1, 1999.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Northern States Power Company (Minnesota Company), and Northern States Power Company (Wisconsin Company)

[Docket No. ER99–4247–000]

Take notice that on August 26, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and Dayton Power and Light Company (Customer).

NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on July 28, 1999.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Monroe Power Company

[Docket No. ER99–4266–000]

Take notice that on August 27, 1999, Monroe Power Company tendered for filing a quarterly report for the quarter ending June 30, 1999.

Comment date: September 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. 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 or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings 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).

David P. Boergers,

Secretary.

[FR Doc. 99–23400 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4216–000, et al.]

Hardee Power Partners Limited, et al.; Electric Rate and Corporate Regulation Filings

August 31, 1999.

Take notice that the following filings have been made with the Commission:

1. Hardee Power Partners Limited

[Docket No. ER99–4216–000]

Take notice that on August 25, 1999, Hardee Power Partners Limited (HPP), tendered for filing a service agreement with Aquila Energy Marketing Corporation (Aquila) under HPP's market-based sales tariff.

HPP proposes that the service agreement be made effective on July 26, 1999, and gives notice of its termination as of August 1, 1999.

Copies of the filing have been served on Aquila and the Florida Public Service Commission.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. PEC Energy Marketing, Inc. and Depere Energy Marketing, Inc.

[Docket Nos. ER97–1431–009 and ER97–1432–009]

Take notice that on August 26, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4223–000]

Take notice that on August 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Mid-Continent Area Power Pool

[Docket No. ER99–4224–000]

Take notice that on August 25, 1999, the Mid-Continent Area Power Pool (MAPP), on behalf of its public utility members, filed short-term firm and non-firm service agreements under MAPP Schedule F with British Columbia Power Exchange Corporation; Cargill-Alliant, LLC; Cedar Falls Municipal Utilities; The Cincinnati Gas & Electric Company, an Ohio corporation, PSI Energy, Inc., an Indiana corporation, (collectively Cinergy Operating Companies) and Cinergy Services, Inc., a Delaware corporation, as agent for and on behalf of the Cinergy Operating Companies; Corn Belt Power Cooperative; Dairyland Power Cooperative; ENRON Power Marketing, Inc.; Entergy Power Marketing Corp.; Heartland Consumers Power District; Iowa Association of Municipal Utilities; Kansas City Power and Light; Manitoba Hydro; MidAmerican Energy Company; Minnesota Municipal Power Agency; Montana-Dakota Utilities Co.; Municipal Energy Agency of Nebraska; Muscatine Power and Water; Nebraska Public Power District; Northern States Power Company; Northwestern Public Service Company; Omaha Public Power District; OTP Wholesale Marketing; Otter Tail Power Company; PECO Energy Company; PG&E Energy Trading-Power, L.P.; Public Service Company of Colorado; Southwestern Public Service Company; Western Area Power Administration; Wisconsin Public Power, Inc. System; Wood County Municipals; and WPS Energy Services Incorporated.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Northern Maine Independent System, Administrator, Inc.

[Docket No. ER99–4225–000]

Take notice that on August 25, 1999, Northern Maine Independent System Administrator, Inc. (NMISA), tendered for filing a comprehensive document including: Northern Maine Independent System Administrator Tariff, including a Form of Service Agreement, certain Northern Maine Market Rules, letter of the Maine Public Utilities Commission (MPUC) in support of the filing, Articles of Incorporation and By-Laws of the NMISA, and a list of NMISA stakeholder meetings and participants.

NMISA requests an effective date for implementation of the NMISA Tariff of March 1, 2000, to coincide with the institution of retail electric competition in the State of Maine.

A copy of this filing has been served on the MPUC and all other parties included on the Service List included in the filing, which comprises the list of stakeholders that have participated in the NMISA process.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Ameren Operating Companies

[Docket No. ER99–4226–000]

Take notice that on August 25, 1999, Ameren Services Company, on behalf of the Ameren Operating Companies, Union Electric Company and Central Illinois Public Service Company (together the Ameren Operating Companies), tendered for filing proposed rate and non-rate changes to the Ameren System's Open Access Transmission Tariff applicable to the provision of both wholesale and resale transmission services.

Ameren Services requests that the proposed changes become effective on October 1, 1999.

Ameren Services states that copies of the amendment were served on the Illinois Commerce Commission and the Missouri Public Service Commission.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Central Vermont Public Service Corporation

[Docket No. ER99–4236–000]

Take notice that on August 25, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Niagara Mohawk Energy Marketing, Inc., under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on August 25, 1999.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Central Vermont Public Service Corporation

[Docket No. ER99–4237–000]

Take notice that on August 25, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Aquila Energy Marketing Corporation under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on August 25, 1999.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER99–4238–000]

Take notice that on August 25, 1999, Niagara Mohawk Power Corporation, tendered for filing an Interconnection Agreement, as amended, with Indeck-Olean Limited Partnership, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. Section 824d, and Part 35 of the Commission's Regulations, 18 CFR Part 35.

A copy of this filing has been served upon the State of New York Public Service Commission and upon the

official service list in the above-captioned dockets.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER99–4239–000]

Take notice that on August 25, 1999, Southern California Edison Company tendered for filing notice that effective January 1, 1999, FERC Rate Schedule Nos. 383.2 and 383.3, effective April 1, 1998 and October 1, 1998, are to be canceled.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California and the City of Banning, California.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER99–4240–000]

Take notice that on August 25, 1999, Southern California Edison Company tendered filing notice that effective January 1, 1999, FERC Rate Schedule Nos. 377.2 and 377.3, effective April 1, 1998 and October 1, 1998, are to be canceled.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California and the City of Azusa, California.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER99–4241–000]

Take notice that on August 25, 1999, Southern California Edison Company tendered for filing notice that effective January 1, 1999, FERC Rate Schedule Nos. 367.1 and 367.2, effective April 1, 1998 and October 1, 1998, are to be canceled.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California and the City of Anaheim, California.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER99–4242–000]

Take notice that on August 25, 1999, Commonwealth Edison Company (ComEd) tendered for filing a service agreement establishing Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power, Mississippi Power company, and Savannah Electric and Power Company (SCSI), as a customer under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of July 29, 1999, for the Service Agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on SCSI.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. 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 or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings 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).

David P. Boergers,

Secretary.

[FR Doc. 99–23376 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10867–014]

Holliday Historic Restoration Associates; Notice of Availability of Final Environmental Assessment

September 2, 1999.

A final environmental assessment (FEA) is available for public review. The FEA is for an application for the Holliday Project (FERC No. 10867) to amend the license to modify Article 405 pertaining to trashrack spacing and to operate the project in accordance with a ''Revised Plan of Operation'' dated April 30, 1998. The project is located on the West Fork of the White River in Noblesville, Hamilton County, Indiana. The FEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA are available for review in the Commission's Public Reference Branch, Room 2A, 888 First Street, NE, Washington, DC 20426 or by calling (202) 208–1371. The FEA may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm*. Please call (202) 208–2222 for assistance. For further information, please contact John K. Novak at (202) 219–2828.

David P. Boergers,

Secretary.

[FR Doc. 99–23370 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend Exemption, and Soliciting Comments, Motions To Intervene, and Protests

September 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application To Amend Exemption for the Wappingers Falls Project.

b. *Project No.:* 3065–009.

c. *Date Filed:* July 2, 1999.

d. *Applicant:* Electro Ecology, Inc.

e. *Name of Project:* Wappingers Falls Project.

f. *Location:* The Wappingers Falls Project is on Wappingers Creek in Dutchess County, New York. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Harry Terbush, 16 Orbit Lane, Hopewell Junction, NY 12533, (914) 897–4178.

i. *FERC Contact:* Any questions on this notice should be addressed to Paul Shannon at (202) 219–2866 or by e-mail at paul.shannon@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* October 12, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (3065–009) on any comments or motions filed.

k. *Description of Filing:* Electro Ecology, Inc. proposes to install a new 100-foot-long penstock bifurcating from the existing penstock immediately upstream of the project's powerhouse and a new 261-kW generating unit within the powerhouse. The new unit would have a maximum hydraulic capacity of 46 cubic feet per second (cfs) and minimum hydraulic capacity of 7 cfs. The new unit would be operated during low flow periods when there is not enough flow for the larger units to operate. The exemptee states the new unit will provide more control and minimize or eliminate lake level fluctuations during low flow periods.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23369 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

City of Unalaska; Notice of Declaration of Intention and Soliciting Comments, Motions to Intervene, and Protests

September 2, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. Application Type: Declaration of Intention

b. Docket No: DI99–10–000

c. Date Filed: August 25, 1999

d. Applicant: The City of Unalaska

e. Name of Project: Pyramid Creek Hydroelectric Project

f. Location: On Pyramid Creek, 2½ miles from Unalaska, Alaska, on Unalaska Island, Alaska, in Sections 16 and 21 of T73S R118W. The project does not utilize federal or tribal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Ms Karen Blue, Utilities Analyst, City of Unalaska, PO Box 610, Unalaska, Alaska 99685–0610. Telephone: (907) 581–1260

i. FERC Contact: Any questions on this notice should be addressed to Henry Ecton at (202) 219–2678, or e-mail address: Henry.ecton@ferc.fed.us.

j. Deadline for filing comments and or motions: October 12, 1999

All documents (original and eight copies) should be filed with David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the docket number (DI99–10–000) on any comments or motions filed.

k. Description of Project: The proposed project will tap into an existing water supply pipeline, which draws water from Icy Creek and Icy Creek Dam, and will include a 2,450-foot-long, 24-inch diameter penstock; a 22-foot-wide, 44-foot long, and 22-foot-high metal powerhouse containing a 600-kW generator; and 85-foot-long, 8-foot-wide tailrace, with a 10-foot vertical drop into Pyramid Creek; and appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS

AND CONDITIONS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23397 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

City of Broken Bow, Oklahoma; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

September 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11803–000.

c. *Date Filed:* August 16, 1999.

d. *Applicant:* City of Broken Bow, Oklahoma.

e. *Name of Project:* Broken Bow Reregulating Dam.

f. *Location:* On Mountain Fork River, near the town of Broken Bow, McCurtain County, Oklahoma, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gerald B. Davenport, Hall, Estill, Hardwick, Gable, Golden and Nelson, P.C., 320 S. Boston Avenue, Suite 400, Tulsa, OK 74103, (918) 592–0400.

i. *FERC Contact:* William H.S. Diehl, E-mail address, William.Diehl@ferc.fed.us, or telephone (202) 219–2813.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's rule of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Broken Bow Reregulating Dam and would consist of: (1) A new 50-foot-long, 50-foot-wide, 20-foot-high powerhouse containing one or two generating units having a total installed capacity of 5,000-kW; (2) a short transmission line; and (3) appurtenant facilities.

Applicant estimates that the average annual generation would be 20,000 MWh and that the cost of the studies to be performed under the terms of the permit would be $100,000. Project energy would be utilized to supply a portion of Applicant's energy requirements.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protests, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular

application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, if will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23398 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–134–000]

Mississippi Canyon Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

September 2, 1999.

Take notice that on August 27, 1999, Mississippi Canyon Gas Pipeline, LLC (MCGP) tendered for filing tariff as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 6, to become effective October 1, 1999.

MCGP states that the purpose of this filing is to reflect the change in the ACA Unit Surcharge authorized by the Commission. The annual charges unit to be applied to rates in 1999 for recovery of 1998 debit/credit and 1999 current year annual charges is $0.0022 Dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23399 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100149; FRL–6380–3]

Versar, Incor. and Syracuse Research Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Federal Quality Protection Act (FQPA), and the Federal Food, Drug, and Cosmetic Act (FFDCA). Versar, Incorporated (Versar) and its subcontractor, Syracuse Research Corporation (SRC), have been awarded a contract to perform work for the EPA Office of Pollution Prevention and Toxics, and will be provided access to certain information submitted to EPA under FIFRA, FQPA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Versar and SRC consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), and will enable Versar and SRC to fulfill the obligations of the contract.

DATES: Versar and SRC will be given access to this information no sooner than September 14, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Schmitt, Information Resources Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 707, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5484; e-mail: schmitt.richard@epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract Number 68–W–99–041, Versar and SRC will review and evaluate data from studies pertaining to the environmental fate and human exposure assessments of microbiocides. The Antimicrobials Division/Office of Pesticide Programs will use the results of these contractor reviews and evaluations to support environmental and human exposure assessments used in making regulatory decisions, specifically those related to the registration, reregistration and special review of microbiocides.

The Office of Pollution Prevention and Toxics and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA and FQPA.

I. Important Information

A. Does this apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, contact the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How can I get additional information or copies of support documents?

1. *Electronically*. You may obtain electronic copies of this document and various support documents are available from the EPA Home Page at the Federal Register-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr).

2. *In person*. The official record for this notice, as well as the public version, has been established under docket control number [OPP–100149], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection in Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

II. Introduction

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Versar and SRC, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Versar and SRC are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor and it's subcontractor until the above requirements have been fully satisfied. Records of information provided to this contractor and subcontractor will be maintained by the Project Officers for this contract in the EPA Office of Pesticide Programs.

All information supplied to Versar and SRC by EPA for use in connection with this contract will be returned to EPA when Versar and SRC have completed their work.

List of Subjects

Environmental protection, Transfer of data.

Dated: August 26, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–23413 Filed 9–8–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–892; FRL–6095–9]

Notice of Filing Pesticide Petitions To Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: NOTICE.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–892, must be received on or before October 12, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–892 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 listed in the table below:

Regulatory Action Leader	Office location/telephone number	Address	Petition number
Denise Greenway	9th Floor, CM #2, 703–308–8263, e-mail: greenway.denise@epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA	PP 8E4926
Diana Horne	9th Floor, CM #2, 703–308–8367, e-mail: horne.diana@epa.gov.	Do.	PP 9F6027

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–892. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–892 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: ''*opp-docket@epa.gov* ,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–892. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want To Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action Is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 30, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. AVA Chemical Ventures, L.L.C.

PP 8E4926

EPA has received a pesticide petition (PP 8E4926) from AVA Chemical Ventures, L.L.C., 65 Aviation Avenue, Portsmouth, New Hampshire, 03801 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of sucrose fatty acid esters in or on all food commodities. Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, AVA Chemical Ventures, L.L.C. has submitted the following summary of information, data, and arguments in support of their pesticide petition.

A. Proposed Use Practices

Sucrose octanoate fatty acid esters made with caprylic acid derived from 21 CFR-approved edible fats and oils are contact insecticides that are effective against whiteflies, aphids, mites, thrips and other soft-bodied insects. The mode of action is physical, whereby the surfactant effect of sucrose octanoate fatty acid esters de-waxes the cuticle of the target insect, causing it to dessicate.

Sucrose octanoate fatty acid esters are sprayed in a water solution at the rate of 0.2–0.5% volume/volume throughout the growing season at intervals of 3–10 days, as needed, to control soft-bodied insects. Treatments are applied up to 2 days before harvest.

B. Product Identity/Chemistry

Sucrose octanoate fatty acid esters are manufactured by the transesterification of sucrose and a caprylic fatty acid ester derived from an edible oil or fat in the presence of a polar solvent, such as dimethylsulfoxide (DMSO). Mono-, di-, and tri-esters of sucrose are formed (i.e., sucrose octanoate, sucrose dioctanoate and sucrose trioctanoate). The crude transesterification product is purified in a series of unit operations that may include vacuum distillation, filtration and liquid-liquid extraction. The resulting material is a high quality non-ionic surfactant.

C. Toxicological Profile

Sucrose fatty acid esters derived from edible vegetable oils, edible tallow or hydrogenated edible tallow were approved in 1983 by the Food and Drug Administration (FDA) for use as emulsifiers in certain foods and as post-harvest protective coatings for certain fruits (21 CFR 172.859). The range of foods in which use of sucrose fatty acid esters is permitted was expanded by the FDA in 1995. Since the initial approval for food use of sucrose fatty acid esters was granted in Japan in 1959, other major regulatory bodies, including the World Health Organization (WHO), have granted similar approvals.

Toxicological studies were conducted in connection with the above-referenced approvals of sucrose fatty acid esters for use as food emulsifiers. AVA Chemical Ventures, L.L.C. has reviewed these toxicological studies and summaries are presented below.

1. *Acute toxicity.* Sucrose fatty acid esters and sucroglycerides were evaluated by the WHO for acceptable daily intake (ADI) for man in 1969, 1973, 1976, and 1980.

WHO Food Additive Series No. 15 (1980), titled, ''Toxicological Evaluation of Certain Food Additives,'' reports on the results of sucrose fatty acid esters administered in short-term feeding studies of dogs and a long-term feeding study of rats. No effects attributable to the ingestion of sucrose fatty acid esters were found in any of the studies. The WHO concluded the ingestion level causing no toxicological effect in rat to be 10,000 parts per million (ppm) (1.0%) in the diet, equivalent to 500 milligrams/kilograms (mg/kg) of body weight (bwt). The estimate of ADI for man was 0–10 mg/kg of bwt.

Primary skin irritation and primary eye irritation studies performed on rabbits by AVA Chemical Ventures, L.L.C. with Manufacturing Use Product (MUP) and End Use Product (EUP) sucrose octanoate fatty acid esters have been submitted to EPA. The MUP was found to be slightly irritating to the skin and severely irritating to the eye. The EUP was found to be slightly irritating to the skin and to cause substantial but temporary eye injury.

2. *Genotoxicity.* The components of sucrose octanoate fatty acid esters (sucrose and caprylic acid) already have regulatory approval and are commonly consumed as foods or food components. Caprylic acid (octanoic acid) is obtained from coconut oil or palm oil where it is present in concentrations of 7.5% and 3.3%, respectively. Caprylic acid (octanoic acid) is approved by the FDA as a generally recognized as safe (GRAS) substance and direct food additive (21 CFR 184.1025 and 21 CFR 172.860)

3. *Reproductive and developmental toxicity.* In 1976, in WHO Food Additive Series No. 10, the WHO reported on the results of a reproduction study over three generations of rats using sucrose fatty acid esters at 0 and 1% of the diet for control and test groups, respectively. Mean litter size, physical appearance and growth of litter were comparable among test and control groups.

4. *Subchronic toxicity.* WHO Food Additive Series No. 15 (1980) reports the findings of a study in which sucrose fatty acid esters made from beef tallow were fed to beagle dogs at concentrations of 3,000, 10,000 or 30,000 ppm for 26–weeks. A control group was fed an identical diet with the exception of the sucrose fatty acid esters. Body weight changes, food intake and water consumption were not affected by the administration of the esters. The opthalmic and haemotologic examinations, urinalysis, organ weights and macroscopic examinations revealed no adverse effects which could be attributed to the intake of the sucrose fatty acid esters. The blood chemistry studies showed that the majority of parameters measured were within acceptable limits.

5. *Chronic toxicity.* An unpublished paper titled, ''Study of Chronic Toxicity of a Sucrose Ester of Fatty Acids'' (undated) was submitted to the FDA in connection with the registration of sucrose fatty acid esters for use as food additives. For up to 76 weeks mice and rats were fed standard feed to which had been added up to 3.0% sucrose fatty acid esters. Animals were examined for body weight, feed consumption, hematological findings, organ weights and histopathology of organs. No particular changes resulting from administration of sucrose fatty acid esters were found.

6. *Animal metabolism.* Sucrose fatty acid esters are derived from fatty acids produced from 21 CFR-approved edible fats and oils. Ethyl alcohol and butanol, two of the solvents used to produce sucrose octanoate fatty acid esters, are exempted from the requirement of a tolerance under 40 CFR 180.1001(c). DMSO, the other solvent used to produce sucrose octanoate fatty acid esters, is approved for use in the manufacture of food-grade sucrose fatty acid esters under 21 CFR 172.859.

7. *Metabolite toxicology.* The components of sucrose octanoate fatty acid esters (sucrose and caprylic acid) already have regulatory approval and are commonly consumed as foods or food components. Caprylic acid (octanoic acid) is obtained from coconut oil or palm kernal oil where it is present at concentrations of 7.5% and 3.3%, respectively. Caprylic acid (octanoic acid) is approved by the FDA as a GRAS substance and direct food additive (21 CFR 184.1025 and 21 CFR 172.860).

8. *Endocrine disruption.* Sucrose fatty acid esters are not derived from nor contain any compounds which are known to be, or suspected to be, endocrine disruptors. Sucrose fatty acid esters are derived from a variety of 21 CFR-approved edible fats and oils.

D. Aggregate Exposure

AVA Chemical Ventures, L.L.C. believes that sufficient data exist to assess the hazards of sucrose fatty acid esters and to make a determination on aggregate exposure, consistent with section 408(c)(2), for an exemption from the requirement of a tolerance. Such data were submitted to the FDA prior to that agency's approval of sucrose fatty acid esters for use as an emulsifier in foods and as fruit coatings.

1. *Dietary exposure from food and feed uses, drinking water and non-dietary exposure*— i. *Dietary exposure.* Sucrose fatty acid esters made from 21 CFR-approved edible fats and oils and conforming to 21 CFR 172.860 are approved for use as food emulsifiers and as fruit coatings (21 CFR 172.859). They are also approved for food use in Europe and by the WHO Joint Expert Committee on Food Additives, with an acceptable daily intake (ADI) of 10 mg/kg body weight/day. Current world consumption in food applications is estimated to be 5,000 metric tons. Pesticide use would increase usage by approximately 1,000 metric tons, much of which will biodegrade prior to consumption of the crops to which it is applied.

ii. *Drinking water.* No drinking water exposure is anticipated as sucrose fatty acid esters are not soluble in water and biodegrade rapidly following use.

iii. *Non-dietary exposure.* Non-occupational, non-dietary exposure is highly unlikely given that the inhalation potential or dermal absorption of these substances are not feasible.

E. Cumulative Exposure

Sucrose octanoate fatty acid esters are non-toxic materials made from edible starting materials (sucrose and caprylic acid), which are commonly consumed as foods or food components. Sucrose fatty acid esters also biodegrade rapidly following use. A cumulative risk assessment is therefore not necessary.

F. Safety Determination

1. *U.S. population.* Sucrose fatty acid esters derived from edible fats and oils

are approved for use as food emulsifiers and as fruit coatings under 21 CFR 172.859. The components of sucrose octanoate fatty acid esters (sucrose and caprylic acid) are commonly consumed as foods or food components.

Based on these materials' low-risk profiles, there is reasonable certainty that no harm to the U.S. population will result from aggregate exposure to sucrose fatty acid esters.

2. *Infants and children*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly or through the use of margin of exposure analysis through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

Due to the extensive toxicology data base that exists for the sucrose fatty acid esters, their widespread approval for use as food emulsifiers and as a component in protective coatings applied to fruits, as well as the fact that their starting materials are edible food commodities, AVA Chemical Ventures, L.L.C. does not believe a safety factor analysis is necessary in assessing the risk of these compounds. For the same reason, we believe an additional safety factor analysis is unnecessary.

G. Analytical Method

An analytical method for residues is not applicable as this petition proposes an exemption from the requirement of a tolerance.

H. Existing Tolerances

Sucrose fatty acid esters derived from edible fats and oils are approved for use as food emulsifiers and as fruit coatings under 21 CFR 172.859. Sucrose fatty acid esters are approved for use as food emulsifiers in Europe under E-470 and by the Joint FAO/WHO Expert Committee on Food Additives at an ADI of 10 mg/kg bwt/day.

There are no known approved CODEX maximum residue levels (MRLs) established for residues of sucrose fatty acid esters.

I. Conclusion

Based on the information and data considered, AVA Chemical Ventures, L.L.C. proposes that sucrose fatty acid esters derived from edible fats and oils be exempted from the requirement of a tolerance in or on all food commodities, when used as an insecticide in accordance with good agricultural practices.

2. EDEN Bioscience Corporation

PP 9F6027

A. Proposed Use Practices

EPA has received a pesticide petition PP 9F6027, from EDEN Bioscience Corporation, 11816 North Creek Parkway N., Bothell, WA 98011-8205, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide Harpin protein in or on all food crops.

The commercial name for the end product containing harpin is Messenger ™. The product uses include the management of plant diseases, the significant improvement in growth and yields, and the suppression of certain insects and other pests.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues*. Harpin is a protein that is derived from and is chemically identical to a protein produced by a bacterium that is commonly found in nature. The harpin protein is an acidic, heat-stable, cell envelope associated protein with a molecular weight of about 40 kilodaltons. The protein consists of approximately 400 amino acid residues with no Cysteine. Harpin is characterized by its mobility on polyacrylamide SDS gel and high performance liquid chromotography (HPLC), and by laser desorption mass spectrometry.

2. *Magnitude of residue at the time of harvest and method used to determine the residue*. No residues of harpin protein are expected to occur at the time of harvest, as this proposes an exemption from the requirement of a tolerance.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed*. This notice proposes an exemption from the requirement of a tolerance, and thus no analytical method is required.

C. Mammalian Toxicological Profile

Messenger exhibits little or no mammalian toxicity and studies indicate that Messenger is a Toxicity Category IV substance. No toxicity was observed in acute oral toxicity studies conducted with Messenger. Acute oral and dermal toxicity LD_{50} values for Messenger were greater than 5,000 mg/kg in rat (Toxicity Category IV). The LC_{50} for Messenger was greater than 2 mg/L in an acute inhalation study in rat. Messenger showed no effect in eye and dermal irritation studies. For example, the dermal irritation index for Messenger was zero at 500 mg and no eye irritation was shown in rabbit at 100 mg. There have been no reported incidents of Messenger-induced hypersensitivity in individuals exposed to Messenger during research, production, and/or field testing and there are no published reports indicating that harpin proteins are toxic. Further, the harpin protein has a non-toxic mode of action by eliciting a systemic acquired resistance response in plants, and it has been demonstrated that the product has no direct antimicrobial effect on bacteria and fungi. Based on these studies, EDEN Bioscience Corporation has concluded that harpin poses no unique or additional risk to children or infants, and has proposed an exemption from the requirement of a tolerance for harpin.

D. Aggregate Exposure

1. *Dietary exposure*— i. *Food*. Messenger is applied at very low rates of application (generally 2 to 7 grams of active ingredient per acre). Because of the low use rates, no active ingredient residues are detectable, using available methods, on treated crops even immediately after application. Dietary exposure to harpin via consumption of treated food or feed is very negligible, if any at all. The product's other ingredients, which generally represent over 90% of the product, consist of food grade substances or other such low risk compounds.

ii. *Drinking water*. The active ingredient of Messenger is highly sensitive to very small amounts of chlorine as contained in many municipal water systems. Therefore, residues of harpin are unlikely to occur in drinking water or food, given the low application rate of the product and its rapid degradation in soil and water.

2. *Non-dietary exposure*. The Company believes that the potential for non-dietary exposure to the general population including infants and children is unlikely as the proposed use sites are primarily commercial, agricultural and horticultural settings and that non-dietary exposures would not be expected to pose any quantifiable risks due to lack of residues of toxicological concern. Increased non-dietary exposure of harpin via lawn care, etc., is not considered likely because of the low use rates and the lack

of persistence of the active ingredient in the environment.

E. Cumulative Exposure

Consideration of a common mode of toxicity is not appropriate, given that there is no indication of mammalian toxicity of harpin protein and no information that indicates that toxic effects would be cumulative with any other compounds. Moreover, harpin does not exhibit a toxic mode of action in its target pests or diseases.

F. Safety Determination

1. *U.S. population*. Harpin's lack of toxicity has been demonstrated by the results of acute toxicity testing in mammals in which harpin caused no adverse effects when dosed orally and via inhalation at the limit dose for each study. Thus, the aggregate exposure to harpin over a lifetime should pose negligible risks to human health.

2. *Infants and children*. Based on the lack of toxicity and low exposure, there is a reasonable certainty that no harm to infants, children, or adults will result from aggregate exposure to harpin residues. Exempting harpin from the requirement of a tolerance should pose no significant risk to humans or the environment.

G. Effects on the Immune and Endocrine Systems

EDEN Bioscience Corporation has no information to suggest that harpin will adversely affect the immune or endocrine systems.

H. Existing Tolerances

There are no existing tolerances for harpin protein in the United States.

I. International Tolerances

EDEN Bioscience Corporation is not aware of any tolerances, exemptions from tolerance or MRL's issued for harpin protein outside of the United States.

[FR Doc. 99–23414 Filed 9–8–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6435–1]

Carolina Creosoting Corporation Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Under section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act, the United States Environmental Protection Agency (EPA) has entered into an Administrative Order on Consent (AOC) to settle claims for past response cost at the Carolina Creosoting Site located in Leland, North Carolina.

The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

Copies of the proposed settlement are available from: Attn: Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, 61 Forsythe Street SW, Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of publication.

Dated: August 30, 1999.

Franklin Hill,

Chief, Waste Programs Branch, Waste Management Division.

[FR Doc. 99–23411 Filed 9–8–99; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

Time and Place: Tuesday, September 28, 1999, at 9:00 a.m. to 3:30 p.m. The meeting will be held at The Westin Peachtree Plaza, 210 Peachtree Street, French-American Rooms, Atlanta, GA 30303.

Agenda: The theme of this meeting will be ''Outreach''. This meeting will include a roundtable discussion on small business, panel discussion on non-traditional marketers and small business exporters.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, place contact, prior to September 22, 1999, Teri Stumpf, Room 1203, Vermont Avenue, NW, Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Teri Stumpf, Room 1203, 811 Vermont Avenue, NW, Washington, DC 20571, (202) 565–3502.

Lisa G. Geberth,

Assistant General Counsel.

[FR Doc 99–23345 Filed 9–8–99; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–805]

Annual Adjustment of Revenue Threshold

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This notice announces that the 1998 revenue threshold used for classifying carriers for accounting purposes remains at $112 million. Section 402(c) of the 1996 Act mandates that the Commission adjust the revenue requirements of certain rules on an annual basis to account for inflation.

DATES: Carriers exceeding the 1998 revenue threshold must file their initial cost allocation manual by December 8, 1999.

ADDRESSES: Federal Communications Commission, 445 '' 12th Street, SW, Room, TW–A325, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Debbie Weber, Accounting Systems Branch, Accounting Safeguards Division, Common Carrier Bureau at (202) 418–0812.

SUPPLEMENTARY INFORMATION:

This gives notice that the revenue threshold used for classifying carriers for accounting purposes remains at $112 million. Section 402(c) of the 1996 Act mandates that we ''adjust the revenue requirements'' of §§ 32.11, 64.903, and part 43 of our rules ''to account for inflation as of the release date of the Commission's Report and Order in CC Docket No. 91–141, and annually thereafter.'' Prior to passage of the 1996 Act, our rules established a $100 million threshold to classify carriers for accounting purposes in § 32.11, for filing cost allocation manuals in § 64.903, and for filing certain reports with the Commission in part 43.

The Commission uses the Gross Domestic Product Chain-type Price Index (GDP–CPI) to adjust the revenue threshold for inflation each year. We

adjust revenue thresholds for inflation based on the annual average value of the GDP–CPI for the revenue year relative to the value of the GDP–CPI on October 19, 1992, rounded to the nearest $1 million.

The indexed revenue threshold for 1998 is calculated as follows:

[A] GDP-CPI (October 19, 1992) 100.69

[B] GDP-CPI (Annual) (1998) 112.71

[C] Ratio: GDP-CPI (Annual) (1998) GDP-CPI (October 19, 1992) 1.1194

[D] Original Revenue Threshold $100 million

[E] Indexed Revenue Threshold ([C] x [D]) $112 million

Accordingly, the indexed revenue threshold for 1998 is $112 million.

Source: National Data Tables, Survey of Current Business, Apr. 1999, tbl. 7.1.

Federal Communications Commission.

Kenneth P. Moran,

Chief, Accounting Safeguards Division.

[FR Doc. 99–23402 Filed 9–8–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Repudiation and Asset-backed Securitizations and Loan Participations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Withdrawal of proposed Statement of Policy

SUMMARY: The Federal Deposit Insurance Corporation (the FDIC) hereby gives notice that it has withdrawn its outstanding proposed Statement of Policy published on December 30, 1998, (46 FR 31018) that would have clarified the treatment of securitizations and loan participations after appointment by the FDIC as conservator or receiver of an insured depository institution. The proposed Statement of Policy, which was intended to provide sufficient assurances to permit the transfer of financial assets by insured depository institutions in connection with a securitization or loan participation to be accounted for as a sale under generally accepted accounting principles, is being withdrawn because the FDIC is proposing a rule that would have the same intended effect as the proposed Statement of Policy.

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Bolt, Counsel, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, (202) 736–0168.

By Order of the Board of Directors.

Dated at Washington, D.C., this 31st day of August, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–23383 Filed 9–8–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, September 14, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, September 16, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Status of Y2K Compliance.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 99–23634 Filed 9–7–99; 3:46 pm]

BILLING CODE 6715–61–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., 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.: 232–011606–002.

Title: COSCON/KL Slot Exchange Agreement.

Parties:

Cosco Container Lines

Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed agreement amendment increases the number of vessels to be used under the agreement and includes an additional service pattern on which slots will be made available. The parties request expedited review.

Agreement No.: 217–011652–001.

Title: Iceland Steamship/Samskip Slot Charter Agreement.

Parties:

Iceland Steamship Company Ltd.

Samskip hf.

Synopsis: The proposed amendment adds clarifying provisions regarding the parties' operations under their slot charter agreement.

Agreement No.: 224–200006–005.

Title: Oakland-DSR Senator/Cho Yang Terminal Use Agreement.

Parties:

Board of Port Commissioners, City of Oakland

DSR-Senator Lines GmbH

Cho Yang Shipping Company, Ltd.

Synopsis: The proposed agreement amendment would change the terminal facility used by the carrier parties.

Dated: September 3, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–23430 Filed 9–8–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 99-12407) published on pages 26966-26967 of the issue for Tuesday, May 18, 1999.

Under the Federal Reserve Bank of San Francisco heading, the entry for Dai-Ichi Kangyo Bank, Limited, Tokyo, Japan, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Dai-Ichi Kangyo Bank, Limited, Tokyo, Japan; to acquire Newcourt Credit Group, Inc., Toronto, Canada, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; engaging in activities related to the extension of credit, pursuant to § 225.28(b)(2) of Regulation Y; leasing personal or real property or acting as agent, broker, or adviser in leasing such property, pursuant to § 225.28(b)(3) of Regulation Y; financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y; providing agency transactional services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y; and providing data processing and data transmission services, pursuant to § 225.28(b)(14) of Regulation Y.

Comments on this application must be received by September 21, 1999.

Board of Governors of the Federal Reserve System, September 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23462 Filed 9–8–99; 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 (12 U.S.C. 1843). 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 October 1, 1999.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Horizon Bancorporation, Bradenton, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Horizon Bank, Bradenton, Florida (in organization).

Board of Governors of the Federal Reserve System, September 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23361 Filed 9–8–99; 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 September 22, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Banco Santander Central Hispano, S.A., Madrid, Spain; to engage *de novo* through its New York Branch, Banco Santander Central Hispano, S.A., New York, New York, in leasing personal or real property or acting as an agent, broker or advisor in leasing such property, pursuant to § 225.28(b)(3) of Regulation Y. Notificant will conduct this activity worldwide.

Board of Governors of the Federal Reserve System, September 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23363 Filed 9–8–99; 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, that engages either directly or through a subsidiary or other company, in a nonbanking activity. These activities will be conducted throughout worldwide.

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 September 22, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. The Sanwa Bank, Limited, Osaka, Japan; to engage *de novo* through its subsidiary, Identrus LLC, New York, New York (formerly known as Global Trust Organization, LLC), in digital certification and data processing and data transmission activities, as described below. Notificant also proposes to engage in activities that it maintains are incidental to permissible digital certification and data processing and data transmission activities.

Notificant proposes to acquire more than 5 percent of the outstanding voting interests in Global Trust Organization,

LLC, New York, New York (Company), a *de novo* limited liability company. Other investors in Company would include national banks and state member banks. Company would serve as the rulemaking authority for a network of participating financial institutions (Network), which would include Notificant, future equity investors in Company, and other financial institutions that elect to participate in the Network (collectively, Participants). The Network is designed to allow Participants to certify electronically the identity of parties conducting business or communicating electronically through the internet or otherwise. Participants in the Network would, among other things, issue to customers ''digital certificates'' that authenticate messages electronically sent by the customer, and confirm the validity of digital certificates issued by Participants. Participants also may issue warranties to customers who request verification of digital certificates issued by Participants, and post collateral to secure claims under any warranty issued by the Participant.

Company would develop, maintain, and enforce the rules governing the operation of, and participation in, the Network, and provide other services designed to facilitate the certification activities of Participants and operation of the Network. These activities would include issuing digital certificates to Participants and maintaining a current database of digital certificates that have been issued. Company and Participants would engage in a wide range of data processing and data transmission activities in connection with their proposed activities. A more complete description of the proposed activities of Company, Notificant, and other Participants is contained in the notices.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity that the Board has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. The Board previously has determined that certain data processing and data transmission services are closely related to banking for purposes of section 4(c)(8) of the BHC Act, pursuant to § 225.28(b)(14) of Regulation Y. Notificant contends that all of the proposed activities are so closely related to banking as to be a proper incident thereto, or are activities that are incidental to permissible activities, pursuant to § 225.21(a)(2) of Regulation Y.

In determining whether the proposal satisfies the proper incident to banking standard of section 4(c)(8) of the BHC Act, the Board must consider whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' 12 U.S.C. 1843(c)(8). Notificant contends that consummation of the proposal will facilitate the development of electronic commerce and will have a beneficial effect on competition for identity certification and related services.

In publishing the proposal for comment, the Board does not take a position on the issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the proposal and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act. The notice is available for immediate inspection at the Federal Reserve Bank indicated above and at the offices of the Board of Governors. Any request for a hearing on the notices must be accompanied by a statement of reasons explaining why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Board of Governors of the Federal Reserve System, September 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23364 Filed 9–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 22, 1999.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Morrison Family Partnership, L.P., Milledgeville, Georgia; to acquire voting shares of Exchange Bankshares, Inc., Milledgeville, Georgia, and thereby indirectly acquire voting shares of Exchange Bank, Milledgeville, Georgia.

Board of Governors of the Federal Reserve System, September 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23362 Filed 9–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 972 3014]

Prolong Super Lubricants, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 8, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Gerald Wright, Federal Trade Commission, Western Regional Office, 901 Market St., Suite 570, San Francisco, CA 94103 (415) 356–5270.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been

placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 2, 1999), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Prolong Super Lubricants, Inc. (''PSL''). The agreement would settle a proposed complaint by the Federal Trade Commission that PSL engaged in unfair or deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertising practices related to the sale of Prolong-brand Engine Treatment Concentrate (''ETC''). Prolong ETC is marketed for use as a supplemental additive to the motor oil used in gasoline automobile engines. The proposed complaint charges that, through the use of statements contained in PSL's television infomercial and other promotional materials, PSL made the following unsubstantiated representations: (1) Compared to motor oil alone, ETC reduces engine wear at start up; (2) compared to motor oil alone, ETC extends the duration of engine life; (3) ETC reduces corrosion in engines; and (4) ETC protects against engine breakdowns. In addition, the proposed complaint alleges that PSL made unsubstantiated claims that benefits that may be achieved through use of ETC in race cars or under racing conditions can be achieved by ordinary consumers in ordinary driving; and that consumer testimonials in PSL's infomercial reflected the typical and ordinary experience of consumers.

The proposed consent order contains provisions designed to prevent PSL from engaging in similar acts and practices in the future. Part I of the proposed order requires PSL to have scientific evidence substantiating claims that, compared to motor oil alone, ETC or any other product for use in an automobile, reduces engine wear at start up, or extends the duration of engine life, under any circumstances or conditions or by any quantitative amount. Similarly, Part I of the order requires PSL to have scientific evidence substantiating claims that ETC or any other product for use in an automobile reduces corrosion in engines, or protects against engine breakdowns, under any circumstances or conditions or by any quantitative amount.

Part I of the order also requires PSL to have scientific evidence substantiating claims that benefits achieved in race cars or under racing conditions will be achieved in ordinary automobiles in conventional use. Similarly, Part IV of the order requires PSL to have scientific evidence substantiating user testimonials or endorsements, or disclosing the limitations on the applicability of the speaker's experience to ordinary users.

Moreover, Part II of the proposed order requires PSL to have competent and reliable evidence, scientific where appropriate, substantiating any claim about the performance, benefits, efficacy, attributes or use of any product it sells. In addition, the proposed order prohibits PSL from misrepresenting the results of tests or studies relating to any product, or utilizing demonstrations to misrepresent a material quality, feature or merit of any product, or the superiority or comparability of a product.

The order also contains standard provisions regarding record-keeping, notification of changes in corporate status, distribution of the order, termination of the order, and the filing of a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.

By direction of the Commission

Benjamin I. Berman,

Acting Secretary.

Statement of Commissioner Orson Swindle Concurring in Part and Dissenting in Part

The Commission accepts for public comment a consent agreement settling allegations that Prolong Super Lubricants, Inc., et al. (''Prolong''), made unsubstantiated claims about the attributes and benefits of Prolong's motor oil additive. I support the provisions in the proposed order prohibiting Prolong from making such claims in the future without adequate substantiation.

The consent agreement, however, also contains provisions prohibiting Prolong, in connection with the sale of any product, from misrepresenting the existence or results of tests and from misrepresenting that a demonstration confirms the benefits of a product. While firms should not misrepresent the existence or results of tests or demonstrations, it is inappropriate to include specific establishment and demonstration requirements as remedies in an order without corresponding complaint allegations. In this case, and in others from the recent past, there is a troubling lack of symmetry between the complaint and the order.

Accordingly, I dissent as to Paragraphs III and V of the proposed order.

[FR Doc. 99–23417 Filed 9–8–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 64 FR 24167, May 5, 1999, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reflect (1) the retitling of the National Institute of Dental Research as the National Institute of Dental and Craniofacial Research (NIDCR) within the NIH, pursuant to Section 212 of the Department of Health and Human Services Appropriation Act,

1999, Title II of Pub. L. 105–277, and (2) the revision of NIDCR's functional statement.

Section N–B, Organization and Functions, is amended as follows:

Under the heading National Institute of Dental Research (NP, formerly HNP), the title and functional statement are deleted in their entirety and the following is inserted:

National Institute of Dental and Craniofacial Research (NP, formerly HNP). To improve and promote craniofacial, oral, and dental health through research: (1) develops disease prevention, diagnostic, therapeutic, and health promotion measures through the conduct and support of basic, translational, applied, and demonstration research; (2) develops and maintains an adequate research personnel pool through the conduct and support of training and career development programs; (3) promotes the timely transfer and appropriate adoption of research findings by the public, professional and research communities; (4) disseminates accurate information to the public, professionals and policy-makers; and (5) coordinates and collaborates with, and assists and fosters relevant research and research-related activities with, other public and private agencies and organizations.

Delegations of Authority Statement

All delegations and redelegations of authority to offices and employees of NIH which were in effect immediately prior to the effective date of this realignment and are consistent with this realignment shall continue in effect, pending further redelegation.

Dated: August 30, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

[FR Doc. 99–23349 Filed 9–8–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: (1) TANF Data Report, ACF–1999 (including TANF Sampling and Statistical Methods Manual)

(2) SSP–MOE Data Report, ACF–204 (Including TANF Sampling and Statistical Methods Manual)

OMB No.: 0970–0199.

Description: 42 U.S.C. 611 and 45 CFR Part 265 require States to collect on a monthly basis and report quarterly the data in the ACF–199 and the ACF–204. A State may comply with these requirements by collecting and submitting case record information for its entire caseload or for a portion of the caseload that is obtained through the use of scientifically acceptable sampling methods. Currently 22 States are sampling their monthly caseloads and submitting the required TANF data based on these samples, and potentially 17 States could use sampling for the SSP–MOE Report. We expect similar numbers to use sampling in the future and the subject to the following revisions. We are proposing to revise the current information collection requirements by: (1) issuing the TANF Sampling and Statistical Methods Manual to provide guidance to States on the sampling process: (2) adding a section four to both data collection forms. The TANF Data Report—Section Four is designed to collect the weighting data for the State TANF program. The SSP–MOE Data Report—Section Four is designed to collect the weighting for the SSP–MOE programs. The current OMB inventory indicates an approved burden of 516,680 hours for the ACF–199 and the ACF–204. We estimate that the proposed revisions will increase the burden by 1,599 hours for a total revised estimated annual burden of 518,279 hours.

Respondents: State, Local or Tribal Government.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF Data Report	54	4	2,187.18	472,430
SSP–MOE Data Report	17	4	674.25	45,849

Estimated total Annual Burden Hours: 518,279.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 2, 1999.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 99–23347 Filed 9–8–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grant to the Institute for Responsible Fatherhood and Family Revitalization

AGENCY: Office of Planning, Research and Evaluation, ACF, DHHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the Institute for Responsible Fatherhood and Family Revitalization. Funding in the amount of $180,000 is being awarded for a 12-month project period, beginning October 1, 1999 and ending September 30, 2000. Under the title of ''Evaluation of the Institute for Responsible Fatherhood and Family

Revitalization's Turning the Hearts of Fathers Program,'' the project proposes to test the value, effectiveness, efficiency and utility of its primary intervention, non-traditional outreach and counseling, in altering the lives of fathers, children, the mothers of their children, families and communities.

This project is being funded noncompetitively, because the Institute plans to use innovative and nontraditional techniques which offer the potential of connecting a non-custodial father with his children and forging an emotional bond. The study will employ a holistic approach in providing services to members of the family who impact the father's life.

FOR FURTHER INFORMATION CONTACT: John K. Maniha, Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW, Washington, DC 20447, Phone: 202–401–5372.

Dated: September 1, 1999.

Janet S. Hartnett,

Deputy Director, Office of Planning, Research and Evaluation.

[FR Doc. 99–23341 Filed 9–8–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grant to The University of Hawaii, Center on the Family

AGENCY: Office of Planning, Research and Evaluation, ACF, DHHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the University of Hawaii, Center on the Family, Honolulu, in the amount of $499,821 for a 30-month project. Under the title of ''Financial Strain and Family Resiliency: A Comparison of Welfare and Working Poor Families,'' the project seeks to gain an understanding of the factors that foster resiliency in poor families in the face of severe financial strain. Specifically, this study will examine welfare families defined as those families receiving federally-funded Temporary Assistance to Needy Families (TANF) and state-funded Temporary Assistance to Other Needy Families (TAONF). The project will utilize an ecological systems framework that considers individual, family, and social network qualities as factors that influence family well-being, health, and psychological and work/school adjustment in these financially stressed groups. The project is unique in that it focuses on psychological and behavioral processes, considers family resiliency as well as vulnerability, and includes Asians (i.e., Filipinos) and Pacific Islanders as well as Caucasians.

This project is being funded noncompetitively, because the study will examine a broad range of attitudinal, psychological and family process variables that impact adjustment in several important psychosocial domains. Also, this study promises to provide useful information on how families cope with financial strain in a stragnant economy such as Hawaii which is in its ninth year of an economic recession.

FOR FURTHER INFORMATION CONTACT: Leonard Sternbach, Administration for Children and Families, 50 U.N. Plaza, San Francisco, California 94102, Telephone: (415) 437–7671.

Dated: September 1, 1999.

Janet S. Hartnett,

Deputy Director, Office of Planning, Research and Evaluation.

[FR Doc. 99–23340 Filed 9–8–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1087–N]

Medicare Program; Open Public Meeting To Discuss the Conduct of a Second Competitive Bidding Demonstration

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting regarding the operation of a second competitive bidding demonstration. It is our intention to use this second demonstration to continue to examine the use of competitive bidding for the use of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS). The principal subjects to be discussed will be the selection of the site and the designation of the group of DMEPOS services for which competitive bids will be solicited.

The first demonstration is in Polk County, Florida. The group of items on which competitive bids were solicited in Polk County were: oxygen supplies and equipment, enteral nutrition equipment and supplies, hospital beds, surgical dressings, and urological supplies. The sale of these products under competitively determined prices will begin October 1, 1999.

This meeting will offer an opportunity to manufacturers, distributors, suppliers, users, and other interested parties to furnish information and raise issues about the group of items to be offered and the site for the second competitive bidding demonstration. The meeting will also address the following issues:

- Quality standards for product categories.
- Bidding for urban versus sparsely populated areas.

DATES: The meeting is scheduled for Tuesday, October 5, 1999, from 9:00 a.m. to 1:00 p.m., e.d.t.

ADDRESSES: The meeting will be held in HCFA's Multipurpose Room, 7500 Security Boulevard, Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT:

Herbert Silverman, (410) 786–7702, hsilverman@hcfa.gov

or

Danielle Grush, (410) 786–0915, dgrush@hcfa.gov

SUPPLEMENTARY INFORMATION:

Background

Section 1847 of the Social Security Act, as added by section 4319 of the Balanced Budget Act of 1997, authorizes the implementation of up to five demonstration projects of competitive bidding for Part B services, but excludes physician services. Each demonstration project is to include specified products and/or services and could be conducted in up to three competitive acquisition areas for a 3-year period. However, all demonstrations must be completed by December 31, 2002.

The first demonstration will be operated in Polk County, Florida. We are now considering how to operate a second demonstration. Among the issues that will be addressed are:

- Site characteristics desirable or undesirable for the second demonstration.
- Group of DMEPOS items for inclusion in the second demonstration.

We are also interested in the quality standards widely used in the industry and the sources of those standards.

We are announcing this public meeting to provide an opportunity for individuals and organizations familiar with the characteristics of the DMEPOS markets to furnish information and raise issues pertaining to the second competitive bidding demonstration involving DMEPOS product categories and the standards that would assure high quality products and services. We

intend to gather and present information related to these issues.

We will schedule short (10 to 15 minute) presentations by our staff and the public on these and other related topics. Individuals interested in making a presentation at the meeting must contact Herbert Silverman or Danielle Grush at the above noted telephone numbers or by fax at (410) 786–1048 no later than September 28, 1999. Individuals must identify the topic or issue they want to discuss. Only a limited number of presentations will be allowed because of time constraints. In an effort to assure that all viewpoints are represented, we will notify the participants selected to make presentations by September 30, 1999.

While the meeting is open to the public, attendance is limited to available space. Individuals must register in advance as described below.

Registration

Individuals may register by sending a fax to the attention of either Herbert Silverman or Danielle Grush at the above number. At the time of registration, please provide your name, address, and telephone and fax numbers. Your fax transmission sheet receipt will constitute confirmation of your registration. Individuals will be contacted only if space is unavailable. If you have questions regarding registration, please contact Ms. Grush. Materials will be provided at the time of the meeting.

We will accept written comments, questions, or other materials specific to the purpose of this meeting if received by September 28, 1999. Written submissions must be sent to: Health Care Financing Administration, Attn: Herbert Silverman, C4–17–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

You may contact Mr. Silverman at: Telephone: (410) 786–7702, Fax: (410) 786–1048, E-mail: hsilverman@hcfa.gov

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 1, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–23348 Filed 9–8–99; 8:45 am]

BILLING CODE 4120–01–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–017018

Applicant: Donald E. Taylor, Olympia, WA.

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–016881

Applicant: Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to export and re-import tigers (*Panthera tigris*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations, to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

The following applicants have applied for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18).

PRT–017017

Applicant: Robert Deligans, Sherman, 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 should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 2, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–23459 Filed 9–8–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Extension of Public Comment Period on Two Applications for Incidental Take Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Due to the recent relocation of our Sacramento Fish and Wildlife Office, the Fish and Wildlife Service is extending the public comment period on two separate applications for incidental take permits pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. These permit applications, from the California Department of Corrections and the Tulare Irrigation District, respectively, were noticed in the **Federal Register** on August 4, 1999 (64 FR 42407 and 42408).

DATES: Written comments on these applications should be received on or before September 15, 1999.

ADDRESSES: Comments should be addressed to the Field Supervisor, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. Comments may be sent by facsimile to 916–414–6710.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Rinek or Mr. Chris Davis, Fish and Wildlife Biologists, at the above address (telephone: 916–414–6600).

Dated: September 1, 1999.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office.

[FR Doc. 99–23379 Filed 9–8–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–040–1610–00]

AGENCY: Bureau of Land Management, Idaho.

ACTION: Notice of availability of the Challis Record of Decision and Resource Management Plan (ROD/RMP).

SUMMARY: The Idaho State Director, Bureau of Land Management, has documented her approval of the Challis Resource Management Plan through a Record of Decision signed July 29, 1999.

Pursuant to section 202 of the Federal Land Policy and Management Act of 1976, section 102(2)(C) of the National Environmental Policy Act of 1969, and BLM Planning Regulations (43 CFR part 1600), the Bureau of Land Management (BLM), Upper Columbia—Salmon Clearwater District prepared and analyzed a Draft Resource Management Plan/Environmental Impact Statement (BLM, May 1996) and Proposed Resource Management Plan/Final Environmental Impact Statement (Proposed RMP) (BLM, October 1998) for the Challis Resource Area. Following a 30-day public protest period and 60-day Governor's consistency review of the Proposed RMP, the BLM prepared, published, and distributed the Challis Record of Decision and Resource Management Plan (ROD/RMP) (BLM, July 1999). Changes to the Proposed RMP which are incorporated in the approved RMP are listed in the Record of Decision portion of the ROD/RMP document. When compared with the Proposed RMP, the approved RMP clarifies the wording of several decisions, maintains the existing off-highway vehicle use for the Dry Creek Road (rather than closing the road to OHV use), updates beneficial use information for surface waters within the planning area, and adds information about current authorized grazing use in the Challis Resource Area.

DATES: Implementation of the Challis RMP will begin as of September 9, 1999.

ADDRESSES: Copies of the Challis ROD/RMP document may be obtained upon request by contacting the Bureau of Land Management at Route 2, Box 610, Salmon, Idaho 83467; phone (208) 756–5400.

FOR FURTHER INFORMATION CONTACT: Further information about the Challis RMP and Record of Decision for the Plan may be obtained by contacting Kathe Rhodes, Planning and Environmental Coordinator, Bureau of Land Management, Route 2, Box 610, Salmon, Idaho 83467; phone (208) 756–5440.

SUPPLEMENTARY INFORMATION: The Challis RMP describes the BLM's plan for managing the approximately 792,657 acres of BLM public lands in the Challis Resource Area, located in Custer and Lemhi counties of east-central Idaho. More specifically, the Challis RMP presents the resource condition objectives, land use allocations, and management actions and direction to guide resource management of the Challis Resource Area on a long-term sustainable basis during the next 15 to 20 years. The Challis RMP replaces the three Management Framework Plans previously used by the Challis Resource Area. It also amends the Little Lost-Birch Creek Management Framework Plan (MFP) (BLM 1981), administered by the Upper Snake River District—BLM, by designating 4,714 acres of lands described in the MFP as part of the Donkey Hills Area of Critical Environmental Concern.

The Challis RMP describes the BLM's Wild and Scenic River suitability findings for rivers within the Challis Resource Area and designates 88,206 acres of public lands as Areas of Critical Environmental Concern (ACECs). The RMP continues to designate seven existing ACEC's (12,236 acres) and also designates seven new ACECs (75,970 acres). These 14 ACECs are designated in order to highlight the following resources for management and protection: unique plant communities, paleontological resources; fragile soils; a geologic area of interest; unique riparian habitats; fisheries habitats; roadless, primitive, and scenic values; crucial bighorn sheep and elk habitats; and unique cultural resources. The ACECs include a total of approximately 9,846 acres of Research Natural Areas (RNAs) which are designated to maintain native plant communities, special status species, and rare/endemic species in a natural condition for study purposes.

Dated: September 1, 1999.

Ted Graf,

Acting District Manager.

[FR Doc. 99–23351 Filed 9–8–99; 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–020–1310–00]

Notice of Availability of the Environmental Assessment, "Management for Bureau of Reclamation Withdrawn Lands Restored to Bureau of Land Management Jurisdiction in the Cody Field Office Planning Area," and Finding of No Significant Impact, for Public Review and Comment; and Notification of Open House

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The environmental assessment (EA) addresses four alternatives for managing about 150,000 acres of Bureau of Reclamation Withdrawn Lands that have been restored to Bureau of Land Management jurisdiction in the BLM's Cody Field Office Administrative Area in north central Wyoming. The restored lands are primarily in the YU Bench and Chapman Bench areas of Wyoming's Bighorn Basin. The Preferred Alternative in the EA describes planning decisions for the future multiple-use management of the restored lands and represents a proposed amendment to the Cody Resource Management Plan (RMP) (BLM 1990). Based on the analysis summarized in the EA, it has been determined that the impacts are not expected to be significant and that an environmental impact statement is not needed. An open house is scheduled for Tuesday, September 14 at the Cody Field Office for discussion of the EA and Preferred Alternative.

DATES: Reviewers will have 30 (thirty) days after this notice of availability (NOA) of the EA is published in the **Federal Register** to submit protests on the proposed decision (Preferred Alternative) as provided by 43 CFR 1610.5–2. All parts of the proposed decision may be protested. Protests shall be filed with the Director of the Bureau of Land Management, Attention: Ms. Brenda Williams, Protests Coordinator, WO–210/LS–1075, Department of the Interior, Washington, DC 20240.

The same 30-day time period will be allowed for commenting on the proposed decision, other elements of the EA, and the Finding of No Significant Impact; and a 60-day time period, beginning on the same date, will be allowed for review and comment on potential area of critical environmental concern (ACEC) designations (see 43

CFR 1610.7–2(b)). One such area relating to the management of long-billed curlew and mountain plover habitat on Chapman Bench is addressed in the EA. Comments should be directed to Bob Ross, BLM Planning Coordinator, Worland Field Office, P.O. Box 119, Worland, Wyoming 82401–0119.

FOR FURTHER INFORMATION CONTACT: Bob Ross, BLM Planning Coordinator, 101 South 23rd Street, Worland, WY 82401, (307) 347–5178, or the Cody Field Office, 1002 Blackburn Avenue, Cody, WY 82414, at (307) 587–2216. Requests for copies of the EA should be made to either office.

SUPPLEMENTARY INFORMATION: The BLM's Preferred Alternative is a proposed amendment to the Cody Resource Management Plan to incorporate the former BOR withdrawn lands into the RMP and apply the appropriate existing BLM planning decisions to their management. Currently, the lands are closed to the operation of the public land laws, including land sales and exchanges, and the staking and development of mining claims. There is also a moratorium on Federal mineral leasing on the lands until the BLM planning decisions for them are in place. The proposed RMP amendment would allow most of the lands to be opened to these potential actions and uses. Existing uses, such as livestock grazing, hunting and fishing, and other types of recreation would continue.

If any protests are received on the proposed amendment, these will be resolved by the BLM Director. Next, the EA will be revised if necessary and a Decision Record will be issued with a description of the comments and (or) protests on the proposed decisions, along with an explanation of how the comments and (or) protests were answered. The Decision Record will incorporate additional or changed land-use planning decisions, as needed, in amending the Cody RMP.

The September 14 open house to discuss the EA and Preferred Alternative has been announced in letters to interested parties on the Cody Field Office mailing list and in local and statewide media releases. The open house will be held at the Cody Field Office.

Comments, including names and street addresses of respondents will be available for public review at the Worland Field Office, 101 South 23rd Street, Worland, Wyoming, and at the Cody Field Office, 1002 Blackburn Avenue, Cody, Wyoming, during regular business hours (7:30 a.m. to 4:30 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: September 2, 1999.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 99–23381 Filed 9–8–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 31044]

Notice of Proposed Withdrawal and Notice of Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, proposes to withdraw 7,840 acres of National Forest System land to protect the Diamond Rim Quartz Crystal Interpretive Area. This notice segregates the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may be made of National Forest System land. This notice also announces a public meeting. This application replaces withdrawal application AZA 30353, which has been canceled.

DATES: Comments should be received on or before December 8, 1999.

ADDRESSES: Comments should be sent to the Forest Supervisor, Tonto National Forest, 2324 E. McDowell Road, Phoenix, Arizona 85006.

FOR FURTHER INFORMATION CONTACT: Karyn Harbour, Tonto National Forest, 602–225–5200, or Rod Byers, Payson Ranger District, 520–474–7900.

SUPPLEMENTARY INFORMATION: On August 26, 1999, the Forest Service filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

Tonto National Forest

T. 11 N., R. 11 E.,
Sec. 1;
Sec. 2;
Sec. 3;
Sec. 4, E½;
Sec. 10;
Sec. 11;
Sec. 12;
Sec. 13;
Sec. 14;
Sec. 15, NE¼;
Sec. 23, N½;
Sec. 24, N½.
T. 11½ N., R. 11 E.,
Sec. 33, E½;
Sec. 34;
Sec. 35, W½ and SE¼;
Sec. 36, SW¼.

The area described contains approximately 7,840 acres in Gila County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor of the Tonto National Forest.

Notice is hereby given that a public meeting will be held to provide an opportunity for public comment regarding the proposed withdrawal. The meeting will be held from 1 p.m. to 3 p.m., Wednesday, October 27, 1999, at the Supervisor's Office, Tonto National Forest, 2324 E. McDowell Road, Phoenix, Arizona.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Application AZA 30353, published in the 62 FR 50404, September 25, 1997, has been canceled.

Dated: August 30, 1999.

Michael A. Ferguson,

Deputy State Director, Resources Division.

[FR Doc. 99–23343 Filed 9–8–99; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

CALFED Bay-Delta Program, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of an additional public hearing for the Draft Programmatic

Environmental Impact Statement/ Environmental Impact Report (EIS/EIR).

SUMMARY: An additional public hearing has been scheduled in Los Banos, California, for the Draft EIS/EIR for the CALFED Bay-Delta Program. A notice of availability of the Draft EIS/EIR appeared in the **Federal Register** (64 FR 34677–34678, Jun. 28, 1999). The notice for public hearings appeared in the **Federal Register** (64 FR 43223–43224, Aug. 9, 1999) providing locations and times for hearings in 15 California cities.

DATES: The additional public hearing will occur on Monday, September 13, 1999. A question and answer session will begin at 6:00 p.m. and the formal hearing will begin at 7:00 p.m.

ADDRESSES: The additional hearing will be at the Merced County Spring Fair-Los Banos, Germino Building, 403 F Street, Los Banos, California.

FOR FURTHER INFORMATION CONTACT: For further information regarding the public hearing, contact Mr. Rick Breitenbach, CALFED Bay-Delta Program, 1416 Ninth Street, Suite 1155, Sacramento CA 95814; telephone (800) 900–3587.

Dated: September 2, 1999.

Frank Michny,

Regional Environmental Officer.

[FR Doc. 99–23380 Filed 9–8–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Proposed City of Albuquerque Water Resources Strategy Implementation, Drinking Water Supply Project, Albuquerque, New Mexico

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) proposes to prepare a draft environmental impact statement (EIS) on the proposed City of Albuquerque Water Resources Strategy Implementation, Drinking Water Supply Project, Albuquerque, New Mexico. The City of Albuquerque, Public Works Department (City) will act as a joint lead agency for NEPA compliance for the proposed project. The City proposes to develop infrastructure that will allow it to fully utilize its contracted (Secretary of the Interior) allotment of San Juan/ Chama Project surface water for drinking water and other consumptive uses, and to call for releases of its stored San Juan/Chama Project water in a manner consistent with the proposed use. The purpose of the proposed project is to provide a sustainable water supply for the City of Albuquerque by utilizing allocated surface water when available, and preserving the local ground water basin as a drought reserve. The proposed project will be implemented in conjunction with ongoing City efforts to implement local water reuse and non-potable supply projects and a water conservation program.

DATES: The dates and times of the scoping meetings will be as follows:

1. Thursday, September 23, 1999; 6:00 p.m. to 8:00 p.m.; Albuquerque, New Mexico, 87102.
2. Tuesday, September 28, 1999; 6:00 p.m. to 8:00 p.m.; Socorro, New Mexico, 87801.
3. Thursday, September 30, 1999; 6 p.m. to 8:00 p.m.; Española, New Mexico, 87532.

The date of release of the draft EIS for public comment, and the public hearings to be conducted to receive comments on the EIS, will be announced in the **Federal Register** and in the local news media, as these dates are established.

ADDRESSES: The locations of the public scoping meetings will be as follows:

1. Albuquerque Convention Center, Cimarron/Dona Ana rooms, 401 Second Street NW, Albuquerque, New Mexico, 87102.
2. New Mexico Tech, Macy Center, 801 Leroy Place, Socorro, New Mexico, 87801.
3. Northern New Mexico Community College, Joseph Montoya Building, 921 Paseo de Onate, Española, New Mexico, 87532.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Robertson, Environmental Protection Specialist, Bureau of Reclamation, 505 Marquette Avenue NW, Suite 1313, Albuquerque, New Mexico, 87102; telephone (505) 248–5326.

SUPPLEMENTARY INFORMATION:

Background

Historically, the City and other water users in Bernalillo County have relied solely on a deep aquifer, the Santa Fe Group aquifer system, for their water supply. This resource is part of a regional aquifer called the Albuquerque underground water basin.

Aquifer studies conducted during the 1950's and 1960's indicated that the aquifer was extensive, and that flows in the Rio Grande recharged the aquifer sufficiently to allow extensive withdrawals without affecting the aquifer's long-term ability to supply water. However, recent studies by Reclamation, the U.S. Geological Survey, and New Mexico Bureau of Mines and Mineral Resources confirmed that the City's primary water supply aquifer was being depleted at a rate that is twice that of the recharge to the aquifer from the Rio Grande.

In 1997, the City adopted the Albuquerque Water Resources Management Strategy (AWRMS). The AWRMS is based on optimizing the City's use of existing water resources and developing new surface water supplies. The strategy is intended to provide a safe and sustainable water supply for the City by minimizing the continued pumping and sole reliance on ground water resources.

Current Activities

The City is currently planning to implement three water reclamation projects using reclaimed industrial wastewater, untreated surface water, and reclaimed municipal wastewater, for turf irrigation and industrial uses. These water reclamation projects will provide a non-potable water supply for non-drinking uses and reduce demands on the ground water aquifer. The City is also in the early planning stages for the drinking water supply project for which this Notice of Intent is being prepared.

The City implemented a broad-based water conservation program approximately 2 years ago. This program emphasizes low-demand landscaping, low-flow water fixtures, and public awareness regarding the scarcity of water and its overall value to the local and regional economy. The program has resulted in a reduction of almost 18 percent in overall City per capita water use. The goal of the program is to achieve a 30 percent per capita reduction in use.

Proposed Project

Infrastructure developed for the implementation of the drinking water project will include a diversion of surface water from the Rio Grande, a water treatment plant to treat surface water to Safe Drinking Water Act requirements, and transmission pipelines to convey the treated water into the existing water distribution network. The City currently stores its San Juan/Chama Project water in Abiquiu Reservoir, has short-term water sales and lease agreements for interim uses, and calls for the water to be delivered down the Rio Chama and into the Rio Grande as needed.

The City will also evaluate implementing an aquifer storage and

recovery program that would allow the City to divert and store surface water underground during wet years, and use this stored supply in place of surface water during dry years when surface water is less available.

Alternative Measures

The City is currently examining potential alternative methods to divert, treat, store, and deliver its San Juan/Chama Project water as the primary source of its drinking water supply. Alternatives are being developed for the location and methods of diversion, method of treatment conveyance options, and storage/operation options. Agency and public scoping processes will be used to present system component options, evaluation criteria, and evaluation approaches for comment regarding environmental and operational issues that should be addressed.

Indian Trust Assets

The environmental evaluation will assess the potential effects that the proposed project may have on Indian Trust Assets.

Environmental Justice

The environmental evaluation will assess the potential effects that the proposed project may have on minority and low-income populations.

Anyone interested in more information concerning the study, or who has information concerning the study or suggestions as to significant environmental issues and/or Indian Trust Assets, should contact Ms. Robertson as provided above.

Dated: September 3, 1999.

Charles A. Calhoun,

Regional Director, Upper Colorado Region.

[FR Doc. 99–23511 Filed 9–7–99; 3:24 pm]

BILLING CODE 4310–94–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

September 21, 1999 Board of Directors Meeting; Sunshine Act Notice

TIME AND DATE: Tuesday, September 21, 1999, 1:00 pm (Open Portion); 1:30 pm (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting Open to the Public from 1:00 pm to 1:30 pm. Closed portion will commence at 1:30 pm (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report
2. Testimonials
4. Approval of June 2, 1999 Minutes (Open Portion)
5. Approval of June 15, 1999 Minutes (Open Portion)

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 pm).

1. Proposed FY 2001 Budget Proposal and Allocation of Retained Earnings
2. Finance Project in Jordan
3. Finance Project in Brazil
4. Finance Project in Argentina
5. Insurance Project in Venezuela
6. Insurance Project in Venezuela
7. Insurance Project in Argentina
8. Insurance Project in Turkey
9. Approval of June 2, 1999 Minutes (Closed Portion)
10. Approval of June 15, 1999 Minutes (Closed Portion)
11. Pending Major Projects

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: September 7, 1999.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 99–23570 Filed 9–7–99; 1:16 pm]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–426–428 (Review), 731–TA–455 (Review), 731–TA–462 (Review), 731–TA–354 (Review)]

Small Business Telephone Systems From Japan, Korea, and Taiwan, Multiangle Laser Light-Scattering Instruments From Japan, Benzyl Paraben From Japan, Stainless Steel Hollow Products From Sweden

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in June and July 1999 to determine whether revocation of the existing antidumping duty orders would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On September 1, 1999, the Department of Commerce published notice that it was revoking the orders because no domestic interested party responded to its notice of initiation by the applicable deadline (64 FR 47762–47763). Accordingly, pursuant to section 207.69 of the Commission's Rules of Practice and Procedure (19 CFR 207.69), the subject reviews are terminated.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: September 2, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–23440 Filed 9–8–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Violence Against Women Grants Office; Agency Information Collection; Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; New collection.

Certification of Compliance With the Eligibility Requirements of Grants To Combat Violent Crimes Against Women on Campuses

The Department of Justice, Office of Justice Programs, Violence Against Women Grants Office has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval is being sought for the information collection listed below. The proposed information collection is published in the **Federal Register** on September 9, 1999, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until October 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item contained in this notice, especially regarding the

estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 F Street NW., Washington, DC 20530.

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:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Certification of Compliance with the Eligibility Requirements of Grants to Combat Violent Crimes Against Women on Campuses.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Violence Against Women Grants Office, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be as or required to respond, as well as a brief abstract:* Primary: Institutions of Higher Education. Other: None.

The Grants to Combat Violent Crimes Against Women on Campuses were authorized through Section 826 of the Higher Education Amendments of 1998, to make funds available to institutions of higher education to combat domestic violence, sexual assault, and stalking crimes against women.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The time burden of the 25 respondents to complete the certification form is estimated to be 30 minutes per respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the certification form is 12.5 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 F Street, NW, Washington, DC 20530.

Dated: September 2, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–23385 Filed 9–8–99; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before October 24, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of

origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–99–3, 3 items, 3 temporary items). Electronic copies of records created using electronic mail and word processing pertaining to the training of foreign nationals in U.S. Army facilities. Files include biographical data and academic reports on each student, invitations to American homes, reports to foreign embassies, invitational travel orders, and arrival/departure notices. This schedule also modifies the retention periods for recordkeeping copies of these files, which were previously approved for disposal.

2. Department of the Army, Agency-wide (N1–AU–99–8, 4 items, 3 temporary items). Records relating to the transfer of technology between designated Army laboratories and non-Federal collaborators, including a database of information about agreements, working files, and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of cooperative research and development agreements, patent license agreements, and related policy documents are proposed for permanent retention.

3. Department of Defense, Office of the Inspector General (N1–509–99–6, 4 items, 4 temporary items). Hotline referral files consisting of correspondence, preliminary investigations, and memoranda of conversations relating to complaints received by the Department of Defense telephone hotline. Also included are electronic copies of documents created using electronic mail and word processing. This schedule also modifies the retention period for recordkeeping copies of these files, which were previously approved for disposal.

4. Department of Health and Human Services, Office of Public Health and Science (N1–468–99–3, 1 item, 1 temporary item). Lists, dating from 1897 to 1912, of medical supplies, suppliers, and prices for items, such as drugs, chemicals, alcoholic liquors, and equipment.

5. Department of Health and Human Services, National Institutes of Health (N1–443–99–5, 1 item, 1 temporary item). User access log of visits to the agency's World Wide Web site. The logs record the visitor's origin, time of visit, length of stay, and activities while at the site.

6. Department of Health and Human Services, Agency for Health Care Policy and Research (N1–510–99–2, 1 item, 1 temporary item). User access log of visits to the agency's World Wide Web site. The logs record the visitor's origin, time of visit, length of stay, and activities while at the site.

7. Department of Health and Human Services, Agency for Health Care Policy and Research (N1–510–99–3, 1 item, 1 temporary item). User access log of visits to the World Wide Web site of the agency's National Guideline Clearinghouse. The logs record the visitor's origin, time of visit, length of stay, and activities while at the site.

8. Department of Justice, U.S. Marshals Service (N1–527–99–3, 6 items, 5 temporary items). Speeches and testimony by U.S. Marshals Service personnel below the level of Associate Director. Also included are electronic copies of speeches and testimony created using electronic mail and word processing. Record-keeping copies of speeches and testimony given by the Director, Deputy Director, and Associate Director are proposed for permanent retention.

9. Environmental Protection Agency, Office of Radiation and Indoor Air Radiation (N1–412–99–7, 4 items, 2 temporary items). Software programs and system input documents associated with the Environmental Radiation Ambient Monitoring System (ERAMS), an electronic system that contains information on ambient levels of radiation in air, milk, and water. ERAMS master files and documentation are proposed for permanent retention. Published reports were previously scheduled for permanent retention.

10. National Institute of Standards and Technology, Boulder, Colorado, Laboratories (N1–167–99–2, 1 item, 1 temporary item). Unidentifiable and undocumented magnetic tapes created by the Boulder Laboratories of the National Bureau of Standards in 1960.

11. Overseas Private Investment Corporation (N1–420–99–1, 4 items, 4 temporary items). Loan case files and investment insurance case files used to manage and track loans and insurance relating to U.S. businesses operating overseas. Also included are electronic copies of these records created using electronic mail and word processing.

Dated: September 2, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–23396 Filed 9–8–99; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Docket No. 50–003

Consolidated Edison Company of New York, Inc.; Indian Point Nuclear Generating Station, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–5 issued to Consolidated Edison Company of New York, Inc. (the licensee), for the permanently shutdown Indian Point Nuclear Generating Station, Unit 1, located in Buchanan, New York.

The proposed amendment would revise Technical Specification (TS) Section 3.2.1.i. to be consistent with a similar TS for Indian Point, Unit 2. Specifically, Indian Point, Unit 1, Section 3.2.1.i would be revised to change the requirement that the operations manager or assistant operations manager be a licensed senior reactor operator. The revision would allow an individual who does not hold a current senior reactor operator license to be appointed as operations manager or assistant operations manager provided all other qualification requirements of ANSI N18.1–1971 are met.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended

(the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant hazards consideration because:

1. [The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.]

* * * This proposed change [to the TS Section 3.2.1.i] is administrative in nature.

* * * This change does not affect possible initiating events for accidents previously evaluated or alter the configuration or operation of the facility. The Limiting Safety System Settings and Safety Limits specified in the current Technical Specifications remain unchanged. Therefore, the proposed change would not involve a significant increase in the probability or in the consequences of an accident previously evaluated.

2. [The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.]

No. The proposed change is administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which design basis accidents have been evaluated are still valid. The operating procedures and the emergency procedures are unaffected. Consequently no new failure modes are introduced as a result of the proposed change. Therefore, the proposed changes would not create the possibility of a new or different kind of accident from any new accident previously evaluated.

3. [The proposed change does not involve a significant reduction in a margin of safety.]

No. The proposed change is administrative in nature. Since there are no changes to the operation of the physical design of the facility, the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, or Technical Specification Bases are not affected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 12, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available 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 White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10601. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also

provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Brent L. Brandenburg, Esq., 4 Irving Place, New York, 10003, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 20, 1999, 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 White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Dated at Rockville, Maryland, this 2nd day of September 1999.

For The Nuclear Regulatory Commission.

John L. Minns,

Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–23409 Filed 9–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

State of Ohio: Discontinuance of Certain Commission Regulatory Authority Within the State

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of agreement with the State of Ohio.

SUMMARY: On August 11, 1999, Greta J. Dicus, Chairman of the U.S. Nuclear Regulatory Commission (NRC) and on August 18, 1999, Governor Bob Taft of the State of Ohio signed an Agreement as authorized by section 274b of the Atomic Energy Act. The Agreement provides for the Commission to discontinue its regulatory authority over source, byproduct and special nuclear materials (in quantities not sufficient to form a critical mass) in the State of Ohio, and for Ohio to assume the regulatory authority.

Under the Agreement, a person in Ohio possessing these materials is exempt from certain Commission regulations. The exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150. The Agreement is published here as required by section 274e of the Act.

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.

The draft Agreement was published in the **Federal Register** for comment once a week for four consecutive weeks (see, e.g. 64 FR 12187, March 11, 1999) as required by the Act. The public comment period ended on April 12, 1999. A total of 25 comment letters were received and were considered by the NRC staff. After considering the comments, the request for an Agreement by the Governor of Ohio, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the Ohio Department of Health, Bureau of Radiological Health, the NRC staff completed an assessment of the Ohio program. Based on the staff's assessment, the Commission determined on August 4, 1999, that the proposed Ohio program for the control of radiation hazards is adequate to protect public health and safety and compatible with the Commission's program. NRC will retain jurisdiction over 19 materials licensees including certain Federal facilities and exempt distribution. In addition, NRC will retain jurisdiction over the gaseous diffusion plant in Portsmouth, Ohio and two nuclear power plants near Toledo and Painesville.

Copies of the comment analysis by the NRC staff, the staff assessment, and the Commission's decision may be viewed at the NRC website, *http://www.nrc.gov*. To view the documents, click on the ''News and Information'' icon, then select ''Staff Papers'' under the ''Commission'' heading. The documents are contained in the Commission paper numbered SECY–99–179.

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 August 4, 1999 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 on behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, III, and IV, 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:

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;

D. Special nuclear materials in quantities not sufficient to form a critical mass;

E. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons; and,

F. 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 August 31, 1999, and shall remain in effect unless and until such time as it is terminated pursuant to Article VII.

Done at Rockville, Maryland, in triplicate, this 11th day of August, 1999.

For the United States Nuclear Regulatory Commission.

Greta Joy Dicus,

Chairman.

Done at Columbus, Ohio, in triplicate, this 18th day of August, 1999.

For the State of Ohio.

Bob Taft,

Governor.

Dated at Rockville, Maryland, this 2nd day of September, 1999.

For the U.S. Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–23407 Filed 9–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Stakeholder Meeting Concerning The Revision of the Safety Inspection Program for Nuclear Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: NRC will host a public meeting in Rockville, Maryland to provide the public, those regulated by the NRC, and other stakeholders, with information about and an opportunity to provide views on how NRC plans to revise its safety inspection program for nuclear fuel cycle facilities. Similar to the revisions of the inspection and oversight program for commercial nuclear power plants, NRC has initiated an effort to improve its programs for nuclear fuel cycle facilities. This is described in SECY–99–188 titled, EVALUATION AND PROPOSED REVISION OF THE NUCLEAR FUEL CYCLE FACILITY SAFETY INSPECTION PROGRAM. SECY–99–188 is available in the Public Document Room and on the NRC Web Page at http://www.nrc.gov/NRC/COMMISSION/SECYS/index.html.

Purpose: To explain the planned revision of the fuel cycle safety inspection program and obtain stakeholder's views. The baseline safety inspection program applies to nuclear fuel cycle facilities regulated under 10 CFR Parts 40, 70 and 76. The facilities currently include gaseous diffusion plants, highly enriched uranium fuel fabrication facilities, low-enriched uranium fuel fabrication facilities, and a uranium hexafluoride (UF^6) production facility. These facilities possess large quantities of materials that are potentially hazardous (i.e., radioactive, toxic, and/or flammable) to the workers, public, or environment. In revising the inspection program, the goals are to have an inspection program that: (1) Provides earlier and more objective indications of acceptable and changing safety performance, (2) increases stakeholder confidence in the NRC, and

(3) increases regulatory effectiveness and efficiency. In this regard, the NRC desires the revised inspection program to be more risk-informed and performance-based and more focused on significant risks. Where practicable, the program will use more objective safety performance indicators (PIs) with accompanying performance thresholds.

DATE: This meeting is scheduled for Thursday, September 16, 1999, from 9 am to 4 pm and is open to the public.

ADDRESS: NRC's Licensing Board Hearing Room at Two White Flint North, Room 3B45, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION CONTACT: Walter Schwink, Office of Nuclear Material Safety and Safeguards, US Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7253, e-mail *wss@nrc.gov*.

Dated at Rockville, Maryland this 2nd day of September, 1999.

For the Nuclear Regulatory Commission,

Philip Ting,

Chief, Operations Branch, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 99–23408 Filed 9–8–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Notice of Visit

AGENCY: Postal Rate Commission.

ACTION: Notice of visit.

SUMMARY: A member of the recent Postal Service/Industry Periodicals task force, Rita Cohen, of the Magazine Publishers of America, will visit the Commission and present a briefing describing the analysis and conclusions of the task force. The briefing will begin at 10:00 a.m.

DATES: The date of the visit is Wednesday, September 15, 1999.

ADDRESSES: Postal Rate Commission (Hearing Room), 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001 (202) 789–6820.

Dated: September 2, 1999.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–23350 Filed 9–8–99; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23987–812–11324]

The Galaxy Fund, et al.; Notice of Application

September 1, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act.

Summary of Applicant: Applicants request an order to permit certain registered management investment companies and private accounts to deposit their uninvested cash and cash collateral from securities lending transactions in joint accounts that invest in short-term investments.

Applicants: The Galaxy Fund (''Galaxy''), The Galaxy VIP Fund (''Galaxy VIP''), Galaxy Fund II (''Galaxy II'') (collectively the ''Trusts''), Fleet Investment Advisors, Inc. (''Fleet'') and Columbia Management Co. (''Columbia'').

Filing Dates: The application was filed on September 24, 1998, and amended on August 10, 1999. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: Trusts, 4400 Computer Drive, Westboro, Massachusetts 01581–5108; Fleet, 75 State Street, Boston, Massachusetts 02109–1810; Columbia, 1300 SW Sixth Avenue, P.O. Box 1350, Portland, Oregon 97207–1350.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. No. 202–942–8090).

Applicants' Representations

1. The Trusts are open-end management investment companies registered under the Act. Each Trust is comprised of multiple series (each a ''Fund,'' collectively the ''Funds''). The assets of the Funds are held by The Chase Manhattan Bank as custodian (the ''Custodian''), which is not affiliated with Fleet or Columbia.

2. Fleet, an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act'') and an indirect wholly-owned subsidiary of Fleet Financial Group, Inc. (''FFG''), serves as investment adviser for each of the Funds of Galaxy and Galaxy II and certain Funds of Galaxy VIP. Fleet also serves as investment adviser or sub-adviser to individual, corporate, charitable and retirement accounts (''Private Accounts'').[1] Columbia, an investment adviser registered under the Advisers Act and an indirect wholly-owned subsidiary of FFG, serves as investment adviser for certain Funds of Galaxy VIP. Fleet and Columbia are collectively referred to as the ''Advisers.''

3. Applicants request that any relief granted also apply to (i) all future series of the Trusts and each series of any other existing or future registered management investment company that is in the future advised or sub-advised by Fleet (''Future Funds,'' together with the Funds, the ''Portfolios'')[2] and (ii) Private Accounts.[3]

4. At the end of each trading day, the Portfolios and the Private Accounts (''Participants'') may have uninvested

[1] For purposes of the application, the term ''Fleet'' includes, in addition to Fleet Investment Advisers, Inc., any other person controlling, controlled by, or under common control with Fleet Investment Advisers, Inc. that acts in the future as an investment adviser to a registered management investment company or a Private Account.

[2] The requested relief would apply to Future Funds that are sub-advised by Fleet to the extent that Fleet manages the Cash Balances (as defined below) of the Future Fund.

[3] All existing registered management investment companies that intend to rely on the requested order are named as applicants. Any Future Fund or Private Account that relies on the requested order will do so only in accordance with the terms and conditions contained in the application.

cash comprised of cash attributable to shareholder or investment activity (''Uninvested Cash''). Currently, the Advisers must purchase short-term investments separately on behalf of each Portfolio as authorized by a Portfolio's investment policies and restrictions. Applicants assert that these separate purchases result in certain inefficiencies, limitations on the returns that some or all of the Participants could otherwise achieve, and higher costs.

5. Several of the Portfolios are authorized to engage in securities lending transactions for which the Custodian or another person that may or may not be affiliated with the Advisers or the Portfolios may serve as lending agent (''Securities Lending Agent'').[4] In connection with these transactions, the Portfolios could receive cash collateral (''Cash Collateral,'' and together with Uninvested Cash, ''Cash Balances'').

6. Applicants propose to deposit Cash Balances into one or more joint accounts (''Joint Accounts'') established at the Custodian. The daily balance in the Joint Accounts will be invested in one or more of the following: (i) repurchase agreements ''collateralized fully'' as defined in rule 2a–7 under the Act;[5] (ii) interest bearing or discounted commercial paper, including United States dollar denominated commercial paper of foreign issuers; and (iii) any other short-term money market instruments that constitute ''eligible securities'' (as defined in rule 2a–7 under the Act) (collectively, ''Short-Term Investments'').

7. Any repurchase agreements entered into through a Joint Account will comply with Investment Company Act Release No. 13005 (February 2, 1983) and any other existing and future staff positions taken by the SEC and the staff by rule, release, letter or otherwise relating to repurchase agreement transactions. In the event that the SEC or the staff sets forth guidelines with respect to other Short-Term Investments, all such investments made through the Joint Accounts will comply with these guidelines. All purchases through the Joint Accounts will comply with all present and future SEC and staff positions relating to the investment of Cash Collateral in connection with securities lending activities.

8. Participants will invest through a Joint Account only to the extent that, regardless of the Joint Accounts, they would desire to invest in Short-Term Investments that are consistent with their respective investment objectives, policies and restrictions. A Participant's decision to use a Joint Account will be based on the same factors as its decision to make any other Short-Term Investment.

9. The Advisers will be responsible for investing Cash Balances (unless the authority to invest Cash Collateral in instruments pre-approved by the Adviser rests with the Securities Lending Agent) held in the Joint Accounts, establishing accounting and control procedures, operating the Joint Accounts, and ensuring fair treatment of Participants. The Advisers will not participate monetarily in the Joint Accounts.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from participating in any joint enterprise or arrangement in which that investment company is a participant, unless the SEC has issued an order authorizing the arrangement. In passing on these applications, the SEC considers whether the participation of the registered investment company in the proposed joint arrangement is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Participants may be considered ''affiliated persons'' because they may be deemed to be under the common control of the Advisers. Applicants state that the Participants, by participating in the Joint Accounts, and the Advisers, by managing the Joint Accounts, could be deemed to be ''joint participants'' in a transaction within the meaning of section 17(d). In addition, applicants state that each Joint Account could be deemed to be a ''joint enterprise or other joint arrangement'' within the meaning of rule 17d–1.

3. Applicants submit that the proposed Joint Accounts meet the criteria of rule 17d–1 for issuance of an order. Applicants assert that no Portfolio would be in a less favorable position than any other Participant as a result of participating in the Joint Accounts. Each Participant's liability on any Short-Term Investment will be limited to its interest in the Short-Term Investment. Applicants also assert that the proposed operation of the Joint Accounts will not result in any conflicts of interest among any of the Participants or Advisers.

4. Applicants state that the operation of the Joint Accounts could result in certain benefits to the Participants. The Participants may earn a higher rate of return on investments through the Joint Accounts relative to the returns they could earn individually. Under most market conditions, applicants assert, it is possible to negotiate a rate of return on larger investments that is higher than the rate available on smaller investments. In addition, applicants state that the enhanced purchasing power available through a Joint Account may increase the number of dealers willing to enter into Short-Term Investments with the Participants and may reduce the possibility that a Participant's Cash Balances would remain uninvested. Finally, the Joint Accounts may result in certain administrative efficiencies and lessen the potential for error by reducing the number of trade tickets and cash wires that counterparties, the Custodian and the Advisers must process.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The Joint Accounts will not be distinguishable from any other accounts maintained by Participants at the Custodian except that Cash Balances from Participants will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence and will not have indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions which would otherwise require daily management by the Advisers of Cash Balances.

2. Cash Balances in the Joint Accounts will be invested in Short-Term Investments as directed by the Advisers (or, in the case of Cash Collateral, by a Securities Lending Agent, if the authority to invest Cash Collateral in instruments pre-approved by the Adviser rests with the Securities Lending Agent). Short-Term Investments that are repurchase agreements would have a remaining maturity of seven (7) days or less and other Short-Term Investments would

[4] Applicants state that prior to the appointment of any affiliated person of the Advisers or Portfolios as Securities Lending Agent, applicants will seek appropriate exemptive relief from the SEC.

[5] The Portfolios will enter into ''hold-in-custody'' repurchase agreements (i.e., repurchase agreements where the counterparty or one of its affiliated persons may have possession of, or control over, the collateral subject to the agreement) only where cash is received late in the business day and otherwise would be unavailable for investment.

have a remaining maturity of 90 days or less, calculated in accordance with rule 2a–7 under the Act. Cash Collateral in a Joint Account would be invested in Short-Term Investments that have a remaining maturity of 397 days or less, calculated in accordance with rule 2a–7 under the Act.

3. All assets held in the Joint Accounts will be valued on an amortized cost basis to the extent permitted by applicable SEC releases, rules or orders.

4. Each Participant that is a registered investment company valuing its net assets in reliance on rule 2a–7 under the Act will use the average maturity of the instruments in the Joint Account in which such Participant has an interest (determined on a dollar-weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in a Joint Account on that day.

5. In order to ensure that there will be no opportunity for any Participant to use any part of a balance of a Joint Account credited to another Participant, no Participant will be allowed to create a negative balance in any Joint Account for any reason, although each Participant will be permitted to draw down its entire balance at any time, provided that the Advisers determine that such draw-down would have no significant adverse impact on any other Participant in that Joint Account. Each Participant's decision to invest in a Joint Account would be solely at its option, and no Participant will be obligated to invest in a Joint Account or to maintain any minimum balance in a Joint Account. In addition, each Participant will retain the sole rights of ownership to any of its assets invested in the Joint Accounts, including interest payable on such assets invested in the Joint Accounts.

6. The Advisers will administer the investment of Cash Balances in, and the operation of, the Joint Accounts as part of their general duties under their advisory agreements with the Trusts and will not collect any additional or separate fees for advising any Joint Account.

7. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

8. The boards of trustees or directors (''Boards'') of each Trust will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of this application will be met. The Boards will make and approve such changes as they deem necessary to ensure that such procedures are followed. In addition, the Boards will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with the adopted procedures and will only permit a Portfolio to continue to participate in the Joint Accounts if the Board determines that there is a reasonable likelihood that the Portfolio and its shareholders will benefit from the Portfolio's continued participation.

9. Any Short-Term Investment made through the Joint Accounts will satisfy the investment policies and guidelines of all Participants participating in that Short-Term Investment.

10. The Advisers, each Participant, and the Custodian will maintain records documenting, for any given day, each Participant's aggregate investment in a Joint Account and each Participant's *pro rata* share of each Short-Term Investment made through such Joint Account. The records maintained for each Participant shall be maintained in conformity with Section 31 of the Act and the rules and regulations thereunder. A Private Account and any investment adviser not registered under the Advisers Act that advises a Private Account will make available to the SEC, upon request, such books and records with respect to the Private Account's participation in the Joint Accounts.

11. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity, except if: (i) the Advisers believe the investment no longer presents minimal credit risks; (ii) the investment no longer satisfies the investment criteria of all Participants in the investment because of a downgrading or otherwise; or (iii) in the case of a repurchase agreement, the counterparty defaults. The Advisers may, however, sell any Short-Term Investment (or any fractional portion thereof) on behalf of some or all of the Participants prior to the maturity of the investment if the cost of such transactions will be borne solely by the selling Participants and the transaction will not adversely affect other Participants participating in that Joint Account. In no case would an early termination by less than all Participants be permitted if it would reduce the principal amount or yield received by other Participants in the Joint Account or otherwise adversely affect the other Participants. Each Participant participating in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

12. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, calculated pursuant to rule 2a–7 under the Act, will be considered illiquid and, for any Participant that is an open-end management investment company registered under the Act, subject to the restrictions that the Portfolio may not invest more than 10%, in the case of a money market fund, or 15%, in the case of a non-money market fund (or such other percentage as set forth by the SEC from time to time) of its net assets in illiquid securities, and any similar restriction set forth in the Portfolio's investment restrictions and policies, if the Advisers cannot sell the instrument, or the Portfolio's fractional interest in such instrument, pursuant to the preceding condition.

13. Every Participant in the Joint Accounts will not necessarily have its Cash Balances invested in every Short-Term Investment. However, to the extent that a Participant's Cash Balances are applied to a particular Short-Term Investment, the Participant will participate in and own its proportionate share of such Short-Term Investment, and any income earned or accrued thereon, based upon the percentage of such investment purchased with Cash Balances contributed by the Participant.

14. The Joint Accounts will be established as one or more separate cash accounts on behalf of the Participants at the Custodian. Each Participant may deposit daily all or a portion of its Cash Balances into the Joint Accounts. Each Participant whose regular custodian is a custodian other than the Custodian and that wishes to participate in a Joint Account, would appoint the Custodian as a sub-custodian for the limited purposes of: (i) receiving and disbursing Cash Balances; (ii) holding any Short-Term Investments; and (iii) holding any collateral received from a transaction effected through a Joint Account. All Portfolios that so appoint the Custodian will have taken all necessary actions to authorize such bank as its legal custodian, including all actions required under the Act.

For the SEC, by the Division of Investment management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23388 Filed 9–8–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23988; File No. 812–11620]

Maxim Series Funds, Inc. and GW Capital Management, LLC; Notice of Application

September 1, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application: Applicatns seek an amended order to permit shares of any current of future series of the Maxim Series Fund, Inc. to be sold to and held by qualified pension and retirement plans outside the separate account context (''Qualified Plans'').

Applicants: Maxim Series Fund, Inc. (''Maxim Fund'' or ''Fund'') and GW Capital Management, LLC (the ''Adviser'').

Filing Date: The application was filed on May 26, 1999 and amended and restated on August 25, 1999.

Hearing or Notification of Hearing: An amended order granting the application was be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 27, 1999, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Beverly A. Byrne, Esquire, Great-West Life & Annuity Insurance Company, 8515 East Orchard Road, Englewood, Colorado 80111.

FOR FURTHER INFORMATION CONTACT: Ann L. Vlcek, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. The Adviser serves as investment adviser to each portfolio of the Fund. The Adviser is wholly-owned subsidiary of Great-West Life & Annuity Insurance Company, which in turn is a wholly-owned subsidiary of the Great-West Life Assurance Company.

2. The Fund, a registered, open-end management investment company, was incorporated in Maryland in 1981. The Fund currently consists of 28 series. In the future, additional series of shares may be added to the Fund. Shares of the Maxim Fund are currently offered to separate accounts (''Participating Separate Accounts'') of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies'') to serve as investment vehicles for variable annuity and variable life insurance contracts (collectively, ''Variable Contracts'').

3. On September 2, 1993, the Commission issued an order granting exemptive relief to permit shares of the Maxim Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (Investment Company Act Release No. 19676, the ''Original Order''). Applicants represent that all of the facts asserted in the application for the Original Order and any amendments thereto remain true and accurate in all material respects to the extent that such facts are relevant to any relief on which Applicants continue to rely. Applicants state that the Original Order did not address the sale of shares of the Maxim Fund to Qualified Plans outside the separate account context.

4. Applicants state that changes in the federal tax law have created the opportunity for the Maxim Fund to increase its asset base through the sale of shares of Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying Variable Contracts. Treasury Regulations generally require that, to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, Applicants note that the Treasury Regulations also contain an exception to this requirement that permits trustees of a Qualified Plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment of Variable Contracts issued through such segregated asset accounts.

5. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act preceded the issuance of these Treasury Regulations. Thus, applicants assert that the sale of shares of the same investment company to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

Applicants' Legal Analysis

1. Applicants request that the Commission issue an amended order pursuant to Section 6(c) of the 1940 Act, granting exemptive relief, to the extent necessary, from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to permit shares of any current or future series of the Maxim Fund to be sold to and held by Qualified Plans under the conditions set forth herein. Applicants submit that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. The Maxim Fund previously requested and received relief from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit mixed and shared funding by the Original Order did not address the sale of shares to Qualified Plans. Applicants submit that it is appropriate for the Commission to grant this same relief in connection with the sale of shares of Maxim Fund to Qualified Plans.

3. Section 6(c) of the 1940 Act provides in part that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provisions of the 1940 Act or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the

1940 Act as a unit investment trust (''UIT''), Rule 6e–2(b)(15) provides partial exemptions from various provisions of the 1940 Act, including the following: (1) Section 9(a), which makes it unlawful for certain individuals to act in the capacity of employee, officer, or director for a UIT, by limiting the application of the eligibility restrictions in Section 9(a) to affiliated persons directly participating in the management of a registered management investment company; and (2) Sections 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections might be deemed to require ''pass-through'' voting with respect to an underlying fund's shares, by allowing an insurance company to disregard the voting instructions of contract owners in certain circumstances.

These exemptions are available, however, only where the management investment company underlying the separate account (the ''underlying fund'') offers its shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.'' Therefore, Rule 6e–2 does not permit either mixed funding or shared funding because the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any affiliated life insurance company. Rule 6e–2(b)(15) also does not permit the sale of shares of the underlying fund to Qualified Plans outside of the separate account context.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) also provides partial exemption from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions, however, are available only where the separate account's underlying fund offers its shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer its shares to variable annuity separate accounts of the life insurer or of an affiliated insurance company. Therefore, Rule 6e–(T) permits mixed funding but does not permit shared funding and also does not permit the sale of shares of the underlying fund to Qualified Plans. As noted above, the Original Order granted the Maxim Fund exemptive relief to permit mixed and shared funding, but did not expressly address the sale of its shares to Qualified Plans outside of the separate account context.

5. Applicants note that if an underlying fund were to sell shares only to Qualified Plan, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be necessary. Applicants state that the relief for under Rule 6e–(b)(15) and Rule 6e–3(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans.

6. Applicants state that changes in the federal tax law have created the opportunity for the Maxim Fund to increase its asset base through the sale of shares to Qualified Plans. Section 817(h) of the Code imposes certain diversification standards on the assets underlying Variable Contracts. Treasury Regulations generally require that, to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, Applicants not that the /Treasury Regulations also contain an exception to this requirement that permits trustees of a Qualified Plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset account, whithout adversely affecting the status of the investment company as an adequately diversified underlying investment of Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

7. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act preceded the issuance of these Treasury Regulations. Thus, the sale of shares of the same investment company to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–(b)(15) and 6e–3(T)(b)(15).

8. Section 9(a) of the 1940 Act provides that is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(A)(1) or (2). Rules 6e–(2)b)(15) and 6e–3(T)(b)(15) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying portfolio investment company.

9. Applicants state that the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that what is appropriate in light of the policy and purposes of Section 9. Applicants submit that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act of apply the provisions of Section 9(a) to the many individuals involved in an insurance company complex most of whom typically will have no involvement in matters pertaining to investment companies funding the separate accounts.

10. The Maximum Fund previously requested and received relief from Section 9(a) and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to the extent necessary to permit mixed and shared funding. Applicants submit that the relief previously granted from Section 9(a) to the Maximum Fund will in no way be affected by the proposed sales of shares to Qualified Plans outside of the separate account context. Those individuals who participate in the management or administration of the Maxim Fund will remain the same regardless of whether Qualified Plans invest therein. Applicants maintain that more broadly applying the requirements of Section 9(a) because of investments by Qualified Plans would serve no regulatory purpose. Moreover, Qualified Plans, unlike separate accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act.

11. Applicants state that Rules 6e–2(b)(15(iii) and 6e–3(T)(b)(15(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard contract owners' voting instructions if

the contract owners initiate certain changes in an underlying fund's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules). Applicants request relief from these provisions to the extent necessary to permit shares of the Maxim Fund to be sold to and held by Qualified Plans consistent with the foregoing provisions regarding a Participating Insurance company's ability to disregard voting instructions under certain circumstances.

12. Applicants assert that Qualified Plans, which are not registered as investment companies under the 1940 Act, have no requirement to pass through the voting rights to plan participants. Applicants state that applicable law expressly reserves voting rights to certain specified persons. Under Section 403(a) of the Employee Retirement Income Security Act (''ERISA''), shares of a fund sold to a Qualified Plan must be held by the trustees of the Qualified Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (1) when the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Qualified Plans and not contrary to ERISA: and (2) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two above exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract holders and Qualified Plan investors with respect to voting of the respective Fund's shares. Accordingly, Applicants state that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans (outside of the separate account context) since the Qualified Plans are not entitled to pass-through voting privileges.

13. Even if a Qualified Plan were to hold a controlling interest in an underlying fund, Applicants believe that such control would not disadvantage other investors in such underlying fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in the Maxim Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed or shared funding, Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

14. Applicants state that some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. In sum, Applicants maintain that the purchase of shares of the Maxim Fund by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

15. Applicants state that they do not believe that the sale of the shares of the Maxim Fund to Qualified Plans outside of the separate account context will increase the potential for material irreconcilable conflicts of interest between among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners.

As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable contracts held in an underlying mutual fund. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. Applicants believe that the Treasury Regulations discussed above specifically permit ''qualified pension or retirement plans'' and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code nor the Treasury Regulations or revenue rulings thereunder presents any inherent conflict of interest.

16. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Maxim Fund. When distributions are to be made, and a Participating Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Participating Separate Account or Qualified Plan will redeem underlying fund shares at net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Qualified Plan will make distributions in accordance with the terms of the Qualified Plan.

17. Applicants maintain that it is possible to provide an equitable means of giving voting rights to Participating Separate Account contract owners and to Qualified Plans. In connection with any meeting of shareholders, the Fund will inform each shareholder, including each Participating Insurance Company and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participating agreement with the Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Fund would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

18. Applicants have concluded that even if there should arise issues with respect to a state insurance commissioner's veto powers over investment objectives where the interests of contract owners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved since the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Fund. Applicants note that the insurance commissioners have been given to veto power in recognition

of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Fund and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

19. Applicants also state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under Qualified Plans and contract owners of Participating Separate Accounts from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

20. Applicants state that the sale of shares of the Maxim Fund to Qualified Plans outside of the separate account context would permit a greater amount of assets available for investment by the Maxim Fund, thereby promoting economies of scale, by permitting increased safety through asset diversification, and by making the addition of new series more feasible. Applicants assert that making the Maxim Fund available to Qualified Plans will encourage more insurance companies to offer Variable Contracts. Applicants believe that this should result in increased competition with respect to both Variable Contract design and pricing, which in turn can be expected to result in more produce variation and lower charges to investors.

21. Applicants assert that, regardless of the type of shareholders in each portfolio of the Maxim Fund, the Adviser is or would be contractually and otherwise obligated to manage each portfolio solely and exclusively in accordance with that portfolio's investment objectives, policies and restrictions as well as any guidelines established by the Board of Directors of the Fund (the ''Board''). The Adviser works with a pool of money and (except in a few instances where this may be required in order to comply with state insurance laws) does not take into account the identity of the shareholders. Thus, each portfolio of the Fund will be managed in the same manner as any other mutual fund. Applicants therefore see no significant legal impediment to permitting the sale of shares of the portfolios of Maxim Fund to Qualified Plans.

22. Applicants state that the Commission has permitted this relief in connection with sales to Qualified Plans. Applicants state that the amended order sought in the application is identical to precedent with respect to the conditions Applicants proposes for the sales to Qualified Plans.

Applicants' Conditions

If the requested amended order is granted, Applicants consent to the following conditions (in addition to the conditions applicable pursuant to the Original Order):

1. Any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a portfolio (or class thereof) of the Maxim Fund (a ''Qualified Plan Participant'') shall report any potential or existing conflicts to the Board. Such Qualified Plan Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board will all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation on the part of each Qualified Plan Participant to inform the Board whenever voting instructions relating to the Maxim Fund are disregarded. The responsibility to report such conflicts and information, and to assist the Board will be contractual obligations of such Qualified Plan Participants under the agreement governing participation in the Fund and such agreement shall provide that such responsibilities will be carried out with a view only to the interests of participants in a Qualified Plan.

2. The Board will monitor the Fund for the existence of any material irreconcilable conflict among the interests of the contract owners of all the separate accounts investing in the Fund and participants in Qualified Plans investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relative proceeding; (d) the manner in which the investments of the Fund are being managed; (e) a difference in voting instructions given by variable annuity and variable life insurance contract owners; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of its participants.

3. If it is determined by a majority of the Board of the Maxim Fund, or by a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant Qualified Plans shall, at their own expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps should include: (a) Withdrawing the assets allocable to some or all of the Qualified Plans from the Fund or any portfolio thereof and reinvesting such assets in a different investment medium, which may include another portfolio of the Fund; and (b) establishing a new registered management investment company or managed separate account.

4. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard voting instructions of participants, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Fund (or portfolio thereof), to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of a material irreconcilable conflict and bearing the cost of such remedial action, will be a contractual obligation of all Qualified Plans under any agreement governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of participants in a Qualified Plan. For purposes of this condition, a majority of the disinterested members of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or the Adviser be required to establish a new funding medium for any Qualified Plan. Further, no Qualified Plan shall be required by this condition to establish a new funding medium for any Qualified Plan if: (a) a majority of its participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or

(b) pursuant to governing Qualified Plan documents and applicable law, the

Qualified Plan makes such decision without a vote of its participants.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly and in writing to Qualified Plans.

6. Each Qualified Plan will vote as required by applicable law governing Qualified Plan documents.

7. All reports of potential or existing conflicts received by a Board and all Board actions with regard to determining the existence of a conflict of interest, notifying Qualified Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. The Maxim Fund will disclose in its prospectus that: (a) shares of the Fund may be offered to insurance company separate accounts on a mixed and shared basis and to Qualified Plans; (b) material irreconcilable conflicts may arise between the interests of Variable Contract owners participating in the Fund and the interests of Qualified Plans investing in the Fund; and (c) the Board of the Fund will monitor events in order to identify the existence of any material irreconcilable conflict and determine what action, if any, should be taken in response to such material irreconcilable conflict.

9. No less than annually, Qualified Plan Participants that have executed a participation agreement upon becoming an owner of 10% or more of the assets of a Portfolio (or a class thereof) of Maxim Fund shall submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Qualified Plan Participants to provide these reports, materials and data shall be a contractual obligation of all the Qualified Plan Participants under the agreements governing their participation in the Funds.

10. The Fund will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10% or more of the assets of the Fund (or portfolio thereof) unless such Qualified Plan executes a fund participation agreement with the Fund, including the conditions set forth herein to the extent applicable. A Qualified Plan will execute a shareholder participation agreement containing an acknowledgment of this condition at the time of its initial purchase of shares of such Fund.

Conclusions

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23389 Filed 9–8–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41810; File No. SR–OCC–99–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Acceptance of Letters of Credit for Margin Purposes

August 30, 1999.

On January 22, 1999, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–99–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] to permit OCC to replace its current letter of credit form with a letter of credit form developed by the Uniform Clearing Group (''UCG'').[2] Notice of the proposal was published in the **Federal Register** on June 14, 1999.[3] On August 2, 1999, OCC amended the proposed rule change.[4] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change will amend OCC's Rule 604(c) to incorporate the use of the Uniform Letter of Credit (''ULC'') created by UCG. First, the rule change will require the issuing bank to make payment against the ULC within sixty minutes of presentment of a demand for payment. Second, the rule change will add a new paragraph to Rule 604(c) that gives OCC flexibility in specifying acceptable expiration dates for the ULC. Third, the rule change will delete the provisions of OCC's rules that permit a clearing member to issue instructions to OCC that restrict a previously unrestricted letter of credit or a portion thereof to serve as margin only for the clearing member's customers' accounts. Finally, the rule change will delete the last sentence of Rule 604(c)(4), which allows members to deposit letters of credit denominated in any foreign currency that is a trading currency.

II. Discussion

Section 17A(b)(3)(F) [5] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. As set forth below, the Commission finds that the rule change is consistent with OCC's obligations under the Act.

By shortening the time period from the third banking day to 60 minutes, the proposed rule change should reduce the likelihood that OCC will be unable to fulfill its settlement obligations while it waits for a issuing bank to honor its demand on a letter of credit.

Currently, OCC requires that a letter of credit expire no later than the first day of the next calendar quarter. By allowing letters of credits to be issued with expiration dates more than one calendar quarter in the future, OCC may be able to simplify its record-keeping, and its members may be able to reduce their costs associated with obtaining letters of credit.

According to OCC, clearing members generally do not use the provisions that permit a clearing member to restrict a previously unrestricted letter of credit. Furthermore, placing the restriction on the face of the letter of credit may

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[1] 15 U.S.C. 78s(b)(1).

[2] The UCG is an organization composed of all major securities and futures clearing organizations and depositories in the United States. The members of the UCG include the Boston Stock Exchange Clearing Corporation, The Depository Trust Company, Government Securities Clearing Corporation, MBS Clearing Corporation, National Securities Clearing Corporation, OCC, Board of Trade Clearing Corporation, Chicago Mercantile Exchange, Clearing Corporation of New York, Kansas City Board of Trade, Minneapolis Grain Exchange, New York Mercantile Exchange, Emerging Markets Clearing Corporation, and Clearing Corporation for Options and Securities.

[3] Securities Exchange Act Release No. 41486 (June 7, 1999), 64 FR 31889.

[4] The amendment filed by OCC was a technical amendment to the proposed rule change and as such did not require republication of the notice.

[5] 15 U.S.C. 78q–1(b)(3)(F).

provide better notice of the restriction and should reduce the likelihood of confusion over which letters are intended to be restricted and which letters are not. Finally, by expressly stating that letters of credit may be denominated in any foreign trading currency is unnecessary in light of other provisions in OCC's rules that specify that letters of credit may be denominated in any currency.

The Commission also finds that the rule change is consistent with OCC's obligations under the Act to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The ULC was developed by OCC and the other members of the UCG to foster uniformity among the various U.S. securities and futures clearing organizations with respect to letters of credit that are deposited as collateral. This uniformity will help reduce operational burdens for securities and futures industry participants and their letter of credit issuers. It should also enhance the legal certainty that the letters of credit received by OCC and other UCG members as collateral will be enforceable.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It Is Therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–99–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23390 Filed 9–8–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–(a)(12).

SOCIAL SECURITY ADMINISTRATION

Modifications to the Disability Determination Procedures; Disability Claims Process Redesign Prototype; Correction

AGENCY: Social Security Administration.

ACTION: Notice of a prototype involving modifications to the disability determination procedures; Correction.

SUMMARY: The Social Security Administration (SSA) published a document in the **Federal Register** of August 30, 1999, announcing a prototype involving a combination of modifications to the disability determination process. The document contained an incorrect address for the Brooklyn branch of the New York Disability Determination Services (DDS).

FOR FURTHER INFORMATION CONTACT: Harry Pippin, Social Security Administration, Office of Disability, Disability Process Redesign Staff, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, 410–965–9203.

Correction

In the **Federal Register** of August 30, 1999, in FR Doc. 99–22421, on page 47219, in the third column under the caption ''Group II'', correct the second address listed for the branch DDS for the state of New York to read as follows: State of New York, Division of Disability Determinations, 300 Cadman Plaza West, 13th Floor, Brooklyn, NY 11201–2701.

Dated: August 31, 1999.

Sue C. Davis,

Director, Disability Process Redesign Team.

[FR Doc. 99–23338 Filed 9–8–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week of August 27, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6163

Date Filed: August 24, 1999

Parties: Members of the International Air Transport Association

Subject:

PTC23 AFR–TC3 0079 dated August 27, 1999

Mail Vote 032—TC23/TC123 Africa–TC3

Special Passenger Amending Resolution from Korea to Libya

Intended effective date: September 1, 1999

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–23391 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending August 27, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–6166.

Date Filed: August 24, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 21, 1999.

Description: Application of Continental Airlines, Inc. pursuant to 49 U.S.C. 41108 and 41102 and subpart Q, applies for a certificate of public convenience and necessity, authoring Continental to provide scheduled foreign air transportation of persons, property and mail between Newark, New Jersey and Buenos Aires, Argentina, and for an allocation of the seven U.S.-Argentina frequencies which become available September 1, 2000.

Docket Number: OST–99–6172.

Date Filed: August 26, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 23, 1999.

Description: Application of American Airlines pursuant to 49 U.S.C. 41102 and subpart Q, applies for an amendment to its certificate of public convenience and necessity for route 560 (U.S.-Mexico) to engage in foreign air transportation of persons, property, and mail on the following route segments: Chicago-Acapulco, Chicago-Monterrey, Chicago-San Jose del Cabo, Dallas/Ft. Worth-Leon, Dallas/Ft. Worth-San Jose del Cabo, Los Angeles-Guadalajara.

Docket Number: OST–99–6173.

Date Filed: August 27, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 24, 1999.

Description: Application of Trans Borinquen Air, Inc. pursuant to 49 U.S.C. 41102 and subpart Q, applies for

a certificate of public convenience and necessity authorizing Interstate and Foreign Charter air transportation (cargo only) to conduct all cargo operations between United States, Puerto Rico, Dominican Republic and the Caribbean.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–23392 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

Maritime Administration

[USCG 1998–3553]

Marine Transportation System: Waterways, Ports, and Their Intermodal Connections

AGENCY: Coast Guard, and Maritime Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard and the Maritime Administration announce the availability of the Report to Congress ''An Assessment of the Marine Transportation System''. A task force comprised of private and public members prepared the Report, which was mandated in the Coast Guard Authorization Act of 1998. The Report is available for your review and comment.

DATES: Comments must be received by the Docket Management Facility by November 8, 1999.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG 1998–3553), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. The comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also electronically access the public docket for this notice on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, or the Marine Transportation System initiative, contact Ms. Margie Hegy, U.S. Coast Guard (G–MW), telephone 202–267–0415 or Mr. John Swank, Maritime Administration (MAR–240), telephone 202–366–5807. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related material on the Report. If you do so, please include your name and address, identify the docket number for this notice (USCG–1998–3553), and give the reasons for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ × 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

A copy of the Report is available for review in the docket and may be electronically accessed on the Internet at *http://dms.dot.gov.* To request a printed copy of the Report, contact Ms. Joyce Short, telephone 202–267–6164, or Ms. Joann Spittle, telephone 202–366–4357.

Background

On November 13, 1998, the U.S. Congress directed, in Section 308 of the Coast Guard Authorization Act of 1998, that ''The Secretary of Transportation, through the Coast Guard and the Maritime Administration, shall, in consultation with the National Ocean Service of the National Oceanic and Atmospheric Administration, the Corps of Engineers, and other interested Federal agencies and departments, establish a task force to assess the adequacy of the Nation's marine transportation system (including ports, waterways, harbor approach channels, and their intermodal connections) to operate in a safe, efficient, secure, and environmentally sound manner.''

The task force was to consider the capability of the MTS, the adequacy of the depth of channels and harbors, and the cost to the Federal government of accommodating projected increases in foreign and domestic traffic over the next 20 years. Evaluations of the Nation's capability to dispose of dredged materials and the future of the navigational aid system were additional components of this effort. This Report summarizes the results of the task force's assessment and constitutes the response to Congress.

The Report reflects a highly collaborative effort among public sector agencies, private sector organizations, and other stakeholders in the MTS. The process began with seven regional listening sessions in spring 1998, hosted by the U.S. Coast Guard, the Maritime Administration, and 12 other Federal agencies. The purpose of these sessions was to learn what users, stakeholders, and the public perceived to be the current state of the MTS and its future needs.

The input received at the regional listening sessions became the basis for a National Conference on the Marine Transportation System hosted by the Secretary of Transportation in November 1998. Executives from industry, labor, and government participated in this conference. Through breakout groups and plenary sessions, the participants addressed two overarching issues—the development of a shared national vision for the MTS and public and private sector coordination of MTS activities. Participants also addressed specific MTS issues concerning safety, competitiveness, infrastructure, security, and the environment.

After the National Conference, the Secretary established the Congressionally mandated MTS Task Force. The Task Force included MTS users and service providers, such as Federal agencies and departments, ports, commercial carriers, shippers, labor, recreational boaters, fishermen, environmental organizations, and other MTS stakeholders.

The Report is available for your review and comment. We request information from the general public and system users on the strategic areas of action recommended and how to accomplish them. Identification of sub-issues and relevant data or other information that will assist us in developing strategies and action plans is

also requested. In addition, information on relevant MTS activities that are ongoing or planned within the public or private sector is requested.

Next Steps

The Report is just another step in our process and is not intended to recommend absolute solutions. Comments received during the comment period will be considered by the Interagency Committee for the Marine Transportation System (ICMTS) as it begins the work to implement the recommendations. There is much work ahead for the public/private partnership that has emerged from this initiative.

James M. Loy,

Admiral, U.S. Coast Guard, Commandant.

Clyde J. Hart, Jr.,

Maritime Administrator.

[FR Doc. 99–23422 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–31]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 30, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9__NPRM__cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 3, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29583.
Petitioner: Dassault Aviation.
Section of the FAR Affected: 14 CFR 25.785(b).
Description of Relief Sought: To allow installation of one or more side-facing divans on Falcon Model 2000 airplanes.

Dispositions of Petitions

Docket No.: 24541.
Petitioner: Boeing Commercial Airplane Group.
Section of the FAR Affected: 14 CFR 91.611.
Description of Relief Sought/ Disposition: To permit BCAG to conduct ferry flights with one engine inoperative on its Boeing 707, 720, 727, 747, DC–10, MD–10, and MD–11 series airplanes without obtaining a special ferry permit.
GRANT: 7/28/99, Exemption No. 4467G.

Docket No.: 28673.
Petitioner: EAA Aviation Foundation and Experimental Aircraft Association.
Section of the FAR Affected: 14 CFR 91.315, 119.5(g), and 119.21(a).
Description of Relief Sought/ Disposition: To permit EAA to operate its Boeing B–17 aircraft, which is certificated in the limited category, for the purpose of carrying its members for compensation or hire in its former military vintage airplane on local flights for educational and historical purposes. The exemption is further amended by (1) revising condition No. 13(c) to allow flight operations with a minimum flight visibility of not less than 3 statute miles and (2) revising condition No. 13(d) to allow flight operations with a minimum ceiling of not less than 1500 feet AGL.
GRANT: 7/30/99, Exemption No. 6541B.

Docket No.: 28964.
Petitioner: Raytheon Aircraft Company.
Section of the FAR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/ Disposition: To allow RAC to obtain airworthiness approval tags for its Hawker Model parts in accordance with §§ 21.21 and 21.303, and export those class II and class III parts located at certain Raytheon facilities outside the United States and modify conditions Nos. 1 and 2, adding condition No. 4, and redesignating condition No. 4 of the original exemption as condition No. 5.
GRANT, 7/26/99, Exemption No. 6720A.

Docket No.: 28991.
Petitioner: Joe Brigham, Inc.
Section of the FAR Affected: 14 CFR 133.33 (d) and (e) and 133.45(d).
Description of Relief Sought/ Disposition: To allow JBI to operate a Bell Model UH–1B helicopter (Huey) (Registration No. N204JB, Serial No. 63–13088), a restricted-category helicopter, in external-load operations over congested areas, subject to an approved Congested Area Plan.
DENIAL, 7/30/99, Exemption No. 6934.

Docket No.: 29342.
Petitioner: Airbus Industrie.
Section of the FAR Affected: 14 CFR 61.77(a).
Description of Relief Sought/ Disposition: To permit pilots and flight engineers employed by Airbus Industrie to be eligible for the issuance of special purpose pilot and flight engineer authorizations, under parts 61 and 65, as appropriate, for the purpose of performing delivery flights of U.S.-registered airplanes between foreign countries and from a foreign country to the United States.
GRANT, 7/28/99, Exemption No. 6850A.

Docket No.: 29451.
Petitioner: Boeing Commercial Airplane Group.
Section of the FAR Affected: 14 CFR 25.562(b)(2).
Description of Relief Sought/ Disposition: To permit relief from the floor warpage testing requirement for flight deck seats on the Boeing Model 767–400ER airplanes.
GRANT, 8/4/99, Exemption No. 6935.

Docket No.: 29598.
Petitioner: McDonnell Douglas Corp., now a wholly owned subsidiary of The Boeing Company.

Section of the FAR Affected: 14 CFR 25.571(b) and 25.671(c)(1).

Description of Relief Sought/ Disposition: To allow the McDonnell Douglas Corporation, now a wholly owned subsidiary of The Boeing Company, three years to analyze, redesign, and retrofit, as necessary, the flap system on the Model 717–200 airplane, in order to show compliance with the subject regulations.

GRANT, 8/20/99, Exemption No. 6951.

Docket No.: 29619.

Petitioner: Helicopter Experts, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit HEI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in each aircraft.

GRANT, 7/30/99, Exemption No. 6933.

Docket No.: 29621.

Petitioner: Ravenaire Aviation Services.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, appendices I & J of part 121.

Description of Relief Sought/ Disposition: To permit RAS to conduct sightseeing rides at Genesee County Airport for a pancake breakfast on July 18, 1999, for compensation or hire, without complying with the drug testing and alcohol abuse prevention requirements of part 135.

GRANT, 7/15/99, Exemption No. 6923.

Docket No.: 29627.

Petitioner: Canton Airport Board.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 1135.353, appendices I & J of part 121.

Description of Relief Sought/ Disposition: To permit CAB to conduct local sightseeing rides at Ellingson Field, Canton, South Dakota, for the annual Canton Car Show on July 25, 1999, for compensation or hire, without complying with the drug testing and alcohol abuse prevention requirements of part 135.

GRANT, 7/15/99, Exemption No. 6924.

Docket No.: 29637.

Petitioner: South Haven Area Regional Airport Authority.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, appendices I & J of part 121.

Description of Relief Sought/ Disposition: To permit SHARAA to conduct sightseeing rides at South Haven Area Regional Airport for an annual, charity fly-in breakfast on August 15, 1999, for compensation or hire, without complying with the drug testing and alcohol abuse prevention requirements of part 135.

GRANT, 8/10/99, Exemption No. 6937.

Docket No.: 29646.

Petitioner: CREST–AERO.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, appendices I & J of part 121.

Description of Relief Sought/ Disposition: To permit CREST–AERO to conduct sightseeing rides at Crest Airpark, during the annual fundraising event, ''Covington Days,'' on July 17 and 18, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

GRANT, 7/15/99, Exemption No. 6925.

Docket No.: 29653.

Petitioner: Punxsutawney Municipal Airport Authority.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, appendices I & J of part 121.

Description of Relief Sought/ Disposition: To permit PMAA to conduct local sightseeing rides at Punxsutawney Municipal Airport for its airport awareness days on July 24 and 25, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

GRANT, 7/21/99, Exemption No. 6927.

Docket No.: 29679.

Petitioner: Historical Aviation Organization of Logan County.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, appendices I & J of part 121.

Description of Relief Sought/ Disposition: To permit HAOLC to conduct local sightseeing rides Bellefontaine Municipal Airport, for ''Airfest 99'' on August 7 and 8, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

GRANT, 8/5/99, Exemption No. 6936.

Docket No.: 29699.

Petitioner: Skyfest Michiana and Goshen Air Center.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, appendices I & J of part 121.

Description of Relief Sought/ Disposition: To permit GAC to conduct local sightseeing rides at Goshen Municipal Airport, for the Goshen Air Show hosted by Skyfest Michiana, August 13, 14 and 15, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

GRANT, 8/13/99, Exemption No. 6939.

Petition for Exemption

Docket No.: 29583.

Petitioner: Dassault Aviation.

Regulations Affected: 25.785(b).

Description of Petition: Relief is requested to allow installation of one or more side-facing divans on Falcon Model 2000 airplanes.

[FR Doc. 99–23393 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number ANM–99–1]

Improving Flightcrew Awareness During Autopilot Operation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of policy statement; request for comments.

SUMMARY: This document announces an FAA proposed general statement of policy applicable to the type certification of transport category airplanes. This document advises the public, in particular manufacturers of transport category airplanes and automatic flight control (autopilot) systems, that FAA, when certifying automatic pilot installations, intends to evaluate various items that will improve the flightcrew's awareness during autopilot operation. This notice is necessary to advise the public of FAA policy and give all interested persons an opportunity to present their views on the policy statement.

DATES: Comments must be received on or before October 12, 1999.

ADDRESSES: Send all comments on this policy statement to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dale Dunford, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane & Flightcrew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2239; fax (425) 227–1100; e-mail: Dale.Dunford@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this policy statement by submitting such written data, views, or

arguments as they may desire. Commenters should identify the Policy Statement Number of this policy statement, and submit comments, in duplicate, to the address specified above. The Transport Airplane Directorate will consider all communications received on or before the closing date for comments.

Background

Recent incidents and accidents that have occurred worldwide involving pilot/autopilot interactions have emphasized to the FAA the need to reexamine the current certification policy relative to autopilot issues.

In 1991, the National Transportation Safety Board (NTSB) began an investigation as a result of an incident involving a transport category airplane that experienced an inflight upset. When the airplane was in cruise at flight level 310, the flightcrew noted that the inertial navigation system ''FAIL'' lights had illuminated. When the flightcrew crosschecked the instrument panel, they determined that the airplane was in a steep right-wing-down banking angle. The flight lost approximately 10,000 feet of altitude and the airplane approached supersonic speeds before recovery could be completed. The airplane eventually made a successful landing, and there were no injuries.

Investigation of the incident revealed, among other things, that a failure in the autopilot system could cause an airplane to slowly roll into a banking attitude. The roll rate induced from such a failure of the autopilot system may be barely perceptible to the flightcrew; it also may be difficult to detect without external visual attitude references or continuous close monitoring of the flight attitude instruments.

The NTSB has advised the FAA of its concern that some autopilot failures can result in changes in attitude at rates that may be imperceptible to the flightcrews, and thus remain undetected until the airplane reaches significant attitude deviations.

FAA Evaluation of Flight Crew/Flight Deck Automation Interfaces

In 1994, the FAA launched an in-depth study to evaluate all flightcrew/flight deck automation interfaces of current generation transport category airplanes. The FAA charted a Human Factor Team to conduct the study. Team members included experts from the FAA, the European Joint Airworthiness Authorities (JAA), and academia. The objective of the study was to look beyond the label of ''flightcrew error,'' and investigate the contributing factors from the perspective of design, flightcrew training/qualifications, operations, and regulatory processes. The team also was tasked to develop recommendations to address any problems identified.

With regard to autopilot issues, the Team identified several specific problematic issues, including:

- Pilot/autopilot interactions that create hazardous out-of-trim conditions;
- Autopilots that can produce hazardous speed conditions and may attempt maneuvers that would not normally be expected by a pilot; and
- Insufficient wording in the Airplane Flight Manual regarding the capabilities and limitations of the autopilot.

Regulatory Initiatives

The FAA has acknowledged the autopilot issues raised by both the NTSB and the Human Factor Team, and has taken steps to address them. For example, the FAA has tasked a new Aviation Regulation Advisory Committee (ARAC) working group to review and propose harmonized revisions to the following three conditions:

- *14 CFR 25.1329* (''Automatic Pilot System''), which contains FAA's standard for certifying automatic pilot systems on transport category airplanes;
- *Advisory Circular (AC) 25–1329–1A* (''Automatic Pilot System Approval''), dated July 8, 1968, which describes an acceptable means by which compliance with the automatic pilot installation requirements of § 25.1329 may be shown; and
- *14 CFR 25.1335* (''Flight Director Systems''), which contains FAA's standards for certifying flight director systems on transport category airplanes.

The work of this ARAC working group, known as the Flight Guidance Systems Harmonization Working Group (FGSHWG), currently is in progress.

Current Certification Standards

In general, automatic pilot systems on transport category airplanes traditionally have been certified in accordance with § 25.1329 on the basis that they are conveniences to reduce flightcrew workload, and that they do not relieve the flightcrew of any responsibility for assuring proper flight path management. As a result, the autopilot evaluation criteria contained in AC 25.1329–1A, are primarily concerned with the effects of autopilot failures on the airplane. The most recent revision to AC 25–7A, ''Flight Test Guide for Certification of Transport Category Airplanes,'' also defines some evaluation criteria for determining whether the autopilot is performing its intended function of relieving the flightcrew of some of their control functions.

Accordingly, even when the flightcrew is not manually performing a specific flight path control function, the FAA expected the flightcrew to be ''aware'' when this function is not being performed safely, and to take appropriate and timely corrective action. The installation certification guidelines presented in AC 25.1329–1A, for example, state ''* * * at least one pilot (should) monitor the behavior of the airplane and associated autopilot performance at all times.''

In certifying all autopilot systems to date, the FAA has accepted the premise that the capability for this flightcrew ''awareness'' comes from either:

- Adherence to operational training and/or procedures,
- A dedicated failure detection and annunciation feature on the flight deck; or
- Inherent aircraft operational cues (e.g., a perceived change of aircraft attitude or change of engine noise).

As evidenced by recent relevant accident and incident cases, one cannot assume that the flightcrew will reliably detect and accommodate adverse autopilot behavior solely from inherent operational cues; other cues are needed.

Inherent operational cues can be insufficient because:

1. During normal autopilot operations, the flightcrew may not be able to detect operational cues related to significant changes in aerodynamic characteristics, such as drag and controllability, as effectively as during manual operation. One specific example of this is the change of control response or ''feel'' during low speed operations as ice accumulates on the airplane surfaces, gradually and imperceptibly reducing control authority. This condition can progress, intangible to the flightcrew, until the autopilot exhausts its control authority and automatically disengages. The flightcrew then is suddenly required to take manual control of the airplane, which (1) is not in proper trim, (2) is at a low margin-to-stall, and (3) has significantly degraded aerodynamic performance.

2. As pointed out by the NTSB, and acknowledged by the FAA, some autopilot failures can result in changes in attitude at rates that may be imperceptible to the flightcrew, and thus remain undetected until the airplane reaches significant attitude deviations.

Neither the certification standards nor the relevant advisory material currently contain actions or detailed guidance to address these types of scenarios. In light

of this, the FAA finds it necessary and appropriate to provide additional guidelines for the provision of design features needed to enable flightcrew control and awareness of the unintended changes of speed and attitude during the operation of the autopilot system. This information, presented here in the form of a general statement of policy, clarifies, details, and formally states items that the FAA:

- Assumes concerning the flightcrew's awareness capability;
- Employs or accepts on an on-going basis in making compliance findings relative to autopilot systems; and
- Considers frequently in the development of a means to prevent recurrences of the accident/incident scenarios described previously, or to enable an appropriate and timely response to other situations that could result in similar circumstances.

Effect of General Statement of Policy

Much of the information presented has been developed from service experience garnered and flightcrew conventions practices throughout the years since the guidance contained in AC 25.1329–1A was published in 1968. The FAA has assembled this information and is presenting it in this general statement of policy as a set of ''guidelines'' that are appropriate for use with § 25.1329 for autopilot certification.

Additionally, as discussed previously, actions currently are underway to revise the applicable airworthiness standards (§ 25.1329) and associated advisory material (AC 25.1329–1A) to more fully address the autopilot system and other flight deck issues. Until then, the guidance provided in this general statement of policy would serve as a reference to assist in the certification of new autopilot systems.

However, the general policy stated in this document is not intended to establish a binding norm; it does not constitute a new regulation and the FAA would not apply or rely upon it as a regulation. The FAA Aircraft Certification Offices (ACO) that certify transport category airplanes and/or the automatic pilot systems installed on them should generally attempt to follow this policy, when appropriate. However, in determining compliance with certification standards, each ACO has the discretion not to apply these guidelines where it determines that they are inappropriate. The ACO should coordinate with the Transport Airplane Directorate, for purposes of standardization, whenever the ACO determines that some deviation from this policy is appropriate. Applicants should expect that the certificating officials would consider this information when making findings of compliance relevant to new certificate actions. Applicants also may consider the material contained in this proposed policy statement as supplemental to that currently contained in AC 25.1329–1A when developing a means of compliance with the relevant certification standards.

Also, as with all advisory material, this statement of policy identifies one means, but not the only means, of compliance.

Because this proposed general statement of policy only announces what the FAA seeks to establish as policy, the FAA considers it to be an issue for which public comment is appropriate. Therefore, the FAA requests comment on the following proposed general statement of policy relevant to certification standards for autopilot systems.

For the convenience of the reader, this proposed general statement of policy has been formatted in outline form.

General Statement of Policy

1. General

1.a. Operational experience has shown that flightcrews may not have adequate awareness of potentially hazardous aircraft states or adequate capability to anticipate sudden, unexpected actions of the autopilot. In this regard, the autopilot design should take into consideration conditions that could create hazardous deviations in the flight path, specifically:

- Conditions that could make continued autopilot operation unsafe, or
- Conditions that could cause manual control of an upset following autopilot disengagement to require exceptional piloting skill or alertness. (Refer to 14 CFR § 25.1329(f), ''Automatic Pilot System''.)

Note that automatic disengagement may not be the safest autopilot response for all cases, particularly with trim conditions that could lead to a significant upset.

1.b. If automatic functions are provided that may be used with the autopilot (e.g., automatic thrust control or yaw damper), and use of the autopilot is permitted with any of these functions inoperative, then the design of the autopilot should comply with the provisions of this general policy statement and Advisory Circular 25.1329–1A, ''Automatic Pilot Systems Aproval'' with these functions operative and inoperative.

1.c. The auto pilot should perform its intended function in all configurations in which it may be used throughout all appropriate maneuvers and environmental conditions, including turbulence and icing, unless an appropriate operating limitations or statement is included in the Airplane Flight Manual.

2. Definitions

2.a. The term *autopilot* is synonymous with the term *automatic pilot.* The term autopilot includes the sensors, computers, power supplies, servo-motors, servo-actuators, and associated wiring necessary for its function. It includes any displays and controls necessary for the pilot to manage and supervise the system.

2.b. The term *autothrust* is synonymous with the term *autothrottle* or *automatic throttle control.*

2.c. The term *hazardous flight path deviations* includes deviations from the intended flight path that may lead to a hazardous state, aircraft attitude and attitude rates that will place the airplane in a hazardous state, and extreme high and low energy conditions that place the airplane in a hazardous state.

2.d. The term *extemely improbable* is defined as the average probability per flight hour of the occurrence of an event (e.g., a failure condition) which is on the order of 1×10^{-9} or less. Catastrophic failure conditions must be extremely improbably (ref. § 25.1309(b)(1)).

2.e. The term *warning* is defined as an indication for a hazard requiring immediate corrective action by the flightcrew.

2.f. The term *caution* is defined as an indication for an event requiring immediate crew awarness and possibly requiring subsequent timely corrective crew action.

3. Design, Installation, and Maintenance

3.a. The autopilot system design should not possess characteristics, in normal operation or when failed, that would degrade safety or lead to an unsafe condition, unless such failures can be limited by design or the effects can be limited and mitigated by the pilot response within a reasonable time. The allowable probability of any failure should be based on its safety effects in accordance with the requirement of § 25.1309.

3.b. Adequate precautions should be taken in the design process, and adequate procedures should be specified in the maintenance manual, to prevent the incorrect installation, connection, or adjustment of parts of the autopilot if such errors would create a hazard to the airplane (e.g., torque clutches or limit switches with a range

of adjustment such that maladjustment could be hazardous).

3.c. The autopilot should be designed and installed so that the tolerances demonstrated during certifcation tests can be maintained in service.

4. System Response

4.a. The autopilot should not cause nuisance oscillations, undue control activity, or sudden large attitude changes, especially, when configuration or power changes are taking place. All maneuvers should be accomplished smoothly, accurately, and in a manner similar to normal pilot control.

4.b. The autopilot should not command a maneuver resulting in an unsafe attitude such that the pilot, without using exceptional skill or strength, cannot safely take over control of the airplane.

4.c. The engagement of the autopilot should be transient-free in both steady and dynamic conditions.

4.d. Except for failure conditions that are shown to be extremely improbable, the pilot should be able to disengage the autopilot at any time without unacceptable out-of-trim forces. Forces on the manual controls, that result from an out-of-trim condition occurring after autopilot disconnect, are considered unacceptable if the sudden application of these forces:

- Require exceptional piloting skill, alertness, or strength; and
- Risk exceeding the airplane limit loads.

These forces should be less than the maximum one-hand force limits specified in § 25.143(c) (''Controllability and maneuverability, General'').

4.e. Any automatic system disengagement of the autopilot should not result in an unsafe attitude, attitude-rate, or energy condition such that the pilot, without using exceptional skill or strength, cannot safely take over control of the airplane.

4.f. Transients occurring during autopilot disengagement in normal conditions, including operations at the boundaries of the normal operational parameters, should not cause unacceptable airplane responses. An airplane response is unacceptable if the flightcrew cannot return the airplane to its normal flight condition under full manual control:

- Without exceeding the loads or speed limits appropriate to the flight condition,
- Without engaging in any dangerous maneuver during recovery, and
- Without forces greater than those given in § 25.143(c).

5. Controls, Displays, and Alerting

5.a. Unless the probability of failure of the quick-disconnect button on the control wheel, or equivalent, is shown to be extremely improbable, an alternative means of disengagement, that is readily accessible in flight, should be provided.

5.b. The controls, displays, and alerts should be designated to minimize crew errors.

5.c. Mode, state, status, and malfunction indications should be presented in a manner compatible with the procedures and assigned tasks of the flightcrew. The indications should be grouped in a logical and consistent manner and be visible from each pilot's station under all expected lighting conditions.

5.d. *Autopilot Disconnect Warning*:

5.d.(1) Disengagement of the autopilot, whether intended by the pilot or not, should trigger both an aural and visual warning during any phase of flight, since immediate pilot action is required.

5.d.(2) The aural alert associated with the autopilot disconnect should be unique and distinct. The aural alert should be cancelable by the pilot pushing the quick-disconnect button on the control wheel or stick. The aural alert should sound until canceled by the pilot, except that a minimum cycle should sound. If the autopilot is disengaged by means of the quick-disconnect button, then an additional push of this button should be required to cancel the aural alert.

5.e. An aural alert and visual caution should be provided to the flightcrew for conditions that:

- Could make continued autopilot operation unsafe, or
- Could cause the manual control of an upset following autopilot disengagment to require exceptional piloting skill or alertness.

5.e.(1) The flightcrew alert should be generated before the conditions lead to an automatic disconnect, unsafe attitude, or stall warning.

5.e.(2) Whenever possible, the alert should provide the flightcrew enough time to be prepared with hands of the controls and to take appropriate corrective action (e.g., change thrust, set trim, disconnect autopilot).

5.e.(3) The thresholds for triggering the flightcrew alert should be designed carefully, with consideration for undue distraction (e.g., nuisance alerts) and potential ''rippling'' of multiple alerts triggered by the same or related conditions, which could mask or override the sounding of this alert.

5.e.(4) Conditions that should be considered for the flightcrew alert, and possibly automatic disengagement, include, but are not limited to:

- Limits of autopilot control authority;
- Out-of-trim;
- Excessive trim rates;
- Airspeeds greater than those intended for autopilot operations;
- Low speeds, (less than 1.2 V_{S1} for the current flap configuration, but greater than 1.07 V_S); and
- Bank and pitch angles beyond those intended for autopilot operation.

5.f. The means provided to comply with § 25.1329(h) (mode indications when coupled with airborne navigation equipment) should also give an appropriate indication when:

5.f.(1) The autopilot cannot engage the mode selected by the flightcrew; and

5.f.(2) The system automatically makes a mode change or mode disengagement that is considered operationally significant and, perhaps, unexpected. (For example, a change from altitude capture to altitude hold is significant, but expected; while a change from vertical path mode to vertical speed mode is both operationally significant and unexpected.)

5.g. If the autopilot has envelope limiting or protection capability, the system should trigger an alert to indicate to the pilots when envelope limiting or protection is invoked.

6. Engagement

If a flight director is available and active, the autopilot should engage in the same models as the flight director and provide consistent flight path guidance.

7. Airplane Flight Manual

Operating procedures for use with the autopilot should be established (see § 25.1585 (''Operating Procedures'')) and documented. In this regard, the Airplane Flight Manual (AFM) should:

7.a. Identify conditions under which the autopilot will or will not engage, will disengage, or will revert to another mode. These conditions should include, but not be limited to:

7.a.(1) engagement above and below design speeds,

7.a.(2) engagement in a specific mode versus speed,

7.a.(3) engagement in a specific configuration versus speed,

7.a.(4) engagement in a specific configuration versus speed,

7.a.(5) engagement asymmetric configuration,

7.a.(6) engagement with asymmetric thrust,

7.a.(7) disengagement due to excessive low and high energy conditions, and

7.a.(8) disengagement due to forces applied to the control wheel or stick by the pilot.

7.b. Define the circumstances in which the autopilot should be engaged, disengaged, or used in a mode with greater or lesser authority.

7.c. Identify appropriate combinations of autopilot and manual/autothrust usage.

7.d Identify inappropriate combinations of autopilot and manual/autothrust usage.

7.e. Define the characteristics and principles of the autopilot design that have operational safety considerations.

7.f. Identify all prohibitions in the use of the autopilot regarding:

7.f.(1) loss or degradation of equipment,

7.f.(2) specific phases of flight,

7.f.(3) specific environmental conditions (e.g., icing, turbulence), and

7.f.(4) specific operational conditions (e.g., low or high speed, extreme attitudes).

7.g. Identify all limitations in the use of the autopilot regarding:

7.g.(1) loss or degradation of equipment,

7.f.(2) specific phases of flight,

7.f.(3) specific environmental conditions (e.g., icing, turbulence), and

7.f.(4) specific operational conditions (e.g., low or high speed, extreme attitudes), and

7.g.(5) unique indications of limiting conditions (e.g., unusual lateral trim or a ''RETRIM ROLL'' message due to icing conditions).

Conclusion

As discussed previously, the FAA intends to update 14 CFR 25.1329 and associated Advisory Circular (AC) 25.1329–1A to more fully address the autopilot issues found in this proposed general statement of policy and others. Until then, this general statement of policy, when finalized, will serve as a reference to supplement § 25.1329, and for use in the certification of new autopilot systems. Please inform the appropriate flight controls and systems designated engineering representatives (DER) of this proposed general statement of policy.

Issued in Renton, Washington, on August 30, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23394 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Dubuque County, Iowa/ Jo Daviess County, Illinois.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent (cancellation).

SUMMARY: The FHWA is issuing this notice to advise the public that the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for a proposed highway capacity improvement project in Dubuque County, Iowa and Jo Daviess County, Illinois is cancelled. The NOI was originally published in the **Federal Register** on December 11, 1998. The cancellation is based on a decision to complete an Environmental Assessment (EA) for this project.

FOR FURTHER INFORMATION CONTACT: Rebecca Hiatt, Environmental Coordinator, Federal Highway Administration, 105 Sixth Street, Ames, Iowa 50010–6337, Telephone (515) 233–7300. Roger Larsen, Project Manager, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, Telephone (515) 239–1791.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202)512–1661. Internet users may reach the office of the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Background

The NOI was originally published in the **Federal Register** on December 11, 1998 63FR68498. The cancelled EIS included alternatives located in a new corridor south of Dubuque and East Dubuque. Any alternative in this location would have significant environmental impacts. However, the study alternatives have been reduced to alignments following existing U.S. Route 20 (U.S. 20), and potentially significant environmental impacts have been avoided. Therefore, the Federal Highway Administration along with Federal and State resource agencies, has determined that an Environmental Assessment is the appropriate investigative process for this project. The FHWA, in cooperation with the Iowa Department of Transportation, will prepare an EA on a proposal to improve the capacity of U.S. 20 in Dubuque County, Iowa and Jo Daviess County, Illinois.

Comments or questions concerning this proposed action and EA should be directed to the FHWA or Iowa DOT at the addresses provided in the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Issued on: August 30, 1999.

Bobby W. Blackmon,

Division Administrator.

[FR Doc. 99–23405 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5683; Notice 2]

Dan Hill & Associates, Inc.; Grant of Application for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

For the reasons explained below, we are granting the application by Dan Hill & Associates, Inc. (''Dan Hill''), of Norman, Oklahoma, for a renewal of its existing temporary exemption from Motor Vehicle Safety Standard No. 224, *Rear Impact Protection.* As it did in applying for the existing exemption, Dan Hill asserts that compliance would cause substantial economic hardship and that it has tried in good faith to comply with the standard.

We published notice of receipt of the application in the **Federal Register** on May 19, 1999, and afforded an opportunity for comment 64 FR 27353). No comments were received.

We granted Dan Hill a 1-year temporary exemption from Standard No. 224 on January 26, 1998 (63 FR 3784). The exemption was to expire on February 1, 1999, but Dan Hill filed a timely application for renewal. Under 49 CFR 555.8(e), the timely filing of a renewal application had the effect of automatically extending the exemption until we make a decision on the application. The company has requested an extension of this exemption until February 1, 2001.

The information below is based on material from Dan Hill's original and renewal applications.

Why Dan Hill Says That it Needs to Renew its Exemption.

Dan Hill manufactures and sells a horizontal discharge trailer (''Flow Boy'') that is used in the road construction industry to deliver asphalt and other road building materials to the construction site. The Flow Boy is designed to connect with and latch onto various paving machines (''pavers''). The Flow Boy, with its hydraulically controlled horizontal discharge system, discharges hot mix asphalt at a controlled rate into a paver which overlays the road surface with asphalt material.

Standard No. 224 required, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including Flow Boy trailers, be fitted with a rear impact guard that conforms to Standard No. 223, *Rear impact guards.* Installation of the rear impact guard will prevent the Flow Boy from connecting to the paver. Thus, Flow Boy trailers will no longer be functional and contractors will be forced to use standard dump body trucks or trailers with their inherent limitations and safety risks.

Why Dan Hill Says That Compliance Would Cause it Substantial Economic Hardship and That it has Tried in Good Faith to Comply With Standard No. 224.

At the time of its application for the existing exemption, Dan Hill told us that it had manufactured 81 Flow Boy trailers in 1996 (plus 21 other trailers). Its production in the 12-month period preceding its application for renewal was ''130 units for the domestic market and 35 units for the international market.''

Dan Hill originally asked for a year's exemption in order to explore the feasibility of a rear impact guard that would allow the Flow Boy trailer to connect to a conventional paver. It has concentrated its efforts this past year in investigating the feasibility of a retractable rear impact guard, which will enable Flow Boys to continue to connect to pavers.

In the absence of an exemption, Dan Hill originally asserted that approximately 60 percent of its work force would have to be laid off; it now argues that failure to extend its exemption would ultimately cause a lay off of ''approximately 70 percent'' of its work force. If the exemption were not renewed, Dan Hill's gross sales would decrease by $8,273,117. Its cumulative net income after taxes for the fiscal years 1995, 1996, and 1997 was $303,303. It projected a net income of $356,358 for fiscal year 1998.

At the time of its original application, its studies show that the placement of the retractable rear impact guard would likely catch excess asphalt as it was discharged into the pavement hopper. Further, the increased cost of the Flow Body would likely cause contractors to choose the cheaper alternative of dump trucks. Finally, the increased weight of the retractable rear impact guard would significantly decrease the payload of the Flow Boy.

Dan Hill sent its Product Specialist to Germany in 1994 to view underride protection guards installed by a German customer on Flow Boy trailers but the technology proved inapplicable because of differences between German and American pavers. Manufacturers of paving machines are not interested in redesigning their equipment to accommodate a Flow Boy with a rear impact guard. Dan Hill contacted a British manufacturer of a retractable rear impact guard but the information received by the time of its initial application did not look encouraging.

During the time that the exemption has been in effect, Dan Hill has continued its efforts to locate a source for a retractable rear impact guard, locating one in Europe which ''was in the process of designing a retractable guard that would meet Standard No. 223 specifications and attach to the Flow Boy trailer while allowing the Flow Boy to attach to a paver.'' However, the European retractable rear impact guard, which was of a ''swing out'' design, raised problems of worker safety, reduced payload because of the guard's weight, accumulation of asphalt paving material on the guard, and prohibitive costs.

Dan Hill is now examining the feasibility of a ''swing in'' guard. It is working with an English source to develop a guard that will comply with Standard No. 223. Dan Hill will then install the guard on several Flow Boy trailers to determine whether further design modifications are required. It anticipates full compliance at the end of a further exemption of 2 years.

Why Dan Hill Says That a Temporary Exemption Would be in the Public Interest and Consistent With Objectives of Motor Vehicle Safety

Dan Hill believes that an exemption would be in the public interest and consistent with traffic safety objectives because the Flow Boy aids in the construction of the national road system. Flow Boy spends very little of its operating life on the highway and the likelihood of its being involved in a rear-end collision is minimal. In addition, the design of the Flow Boy is such that the rear tires act as a buffer and reduce the likelihood of impact with the trailer.

Our Findings and Decision

As the exemption renewal petitions by Dan Hill and by Red River Manufacturing, Inc. (see 64 FR 10737) demonstrate, manufacturers of horizontal discharge trailers continue to find it difficult to develop a retractable rear impact guard that complies with Standard No. 223, and to fit it to its trailers to comply with Standard No. 224. During the past year, Dan Hill has investigated the feasibility of a ''swing-out'' design, which presented problems of an accumulation of asphalt paving material on the guard. Presently, it is examining a ''swing-in'' guard, and working with an English source to develop it. It anticipates full compliance by February 1, 2001. Dan Hill's yearly net income is substantially less than half a million dollars under the best of circumstances. Were the exemption denied, its estimated loss of gross sales exceeding $8,273,117 would appear to create a net loss of some magnitude.

Given the fact that Dan Hill and its principal competitor Red River dominate the horizontal asphalt discharge trailer market, and that both are experiencing the same difficulties in achieving compliance, it is in the public interest to maintain the existing level of competition by affording equal treatment to both companies. We note, also, that the risk to safety is minimized to the extent that road construction trailers spend comparatively little of their operating life traveling on the highways.

Accordingly, for the reasons set forth above, we hereby find that compliance with Standard No. 224 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with Standard No. 224, and that an exemption would be in the public interest and consistent with the objectives of traffic safety. NHTSA Temporary Exemption No. 98–1 from Federal Motor Vehicle Safety Standard No. 224, Rear Impact Protection, applicable to Flow Boy horizontal discharge construction trailers, is hereby extended to expire on February 1, 2001. That date is slightly more than five years after Standard No. 224 was issued, and NHTSA does not anticipate providing further extensions of exemptions from compliance with Standard No. 224.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on September 1, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–23427 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3355; Notice 4]

Red River Manufacturing, Inc.; Grant of Application for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

For the reasons explained below, we are granting the application by Red River Manufacturing, Inc., of West Fargo, North Dakota, for a renewal of NHTSA Temporary Exemption No. 98–3 from Motor Vehicle Safety Standard No. 224, *Rear Impact Protection*. Red River applied again on the basis that ''compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.'' 49 CFR 555.6(a).

We published notice of receipt of the application on March 5, 1999, and afforded an opportunity for comment (64 FR 10737).

We granted Red River a 1-year temporary exemption from Standard No. 224 on April 1, 1998 (63 FR 15909). The exemption was to expire on April 1, 1999, but Red River filed a timely application for renewal, and, as provided by 49 CFR 555.8(e), the exemption will continue in effect until we make a decision on its application. The company has requested an extension of this exemption until April 1, 2002. The discussion that follows is based on information contained in Red River's application.

Why Red River Says That it Needs to Renew its Temporary Exemption

On April 1, 1998, we granted Red River a temporary exemption of one year from Standard No. 224. See 63 FR 15909 for our decision.

Among other kinds of trailers, Red River manufactures and sells two types of horizontal discharge trailers which discharge their contents into hoppers, rather than on the ground. This makes it impractical to comply with Standard No. 224 by using a fixed rear impact guard. One type of horizontal discharge trailer is used in the road construction industry to deliver asphalt and other road building materials to the construction site. The other type is used to haul feed, seed, and agricultural products such as sugar beets and potatoes, from the fields to hoppers for storage or processing. Both types are known by the name ''Live Bottom.''

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including Live Bottom trailers, be fitted with a rear impact guard that conforms to Standard No. 223, *Rear impact guards*. Red River, which manufactured 225 Live Bottom trailers of all kinds in the 12 months preceding the filing of its application on December 22, 1998, has asked for a renewal of its exemption until April 1, 2002, in order to continue its efforts to develop a rear impact guard that conforms to Standard No. 223 and can be installed in compliance with Standard No. 224, while retaining the functionality and price-competitiveness of its trailers.

Why Red River Says That Compliance Would Cause it Substantial Economic Hardship

Live Bottoms accounted for almost half of Red River's production in 1997. In the absence of an exemption, Red River believes that approximately 60 percent of its work force would have to be laid off. Its projected loss of sales is $8,000,000 to $9,000,000 per year (net sales have averaged $14,441,822 over its 1995, 1996, and 1997 fiscal years).

We require hardship applicants to estimate the cost required to comply with a standard, as soon as possible, and at the end of a one, two, or three year exemption period. Red River estimates that even a 3-year exemption will require a retail price increase that will result in a loss of 35 percent of Live Bottom sales. Further, ''more than 50 percent of available engineering time would be required for compliance and related modifications in this time frame, resulting in a significant reduction in support for non-Live Bottom products, and a 5% decline in non-Live Bottom sales.''

Why Red River Says That it Has Tried to Comply With the Standard in Good Faith

In its initial application for a temporary exemption, Red River explained that, in mid 1996, its design staff began exploring options for compliance with Standard No. 224. Through a business partner in Denmark, the company reviewed the European rear impact protection systems. Because these designs must be manually operated by ground personnel, Red River decided that they would not be acceptable to its American customers. Later in 1996, Red River decided to investigate powered retractable rear impact guards. The initial design could not meet the energy absorption requirements of Standard No. 223. The company then investigated the use of pneumatic-over-mechanical retractable rear impact guards, and developed a prototype design which it began testing in the field in May 1998. This testing is disclosing a number of problems as yet unresolved. In the meantime, Red River consulted three commercial suppliers of underride devices but none produces a guard that could be used on the Live Bottoms.

Red River intends to continue its compliance efforts while an exemption is in effect, and believes that three years will enable it to conclude definitively whether it is feasible to design and manufacture a compliant rear guard that meets the requirements of its customers, and, if it is not feasible, to petition the agency for rulemaking to exclude Live Bottoms from Standard No. 224.

Red River was able to conform its other trailers with Standard No. 224.

Why Red River Says That Exempting it Would Be Consistent with the Public Interest and Objectives of Motor Vehicle Safety

In its initial application, Red River argued that an exemption would be in the public interest and consistent with traffic safety objectives because the Live Bottom ''can be used safely where it would be hazardous or impractical to use end dump trailers, such as on uneven terrain or in places with low overhead clearances.'' These trailers are ''valuable to the agricultural sector'' because of the advantages they offer in the handling of relatively fragile cargo. An exemption ''would have no adverse effect on the safety of the general public'' because the Live Bottom spends very little of its operating life on the highway and the likelihood of its being involved in a rear-end collision is minimal. In addition, the design of the Live Bottom is such that the rear tires act as a buffer and reduce the likelihood of impact with the trailer.

Red River reiterates these arguments in its application for renewal of its temporary exemption. It adds that it knows of no rear end collisions involving horizontal discharge trailers that have resulted in injuries, nor any instances in which there has been an intrusion by a horizontal discharge trailer into the passenger compartment of a vehicle impacting the rear of such a trailer.

Comments Received From the Public on the Application

We received four comments on Red River's application for renewal of its temporary exemption. Two commenters

opposed granting the renewal, and two commenters supported it.

Timpte Trailer Co. of David City, Nebraska, identified itself as a manufacturer of bulk commodity trailers ''with the same limited engineering resources'' as Red River, and opposed granting Red River's request. Timpte related that it was able to design a ''live bottom'' trailer with a telescoping rear underride protection system ''which complied with FMVSS 224 on its original effective date.'' However, this added to the trailer's weight and cost, and Timpte says that the exemptions granted Red River and two other ''live bottom'' manufacturers placed Timpte at an unfair competitive advantage. As a consequence, it had to suspend production of its ''live bottom'' trailer and release approximately 20 percent of its workforce. Timpte argues that Red River has had adequate time to comply with the underride requirement, and that Timpte's system proves that this type of trailer can be equipped with a workable rear underride protection system that meets Federal requirements. It ''strongly objects'' to extending Red River's exemption.

E.D. Entyre & Co. of Oregon, Illinois, filed a similar comment in opposition. It designed a ''live bottom'' trailer with a retractable rear underride guard which it introduced in August 1998. The total engineering and test time spent on this retractable design ''was approximately two man months and the mechanism has a manufacturing cost of approximately $500.'' The company believes that the extension should be denied ''since a solution has been shown to be technically feasible,'' and complying companies have been placed at a competitive disadvantage.

Red River's application was supported by Dan Hill & Associates, Inc., which has been producing ''live bottom'' trailers pursuant to a temporary exemption we gave it in 1998, and Robert J. Crail, Transportation Engineering Consultant. Dan Hill states that it and Red River have dominated the horizontal flow discharge trailer market for the last few decades. In view of this experience, and understanding that Entyre has produced less than 20 complying ''live bottom'' trailers, Dan Hill comments that ''Entyre's lack of experience in the horizontal discharge market [may have] erroneously lead Entyre to believe that it has successfully complied with a very complex issue.'' In any event, Dan Hill further comments that Entyre is a far larger company than it and Red River, with ''considerably more resources to allocate to research and development.'' With respect to Timpte, Dan Hill comments that Timpte does not manufacture a horizontal discharge trailer for the road construction industry and thus does not have the problems associated with the asphalt paver/trailer interface.

Mr. Crail reiterates his previous support of Red River. He has examined one of its trailers and is convinced ''that it will take at least an additional three years for Red River to determine whether it is feasible to manufacture an impact guard for these trailers.'' He believes that the impact of an exemption upon safety will be minimal, given the small number of trailers that would be covered by an exemption and the fact that ''the Live Bottom trailers are used mostly off roads.''

Our Findings and Decision

In granting a temporary exemption, we must find that a manufacturer has made a good faith effort to comply with the standard from which it has requested exemption. While the fact that another manufacturer may have achieved compliance indicates that a particular technological problem is not insoluble, it does not mean that a petitioner has failed to make a good faith compliance effort. It does indicate, however, that, during the period of any renewed exemption, a petitioner should carefully examine these solutions for applicability to its own product. The fact that Timpte and Entyre have commented that their ''live bottom'' trailers comply with Standard No. 224 should alert Red River that an alternative may exist to the prototype design that it began testing in May 1998 and which has disclosed a number of problems. We note that Red River's principal competitor, Dan Hill & Associates, Inc., believes that it will have a complying ''swing-in'' guard by February 1, 2001. For these reasons, we do not believe that Red River has sustained its request for an exemption for a period as long as April 1, 2002, and we are providing one commensurate with the extension granted Dan Hill, until February 1, 2001.

In the absence of extending the exemption, it appears that Red River could not produce trailers that have accounted for over 50 percent of its net sales, with the accompanying dislocation of its work force that this would entail. Given the apparent minimal risk to safety presented by a trailer that spends comparatively little of its life being operated on the public roads (construction trailers) and in which the rear tires can act as a buffer in the absence of an impact guard (agricultural trailer), and the public interest in maintaining full employment, Red River has met its burdens under the statutory procedures.

Accordingly, for the reasons set forth above, we hereby find that compliance with Standard No. 224 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with Standard No. 224, and that an exemption would be in the public interest and consistent with the objectives of traffic safety. NHTSA Temporary Exemption No. 98–3 from Federal Motor Vehicle Safety Standard No. 224, *Rear Impact Protection,* applicable to horizontal discharge trailers, is hereby extended to expire on February 1, 2001. That date is slightly more than five years after Standard No. 224 was issued, and NHTSA does not anticipate providing further extensions of exemptions from compliance with Standard No. 224.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: September 1, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–23428 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 552 (Sub-No. 3)]

Railroad Revenue Adequacy—1998 Determination

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On September 9, 1999, the Board served a decision announcing the 1998 revenue adequacy determinations for the Nation's Class I railroads. One carrier (Illinois Central Railroad Company) is found to be revenue adequate.

EFFECTIVE DATE: This decision is effective September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Board is required to make an annual determination of railroad revenue adequacy. A railroad will be considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment equal to at least the current cost of capital for the railroad industry for 1998, determined to be 10.7% in *Railroad Cost of Capital—1998,* STB Ex Parte No. 558 (Sub-No. 2) (STB served May 17, 1999). In this proceeding, the Board applied the

revenue adequacy standards to each Class I railroad, and it found one carrier, Illinois Central Railroad Company, to be revenue adequate.

Additional information is contained in the Board's formal decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, N.W., Washington, DC 20423. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.] The decision is also available on the Board's internet site, www.stb.dot.gov. Environmental and energy considerations.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the action is merely to update the annual railroad industry revenue adequacy finding. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Decided: September 1, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–23438 Filed 9–8–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 that a meeting of the Veterans; Advisory Committee on environmental Hazards will be held on Wednesday and Thursday, October 6–7, 1999, in room 203 of VA Central Office, 810 Vermont Avenue, N.W., Washington, DC 20420. The meeting will convene at 9:00 a.m. and adjourn at 5:00 p.m. on both days.

The purpose of the meeting is to review information relating to the health effects of exposure to ionizing radiation. The major items on the agenda for both days will be discussions and analyses of medical and scientific papers concerning the health effects of exposure to ionizing radiation. On the basis of their analyses and discussions, the Committee may make recommendations to the Secretary concerning diseases that are the result of exposure to ionizing radiation. The agenda for the second day will include planning future Committee activities and assignment of tasks among the members.

The meeting is open to the public on both days. Those who wish to attend or submit written questions or prepared statements for review by the Committee should contact Ersie Farber-Collins of the Department of Veterans Affairs, Compensation and Pension Service, 810 Vermont Avenue, N.W., Washington, DC 20420, prior to September 27, 1999. Ms. Farber-Collins may also be reached at 202–273–7268.

Dated: August 30, 1999.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 99–23406 Filed 9–8–99; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 64, No. 174

Thursday, September 9, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 264, 265, 268, 271, and 302

[SWH–FRL–6413–4]

RIN 2050–AD85

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities

Correction

In proposed rule document 99–20753, beginning on page 46476, in the issue of Wednesday, August 25, 1999, make the following correction(s):

On page 46495, remove the heading for Table III-4, and the tables designated as Table III-4A and Table III-4B, and add Table III-5A and Table III-5B as follows:

Table III-5. Summary of Excess Lifetime Arsenic Cancer Risks Attributable to Management of EDC/VCM Sludge in An Offsite Landfill

Table III-5A. Deterministic Risk Results

Receptor	HE	CT	High End Parameters
Farmer	3E-05	9E-07	Distance To Receptor Well and Exposure Duration
Child of Farmer/Child of Resident	9E-06	6E-07	
Adult Resident/Gardener/Fisher	2E-05	8E-07	

HE = High End; CT = Central Tendency

Time for Peak concentration to reach receptor is approximately 8800 years (HE), 9600 years (CT)

Table III-5B. Probabilistic Risk Results

Receptor	Percentile				
	50th	90th	95th	97.5th	100th
Farmer	2E-08	3E-06	8E-06	1E-05	3E-04
Adult Resident/Gardener/Fisher	2E-08	3E-06	6E-06	1E-05	2E-04
Child Resident					
Age 1-5	1E-08	2E-06	5E-06	9E-06	1E-04
Age 6-11	1E-08	2E-06	4E-06	8E-06	1E-04
Age 12-18	9E-09	1E-06	3E-06	6E-06	9E-05
Farm Child					
Age 1-5	3E-08	4E-06	9E-06	2E-05	2E-04
Age 6-11	2E-08	3E-06	6E-06	1E-05	2E-04
Age 12-18	1E-08	2E-06	5E-06	1E-05	1E-04

[FR Doc. C9–20753 Filed 9–8–99; 8:45 am]
BILLING CODE 1505–01–D

federal register

Thursday
September 9, 1999

Part II

Department of the Interior

Fish and Wildlife Service

50 Parts 25, 26 and 29

Proposed Compatibility Regulations Pursuant to the National Wildlife Refuge System Improvement Act of 1997 and Draft Compatibility Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997; Proposed Rule and Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 25, 26, and 29

1018–AE98

Proposed Compatibility Regulations Pursuant to the National Wildlife Refuge System Improvement Act of 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We propose to establish in regulations, the process for determining whether or not a use of a national wildlife refuge is a compatible use. The National Wildlife Refuge System Improvement Act of 1997 (NWRSIA–1997), that amends the National Wildlife Refuge System Administration Act of 1966 (NWRSAA–1966) requires this rulemaking. Published concurrently in this issue of the **Federal Register** is our draft compatibility policy describing in more detail the process for determining whether or not a use of a national wildlife refuge is a compatible use.

DATES: Submit comments on or before November 8, 1999.

ADDRESSES: Send comments concerning this proposed compatibility regulation via mail, fax or email to: Chief, Division of Refuges, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; fax (703) 358–2248; e-mail Compatibility__Regulations__ Comments@fws. gov.

FOR FURTHER INFORMATION CONTACT: Jim Kurth, Chief, Division of Refuges, U.S. Fish and Wildlife Service, Telephone (703) 358–1744.

SUPPLEMENTARY INFORMATION: The NWRSIA–1997 amends and builds upon the NWRSAA–1966, providing an ''Organic Act'' for the National Wildlife Refuge System. It clearly establishes that wildlife conservation is the singular National Wildlife Refuge System Mission, provides guidance to the Secretary of the Interior (Secretary) for management of the National Wildlife Refuge System, provides a mechanism for national wildlife refuge planning, and gives Refuge Managers uniform direction and procedures for making decisions regarding wildlife conservation and uses of the National Wildlife Refuge System.

The NWRSAA–1966 required the Secretary, before permitting uses, to ensure that those uses are compatible with the purposes of the national wildlife refuge. We built this legal requirement into our policy and regulation. For 32 years, the compatibility standard for national wildlife refuge uses has helped us manage national wildlife refuge lands sensibly and in keeping with the general goal of putting wildlife conservation first. The NWRSIA–1997 maintains the compatibility standard as provided in the NWRSAA–1966, provides significantly more detail regarding the compatibility standard and compatibility determination process, and requires that we promulgate the compatibility process in regulations. These regulations will ensure that compatibility becomes a more effective conservation standard, more consistently applied across the entire National Wildlife Refuge System, and more understandable and open to involvement by the public.

Compatibility and the NWRSIA–1997

The NWRSIA–1997 includes a number of provisions that specifically address compatibility. The following is a summary of those provisions and how they apply to us.

We will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge, unless we have determined that the use is a compatible use and that the use is not inconsistent with public safety. We may make compatibility determinations for a national wildlife refuge concurrently with the development of a Comprehensive Conservation Plan.

On lands added to the National Wildlife Refuge System after March 25, 1996, we will identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational public uses (if any) that we will permit to continue on an interim basis pending completion of a Comprehensive Conservation Plan for the national wildlife refuge.

We may authorize wildlife-dependent recreational uses on a national wildlife refuge when we determine they are compatible uses and are not inconsistent with public safety. We are not required to make any other determinations or findings to comply with the NWRSAA–1966 or the Refuge Recreation Act of 1962 (RRA–1962) for wildlife-dependent recreational uses to occur except for consideration of consistency with State laws and regulations.

Compatibility determinations in existence on the date of enactment of the NWRSIA–1997, October 9, 1997, will remain in effect until and unless modified. In addition, we will make compatibility determinations prepared during the period between enactment of the NWRSIA-1997 and the effective date of these compatibility regulations under the existing compatibility process. After the effective date of these regulations, we will make compatibility determinations and re-evaluations of compatibility determinations under the compatibility process in these regulations.

By October 9, 1999, we will issue final regulations establishing the process for determining whether or not a use of a national wildlife refuge is a compatible use. These regulations will:

1. Identify the refuge official responsible for making compatibility determinations;
2. Require an estimate of the time-frame, location, manner, and purpose of each use;
3. Require the identification of the effects of each use on national wildlife refuge resources and purposes of each national wildlife refuge;
4. Require that compatibility determinations be made in writing;
5. Provide for the expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the affected national wildlife refuge's purposes or the National Wildlife Refuge System Mission;
6. Provide for the elimination or modification of any use as expeditiously as practicable after we make a determination that the use is not a compatible use;
7. Require, after an opportunity for public comment, reevaluation of each existing use, other than wildlife-dependent recreational uses, if conditions under which the permitted use change significantly or if there is significant new information regarding the effects of the use, but not less frequently than once every 10 years, to ensure that the use remains a compatible use. In the case of any use authorized for a period longer than 10 years (such as an electric utility right-of-way), the reevaluation will examine compliance with the terms and conditions of the authorization, not examine the authorization itself;
8. Require, after an opportunity for public comment, reevaluation of each existing wildlife-dependent recreational use when conditions under which the permitted use change significantly or if there is significant new information regarding the effects of the use, but not less frequently than in conjunction with each preparation or revision of a comprehensive conservation plan or at

least every 15 years, whichever is earlier; and

9. Provide an opportunity for public review and comment on each evaluation of a use, unless we have already provided an opportunity during the development or revision of a Comprehensive Conservation Plan for the national wildlife refuge or have already provided an opportunity during routine, periodic determinations of compatibility for wildlife-dependent recreational uses.

Purpose of This Proposed Rule

The purpose of this proposed rule is to establish in regulation, the process for determining compatibility of proposed national wildlife refuge uses and procedures for documentation and periodic review of existing uses, and to ensure that we administer proposed and existing uses according to the compatibility provisions of the NWRSIA–1997. Published concurrently in this **Federal Register** is our draft compatibility policy, Part 603 Chapter 3 (draft) of the Fish and Wildlife Service Manual, which reflects this proposed rule and provides additional detail for each step in the compatibility determination process.

Specific Changes to 50 CFR Part 25

We are revising § 25.12(a) by adding 20 new definitions and revising 3 existing definitions. Of the 20 new definitions, the NWRSIA–1997 provides 11 (''compatible use,'' ''conservation, and management,'' ''Director,'' ''fish, wildlife, and fish and wildlife,'' ''National Wildlife Refuge System Mission, and Refuge System Mission,'' ''plant,'' ''purpose(s) of the refuge,'' ''Secretary,'' ''sound professional judgment,'' ''State, and United States,'' and ''wildlife-dependent recreational use, and wildlife-dependent recreation'') and we developed 9 (''compatibility determination,'' ''comprehensive conservation plan,'' ''Refuge Manager,'' ''refuge use, and use of a refuge,'' ''refuge management economic activity,'' ''refuge management activity,'' ''Regional Director,'' ''Service, and we,'' and ''you''). The 3 existing definitions (''coordination area,'' ''national wildlife refuge, and refuge'' and ''National Wildlife Refuge System, and Refuge System'') that we are revising are provided in the NWRSIA–1997 and are not significantly different from the existing ones. These definitions are necessary to consistently determine compatibility of proposed national wildlife refuge uses.

We are revising and expanding § 25.21 in order to explain how we open and close a national wildlife refuge to public access and use, and how we continue to allow an existing use of a national wildlife refuge. Currently, this part only addresses closing national wildlife refuges. We are expanding this section because this is the most appropriate place in this subchapter to state not only how we close a national wildlife refuge but how we open a national wildlife refuge and continue a use on a national wildlife refuge. This revision of § 25.21 consolidates existing regulations but does not change existing regulations regarding how we open and close national wildlife refuges or continue uses on national wildlife refuges. The following is a discussion of the specific sections we are adding.

Paragraph (a) of § 25.21—When and how do we open and close areas of the National Wildlife Refuge System to public access and use or continue a use?—states our long-standing policy and regulation under the NWRSAA–1966 that presumes that national wildlife refuges are closed to public access and use until they are specifically opened to public access and use. Simply stated, the NWRSAA–1966 closes national wildlife refuges until we administratively open them. This section also states that we may open national wildlife refuges by a number of methods. Depending on the type of allowed use, the Refuge Manager has several ways to open a given national wildlife refuge. For example, to open a national wildlife refuge to hunting, we revise a list of refuges allowing hunting found at 50 CFR part 32, whereas to open a national wildlife refuge to wildlife observation we may do so by posting a sign at an appropriate location. This revised section does not change the various ways we currently open a national wildlife refuge.

Paragraph (b) of § 25.21 states that we cannot allow a use of a national wildlife refuge unless we first determine that the use is a compatible use, except in emergencies when we may temporarily allow uses to protect the public or wildlife. This comes directly from the NWRSIA–1997. In addition, this section states that the compatibility standard applies to the development and use of Alaska Native Claims Settlement Act, Section 22(g) village lands in Alaska national wildlife refuges. The Alaska Statehood Act of 1959 allowed the new state to select 104 million acres of Federal lands (outside of existing parks, national wildlife refuges, and military reservations) but left the matter of Native land claims ''* * * for either future legislative action or judicial determination.'' Passage of the Alaska Native Claims Settlement Act (ANCSA) (December 18, 1971) later settled Native land claims by providing a cash settlement over a number of years, together with 44 million acres to be selected from Federal public lands. Section 22(g) of ANCSA provides, that ''[I]f a patent is issued to any Village Corporation for land in the National Wildlife Refuge System, the patent shall reserve to the United States the right of first refusal if the land is ever sold by the Village Corporation. Notwithstanding any other provision of this Act, every patent issued by the Secretary pursuant to this Act—which covers lands lying within the boundaries of a National Wildlife Refuge on the date of enactment of this Act shall contain a provision that such lands remain subject to the laws and regulations governing use and development of such Refuge.'' The legislative history of ANCSA 22(g) clearly illustrates the Congressional intent that the national wildlife refuge compatibility standard applies as a protection to the basic integrity of the pre-1971 refuge lands from which ANCSA village conveyances may be made. S. Rep. No. 92–405, at 34 in a section-by-section analysis explains: ''[T]his subsection provides that every patent issued by the Secretary pursuant to this section which covers lands lying within the boundaries of a Federal wildlife refuge on the date of Enactment of this Act, shall contain a provision that such lands shall remain subject to the laws and regulations governing use and development of refuges, as long as the lands continue within its boundaries. The purpose of this provision and limitation is to insure that the activities which take place within the refuges are compatible with the purposes for which the refuge was established. This section also assures continuing review by the appropriate Federal agencies.''

Paragraph (c) of § 25.21 is a requirement to identify and inform the public, prior to adding lands to the National Wildlife Refuge System, as to which existing wildlife-dependent recreational public uses we will allow to continue on the newly added lands between the time we acquire the lands and completion of a Comprehensive Conservation Plan. This does not relieve us from the requirement that before we may allow a use on a national wildlife refuge, we must first determine that it is a compatible use. We will prepare a compatibility determination as we would for any other use, but in this case we will prepare the compatibility determination prior to adding the land to the National Wildlife Refuge System.

This comes directly from the NWRSIA–1997.

Paragraph (d) of § 25.21 states that we may close a national wildlife refuge to public access and use. This is essentially the same language as currently exists in § 25.21 and does not change the way we currently close a national wildlife refuge.

Paragraphs (e), (f), and (g) of § 25.21 require that we must periodically re-evaluate uses to ensure that they continue to be compatible. The NWRSIA–1997 provides specific criteria for re-evaluating three categories of uses (wildlife-dependent recreational uses, uses other than wildlife-dependent recreational uses except for uses authorized for more than 10 years, and uses authorized for more than 10 years). The re-evaluation schedule for wildlife-dependent recreational uses is tied closely to the Comprehensive Conservation Plan schedule. We must re-evaluate this category of uses at least every 15 years which is the same minimum requirement for revising Comprehensive Conservation Plans. The re-evaluation schedule for uses other than wildlife-dependent recreational uses is more stringent. We must re-evaluate this category of uses at least every 10 years. The third category is for special activities such as the granting of a utility line right-of-way which may require a term beyond ten years. The NWRSIA–1997 limits the re-evaluation in these cases to whether the original terms and conditions of the permit had been complied with by the permittee.

We will most likely re-evaluate the first two categories of uses more often than the minimum requirement because new information may become available or the conditions for conducting the use may change that would engage the re-evaluation requirement.

As noted previously, the NWRSIA–1997 specifically separates out uses authorized for a period longer than 10 years, and this will almost always involve a right-of-way use. The primary reason for this particular separation is to clarify that once we prepare a compatibility determination for a use specifically authorized for a relatively long period of time (greater than 10 years), we will not re-evaluate the use for compatibility until and unless the authorization has expired and we are considering extending or renewing the authorization. When we authorize a use for greater than 10 years, we develop terms and conditions associated with the use that the permittee must follow. We design terms and conditions to ensure that the authorized use will remain compatible, and we check compliance regularly with these terms and conditions.

We are revising § 25.44 to incorporate the definition of compatibility from the NWRSIA–1997 and to remove the option of using mitigation measures to make uses of easement areas of a national wildlife refuge compatible. We also changed the heading to comply with the plain language requirement for new regulations. The following is a discussion of the specific revised sections.

We are revising paragraph (b) of § 25.44 by placing a period after the word ''compatible'' and deleting ''with the purposes for which the easement was acquired'' in the third sentence. It is necessary to either end the sentence after the word ''compatible'' or repeat the entire definition of compatible which we now define in § 25.12. Since we use the term ''compatible use'' extensively throughout subchapter C, we will define this term in the definitions section and then only use the term without repeating the definition. We also made minor word changes to comply with the plain language requirement for new regulations.

We are revising paragraph (c)(1) of § 25.44 by placing a semicolon after the word ''compatible'' and deleting ''with the purposes for which the Service's easement was acquired.'' This is necessary for the same reason described in the above paragraph.

We are removing paragraph (d) of § 25.44 for the reasons stated in the discussion of proposed paragraph (b) of § 26.41.

Specific Changes to 50 CFR Part 26

We are adding § 26.41 to establish in regulations the process for determining whether or not a proposed or existing use of a national wildlife refuge is a compatible use. Rather than revise an existing section of part 26 to include this process, we believe it should be a separate section within part 26.

This section clearly states that we cannot allow a use of a national wildlife refuge unless we first determine that it is a compatible use. This has been a legal requirement since 1962 for recreational uses and since 1966 for all uses. This rule does not change that legal requirement; however, it more clearly states the requirement and provides additional detail of how we will make the determination. This section requires that we make all compatibility determinations in writing and include the following information which is necessary to make the determination:

(1) *The proposed or existing use being evaluated.* This may be an individual use or a group of closely related uses or a use program. Whenever practicable, the Refuge Manager will concurrently consider similar uses or uses that are likely to have similar effects, in order to facilitate analysis of cumulative effects. This includes, all uses as defined by the term ''refuge use'' to mean a recreational use, refuge management economic activity, refuge action undertaken principally to support a recreational or other general public use, or other use of a national wildlife refuge by the public or other non-Service entity.

(2) *The name of the national wildlife refuge.* We will state the name of the national wildlife refuge where the proposed use may occur or where the existing use is occurring.

(3) *The authorities used to establish the national wildlife refuge.* This could include a variety of authorities including Executive Orders, public land orders, Secretarial Orders, refuge-specific legislation, or general legislation. For example, the establishing authority for Archie Carr National Wildlife Refuge in Florida is the Endangered Species Act of 1973 and for Breton National Wildlife Refuge in Louisiana it is Executive Order 7938.

(4) *The major purposes of the national wildlife refuge.* This will be a statement of the major purposes for which the refuge was established and will be based on those things that are referenced in the definition of the term ''purposes of the refuge.'' For example, the purposes of Okefenokee National Wildlife Refuge in Georgia are ''* * * as a refuge and breeding ground for migratory birds and other wildlife: * * *'' Executive Order 7593, dated March 30, 1937, ''* * * for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.'' 16 U.S.C. 715d (Migratory Bird Conservation Act) and ''* * * to conserve (A) fish or wildlife which are listed as endangered species or threatened species * * * or (B) plants * * *'' 16 U.S.C. 1534 (Endangered Species Act of 1973).

(5) *The National Wildlife Refuge System Mission.* The Mission of the National Wildlife Refuge System is ''to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.'' This is directly from the NWRSIA–1997.

(6) *The nature and extent of the use including the following: (i) What is the use? (ii) Where would the use be*

conducted? (iii) When would the use be conducted? (iv) How would the use be conducted? This will include such things as specific areas of the national wildlife refuge where the use would take place, habitat types and acres involved, key species in the area, time of year and duration of the use, number of people involved, and facilities needed.

With regard to facilities, structures, or improvements constructed or installed by us (or at our direction) in conjunction with a use, and refuge management activities undertaken in conjunction with a use, Part 603 Chapter 3 (draft) Section 3.9 of the Service Manual makes it clear to Refuge Managers that they must consider these things when making compatibility determinations. This requirement will apply to all such facilities, structures, improvements, and refuge actions associated with uses that we approve on or after the effective date of these regulations and to the replacement or major repair or alteration of facilities, structures, and improvements associated with already approved uses.

It goes without saying that these facilities, structures, and improvements are and have been subject to compatibility determinations when proposed by an applicant as part of a requested use. It has not, however, been our clear policy to include these types of facilities, structures, or improvements in such analyses when we have built or installed them. We have historically viewed them as part of our management activities and, as a general matter, they have not specifically been the subject of the compatibility determinations.

The NWRSIA–1997's amendments to the NWRSAA–1966 have caused us to re-address this issue. Requiring Refuge Managers to ensure that our installed facilities and management activities that are associated with public uses are compatible will provide an additional measure of protection for each national wildlife refuge and for the National Wildlife Refuge System. It will further enable us to accomplish the Secretary's responsibilities under the NWRSIA–1997's amendments to conserve fish, wildlife, plants, and their habitats; to ensure the biological integrity, diversity and environmental health of the National Wildlife Refuge System; and to ensure that we carry out the purposes of each national wildlife refuge and the National Wildlife Refuge System Mission.

With regard to refuge management economic activities (defined at § 25.12), we are also making it clear in Part 603 Chapter 3 (draft) Section 3.9 of the Service Manual that whenever an activity designed to achieve a management objective but performed by a member of the public will result in the generation of income or in a commodity that is or can be sold or traded by them, a Refuge Manager must make a compatibility determination before allowing the activity. The issue here is that some management activities (timber harvesting in order to provide a certain type of habitat, for example) can also generate local economic dependency upon a continuation of the activity or create an appearance that it is a use, not a management activity. In some instances, such a dependency could outweigh and override the management needs of the refuge and in fact become more in the nature of a use. In some past instances, this local economic dependency ultimately outweighed and overrode the biological needs or interests of the affected national wildlife refuges and became not compatible. We believe that the local economic aspect of these refuge management economic activities enhances the possibility of compatibility problems, thereby warranting the preparation of compatibility determinations. This requirement will apply to all refuge management economic activities approved or extended on or after the effective date of these regulations.

We want to make it clear that because a compatibility determination is not being required for other Service management activities, those activities will not escape scrutiny. To properly manage a national wildlife refuge, a Refuge Manager must take actions that will lead toward accomplishing the purposes of that national wildlife refuge. This, in fact, is a different but higher standard than that applied to uses. Authorizing a use requires the Refuge Manager to find that it will ''not materially interfere with or detract from'' fulfilling the refuge purposes and Refuge System Mission, whereas management activities of a Refuge Manager must be for accomplishing those purposes. Refuge Managers are constantly engaging in the difficult job of marshaling the necessary resources and equipment, controlling uses, providing the necessary habitat, managing personnel, seeking enhanced budget allocations, and taking numerous other actions all with the ultimate goal of accomplishing those purposes. Each Refuge Manager is responsible for ensuring that what we do at each particular national wildlife refuge in the name of management is done with that goal in mind.

(7) *An analysis of costs for administering and managing each use.* This will be an analysis of adequate resources (including financial, personnel, facilities, and other infrastructure) to properly develop, operate, and maintain the use at an acceptable level. It would include: resources involved in the administration and management of the use; special equipment, facilities or improvements necessary to support the use and comply with disabled access requirements, such as costs associated with special equipment, physical changes, or necessary improvements; maintenance costs associated with the use (e.g., trail maintenance and mowing, signing, garbage pickup or sanitation costs, parking areas, road repair or grading, building or structure repair, including blinds, boat ramps, kiosks, etc.); and monitoring costs to assess the impact of uses over time. This analysis of cost for administering and managing each use will only include the incremental increase above general operational costs that we can show as being directly caused by the proposed use.

(8) *The anticipated impacts of the use on the national wildlife refuge's major purposes and the National Wildlife Refuge System Mission.* This will include an assessment of the potential impacts of a proposed use on the national wildlife refuge purposes and the National Wildlife Refuge System Mission. Refuge Managers will use available sources of information to substantiate their analysis. Sources may include planning documents, environmental assessments, environmental impact statements, annual narratives, information from previously-conducted or ongoing research, data from refuge inventories or studies, published literature on related biological studies, State conservation management plans, field management experience, etc. We do not require Refuge Managers to independently generate new data on which to base compatibility determinations but rather to work with available information. The Refuge Manager may work at his or her discretion with the proponent of the use to gather additional information before making the determination. If the available information is insufficient to document that a proposed use will be compatible, the use is not compatible, and we will not authorize or permit the use.

(9) *A logical explanation describing how the proposed use affects fulfillment of the national wildlife refuge's major purposes and the National Wildlife Refuge System Mission.* After completing steps 1–8, the Refuge Manager will provide a written and logical explanation of the rationale for,

or the rational basis behind, the determination. The justification will describe how the proposed use affects the fulfillment of the national wildlife refuge's major purposes and the National Wildlife Refuge System Mission.

(10) *The amount of opportunity for public review and comment provided.* The Refuge Manager will provide an adequate opportunity for public review and comment on the proposed refuge use before issuing a final compatibility determination. Providing for public review and comment includes actively seeking to identify and inform individuals and organizations reasonably affected by or interested in the proposed refuge use. Additionally, review and comment will offer the public the opportunity to provide relevant information and express their views on whether or not a use is compatible. The Refuge Manager will determine the level of opportunity for public review and comment that is necessary or appropriate based upon the complexity or controversial nature of the use, the anticipated adverse impacts to the refuge and potential public interest. For compatibility determinations prepared concurrently with Comprehensive Conservation Plans, we can achieve public review and comment concurrently with the public review and comment of the draft Comprehensive Conservation Plan and associated NEPA document. For compatibility determinations prepared separate from a Comprehensive Conservation Plan, we will determine the appropriate level of opportunity for public review and comment through a tiered approach. For minor, incidental, or one-time uses which have been shown by past experience at this or other refuges in the Refuge System to result in no significant, cumulative, lingering or continuing adverse impacts to the refuge and would likely generate minimal public interest, the public review and comment requirement can be accomplished by posting a notice of the proposed determination at the refuge headquarters so as to maximize the opportunity for comment as is practicable. For all other uses, at a minimum, the Refuge Manager will solicit public comment by placing a public notice in a newspaper with wide local distribution. The notice must contain, at a minimum: a brief description of the compatibility determination process, a description of the use that is being evaluated, the types of information that may be used in completing the evaluation, how to provide comments, when comments are due, and how people may be informed of the decision the Refuge Manager will make regarding the use. The public will be given at least 14 calendar days to provide comments following the day the notice is published. This period may be reduced by the Refuge Manager when there is not sufficient time to provide the full 14-days. For evaluations of controversial or complex uses, the Refuge Manager should expand the public review and comment process to allow for additional opportunities for comment. This may include newspaper or radio announcements, notices or postings in public places, notices in the **Federal Register**, letters to potentially interested people such as adjacent landowners, holding public meetings, or extending the comment period.

(11) *Whether the use is compatible or not compatible.* The Refuge Manager will simply identify whether the use is compatible or not compatible based on the explanation under (9), above.

(12) *Stipulations necessary to ensure compatibility.* This will include such protective stipulations, detailed and specific, that are necessary for a particular use to be compatible. They may include such things as: limitations on time (daily, seasonal, or annual) or space where the use would occur; the routes or forms of access for the use; restrictions on the types of equipment used; and the number of people involved.

(13) *The name of the Regional Office Supervisor or designee that was consulted with and date of consultation prior to approving each compatibility determination.* Prior to approving each compatibility determination, the Refuge Manager will consult with their Regional Office Supervisor or designee. The Refuge Manager will document the consultation by recording on the compatibility determination form the date and name of person consulted with.

(14) *The Refuge Manager's signature and date signed.* The Refuge Manager will sign and date the compatibility determination.

Paragraph (b) of § 26.41 states that we will not allow making proposed refuge uses compatible through replacement of lost habitat values or other compensation (sometimes referred to as ''mitigation'' or as a component of mitigation.) This does not change the current general application of the compatibility standard and represents a change only in our application of the standard with regard to rights-of-way and easement area uses. The review and analysis of current regulations that we conducted while complying with the mandate of the NWRSIA–1997 to issue compatibility regulations caused us to look into the right-of-way and easement area uses regulations. We found no authority in law to allow an incompatible use where the Service receives some sort of compensatory mitigation. In this regard, we are also proposing to delete paragraph (d) of § 25.44, which authorizes the Service to require ''mitigation measures'' within the easement area to ''make the proposed use compatible'' and paragraph (c) of § 29.21–7, which authorizes the Service to require ''mitigation measures'' on- or off-site to ''make the proposed use compatible.''

A use is either compatible or not, and the fact that some ''incompatible'' impact might be compensated for by doing something to make up for the impacts cannot make a use compatible for purposes of the NWRSAA–1966. This change does not alter our current practice that if a use as proposed is deemed not compatible, the applicant can certainly re-propose or amend the original proposed use to avoid the troublesome impacts and render the use compatible.

Paragraph (c) of § 26.41 requires us to either terminate an existing use or modify an existing use to make it compatible as expeditiously as practicable whenever we determine an existing use is not compatible. For example, if a group of colonial nesting birds began nesting in an area open to fishing by motorized boats, and, consequently, we determined fishing in this area to be not compatible because of disturbance to the nesting birds, we would likely modify the fishing program (prohibit fishing from that particular portion of the area open to fishing or perhaps requiring non-motorized boats) in order to make it compatible.

Specific Changes to 50 CFR Part 29

We are revising § 29.1 by replacing ''will not be incompatible with the purposes for which the refuge was established'' with language consistent with the new definition of ''compatible use.'' This revised language is consistent with the definition of compatible use in § 25.12. Since we use extensively the term ''compatible use'' throughout subchapter C, we define this term in § 25.12 and then only use the term without repeating the definition. We also made word changes throughout to comply with the plain language requirement for new regulations.

We are revising § 29.3 by replacing ''compatible with the major purposes for which such areas are established'' with language consistent with the new definition of ''compatible use.'' This is necessary for the same reason described

in the above paragraph. We also made word changes throughout to comply with the plain language requirement for new regulations.

We are revising § 29.21 by removing the definitions of ''Secretary,'' ''Service,'' and ''Regional Director,'' and revising the definition of ''Compatible.'' The three definitions are not necessary because we include them in § 25.12. Part 25 is the first part of subchapter C and is the most appropriate place for definitions used throughout subchapter C. It is generally not necessary to repeat definitions in other parts of this subchapter. We are revising the definition of ''Compatible'' to be consistent with the NWRSIA–1997. We define ''Compatible use'' in § 25.12; however, it is necessary to repeat it here because it explains the relationship between the terms ''inconsistent'' in the Mineral Leasing Act of 1920 and ''compatible'' in the NWRSIA–1997. The term ''inconsistent'' means the same as ''not compatible.''

We are removing § 29.21–7(c) for the reasons stated in the discussion of proposed paragraph (b) of § 26.41.

Comment Solicitation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Chief, Division of Refuges, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203. You may comment via the Internet to: Compatibility__Regulations__ Comments@fws. gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include: ''Attn: 1018–AE98'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703) 358–1744. You may also fax comments to: Chief, Division of Refuges, (703) 358–2248. Finally, you may hand-deliver comments to the address mentioned above.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We seek public comments on this proposed compatibility regulation and will take into consideration comments and any additional information received during the 60-day comment period. When finalized, we will incorporate this regulation into Title 50 Code of Federal Regulations (50 CFR) parts 25, 26, and 29. Part 25 contains general administrative provisions which govern national wildlife refuges, part 26 contains provisions that govern public entry and use of the National Wildlife Refuge System, and part 29 contains provisions that govern land use management.

We published a notice in the **Federal Register** on January 23, 1998 (63 FR 3583) notifying the public that we would be revising the Fish and Wildlife Service Manual, establishing regulations as they relate to the NWRSIA–1997, and offering to send copies of specific draft Service Manual chapters to anyone who would like to receive them. We will mail a copy of the draft compatibility Service Manual chapter published concurrently in this **Federal Register** to those who requested one, along with a copy of this proposed compatibility regulation. In addition, this proposed compatibility regulation and the draft compatibility Service Manual chapter will be available on the National Wildlife Refuge System web site (http://refuges.fws.gov) during the 60-day comment period.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand?

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (NWRSAA–1966), (16 U.S.C. 668dd–668ee), and the Refuge Recreation Act of 1962 (RRA–1962), (16 U.S.C. 460k–460k–4) govern the administration and use of the National Wildlife Refuge System.

The NWRSIA–1997 is the latest amendment to the NWRSAA–1966. It amends and builds upon the NWRSAA–1966 in a manner that provides an ''Organic Act'' for the National Wildlife Refuge System. It serves to ensure that we effectively manage the National Wildlife Refuge System as a national system of lands, waters and interests for the protection and conservation of our Nation's wildlife resources.

The NWRSAA–1966 states, first and foremost, that the National Wildlife Refuge System Mission is the conservation of fish, wildlife, and plant resources and their habitat. The NWRSAA–1966 prohibits the Secretary from initiating or permitting a new use of a national wildlife refuge or expanding, renewing, or extending an existing use of a national wildlife refuge, unless the Secretary has determined that the use is a compatible use and not inconsistent with public safety.

The RRA–1962 authorizes the Secretary to administer areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which we established the areas. The RRA–1962 requires that any recreational use of national wildlife refuge lands be compatible with the primary purposes for which we established the national wildlife refuge and not inconsistent with other previously-authorized operations.

The Alaska National Interest Lands Conservation Act of 1980 (ANILCA), (16 U.S.C. 140hh–3233), (43 U.S.C. 1602–1784), requires that we administer national wildlife refuges in Alaska in accordance with the laws governing the administration of the National Wildlife Refuge System. Section 304 of the ANILCA adopted the compatibility standard of the NWRSAA–1966 for Alaska national wildlife refuges.

The ANILCA establishes the same standard of compatibility for Alaska national wildlife refuges as for other national wildlife refuges but the NWRSIA–1997 specifically requires that ANILCA take precedence if any conflict arises between the two laws. Additionally, the NWRSIA–1997 did not affect the provisions of ANILCA that

are the primary guidance Refuge Managers must use regarding subsistence use in Alaska.

The Alaska Native Claims Settlement Act of 1971, Section 22(g), provides that patents issued to Native village corporations or groups for selected land within the boundaries of a national wildlife refuge existing on the December 18, 1971, signing date of the Act will contain provisions which indicate that the land shall remain subject to laws and regulations governing the use and development of such national wildlife refuges. This includes application of the compatibility standard before uses or development may occur on the land.

Alaska national wildlife refuges established before the passage of the ANILCA have two sets of purposes. Purposes for pre-ANILCA national wildlife refuges (in effect on the day before the enactment of the ANILCA) remain in force and effect, except to the extent that they may be inconsistent with the ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts control. However, the original purposes for pre-ANILCA refuges apply only to those portions of the national wildlife refuge established by the prior executive order or public land order, and not to those portions of the national wildlife refuge added by the ANILCA.

The NWRSAA–1966 and the RRA–1962 authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit or full economic analysis is not required. This rule is administrative, legal, technical, and procedural in nature. The regulation established the process for determining the compatibility of proposed national wildlife refuge uses as well as the procedures for documentation and periodic review of existing uses. We have been making compatibility determinations since passage of the NWRSAA–1966 in 1966. The NWRSIA–1997 passed in 1997 does not greatly change the compatibility standards so we expect these procedures to cause only minor modifications to existing national wildlife refuge public use programs. We expect a small increase, up to 5%, in the amount of public use activities allowed on refuges as a result of this rule.

The appropriate measure of the economic effect of changes in recreational use is the change in the welfare of recreationists. We measure this in terms of willingness to pay for the recreational opportunity. Total annual willingness to pay for all recreation at national wildlife refuges was estimated to be $372.5 million in FY 1995 (Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation, 1997). We expect the compatibility determination process implemented in this rule to cause at most a 5% increase in recreational use system-wide. This does not mean that every refuge will have the same increase in public use. Only refuges where increases in hunting, fishing, and non-consumptive visitation are compatible will we allow the increases. Across the entire Refuge System we expect an increase in hunting, fishing, and non-consumptive visitation to amount to no more than a 5% overall increase. If the full 5% increase in public use were to occur at national wildlife refuges, this would translate to a maximum additional willingness to pay of $21 million (1999 dollars) annually for the public. However, we expect the real benefit to be less than $21 million because we expect the final increase in public use to be smaller than 5%. Furthermore, if the public substitutes non-refuge recreation sites for refuges, then we would subtract the loss of benefit attributed to non-refuge sites from the $21 million estimate. Even the conservative estimate of $21 million annually is well below the $100 million annual impact required for a significant regulatory action under Executive Order 12866.

We measure the economic effect of commercial activity by the change in producer surplus. We can measure this as the opportunity cost of the change, i.e., the cost of using the next best production option if we discontinue production using the national wildlife refuge. National wildlife refuges use grazing, haying, timber harvesting, and row crops to help fulfill the National Wildlife Refuge System Mission and national wildlife refuge purposes. Congress authorizes us to allow economic activities of national wildlife refuges, and we do allow some. But, for all practical purposes, we invite (almost 100 percent) the economic activities to help achieve a national wildlife refuge purpose or National Wildlife Refuge System Mission. For example, we do not allow farming per se, rather we invite a farmer to farm on the national wildlife refuge under a Cooperative Farming Agreement to achieve a national wildlife refuge purpose. Compatibility applies to these economic activities, and this rule will likely have minor changes in the amounts of these activities occurring on national wildlife refuges. Information on profits and production alternatives for most of these activities is proprietary, so a valid estimate of the total benefits of permitting these activities on national wildlife refuges is not available.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency since the rule pertains solely to management of national wildlife refuges by the Service.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. There are no grants or other Federal assistance programs associated with public use of national wildlife refuges.

(4) This rule does not raise novel legal or policy issues; however, it does provide a new approach. This rule continues the practice of requiring public use of national wildlife refuges to be compatible. It adds the NWRSIA–1997 provisions that ensure that compatibility becomes a more effective conservation standard, more consistently applied across the entire National Wildlife Refuge System, and more understandable and open to involvement by the public.

Regulatory Flexibility Act

We certify that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Congress created the National Wildlife Refuge System to conserve fish, wildlife, and plants and their habitats and facilitated this conservation mission by providing Americans opportunities to visit and participate in compatible wildlife-dependent recreation, including fishing, hunting, wildlife observation and photography, and environmental education and interpretation as priority general public uses on national wildlife refuges and to better appreciate the value of, and need for, wildlife conservation.

This rule is administrative, legal, technical, and procedural in nature and provides more detailed instructions for the compatibility determination process than have existed in the past. This rule does not change the compatibility standard but implementation of the

National Wildlife Refuge System Improvement Act of 1997 may result in more opportunities for wildlife-dependent recreation on national wildlife refuges. For example, there may be more wildlife observation opportunities at Florida Panther National Wildlife Refuge in Florida or more hunting opportunities at Pond Creek National Wildlife Refuge in Arkansas. Such changes in permitted use are likely to increase visitor activity near the national wildlife refuge. To the extent visitors spend time and money in the area that would not have been spent there anyway, they contribute new income to the regional economy and benefit local businesses.

National wildlife refuge visitation is a small component of the wildlife recreation industry as a whole. In 1996, 77 million U.S. residents over 15 years old spent 1.2 billion activity-days in wildlife-associated recreation activities. They spent about $30 billion on fishing, hunting, and wildlife watching trips (Tables 49, 54, 59, 63, 1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, DOI/FWS/FA, 1997). National wildlife refuges recorded about 29 million visitor-days that year (RMIS, FY1996 Public Use Summary). A study of 1995 national wildlife refuge visitors found their travel spending generated $401 million in sales and 10,000 jobs for local economies (Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation, DOI/FWS/Refuges, 1997). These spending figures include spending which would have occurred in the community anyway, and so they show the importance of the activity in the local economy rather than its incremental impact. Marginally greater recreational opportunities on national wildlife refuges will have little industry-wide effect.

Many small businesses will benefit from any increased national wildlife refuge visitation. We expect the incremental recreational opportunities to be marginal and scattered so we do not expect the rule to have a significant economic effect on a substantial number of small entities in any Region or nationally.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act as discussed in Regulatory Planning and Review section above. This rule:

a. Does not have an annual effect on the economy of $100 million or more;

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

Since this rule applies to use of federally-owned and managed national wildlife refuges, it does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local, tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. These regulations may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the National Wildlife Refuge System.

Federalism Assessment (E.O. 12612)

As discussed in the Regulatory Planning and Review, and Unfunded Mandates Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501) is required.

Section 7 Consultation

We are in the process of reviewing the potential of these regulations to affect species subject to the Endangered Species Act of 1973 (16 U.S.C. 1531–1543). The findings of that consultation will be available as part of the administrative record for the final rule.

National Environmental Policy Act

We ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) when developing national wildlife refuge Comprehensive Conservation Plans and public use management plans, and we make determinations required by NEPA before the addition of national wildlife refuges to the lists of areas open to public uses. The revisions to regulations as proposed in this document resolve a variety of issues concerning compatibility of national wildlife refuge uses. In accordance with 516 DM 2, Appendix 1, we have determined that this rule is categorically excluded from the NEPA process because it is limited to ''the issuance and modification of procedures, including manuals, orders and guidelines of an administrative nature.'' 516 DM 2, Appendix 1, Sec. 1.4 A. (3) and (9). These proposed regulations qualify or otherwise define methods which we use for purposes of resource management.

Available Information for Specific National Wildlife Refuges

Individual national wildlife refuge headquarters retain information regarding public use programs and the conditions that apply to their specific programs, and maps of their respective areas.

You may also obtain information from the Regional Offices at the addresses listed below:

- Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181; Telephone (503) 231–6214.
- Region 2—Arizona, New Mexico, Oklahoma and Texas. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.
- Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713–5300.
- Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands. Program Assistant Regional Director—Refuges and

Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7152.

• Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8550.

• Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

• Region 7—Alaska. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3357.

Primary Author

J. Kenneth Edwards, Refuge Program Specialist, Division of Refuges, U.S. Fish and Wildlife Service, is the primary author of this proposed rule.

List of Subjects 50 CFR Part 25

Administrative practice and procedure, Concessions, Reporting and recordkeeping requirements, Safety, Wildlife refuges.

50 CFR Part 26

Recreation and recreation areas, Wildlife refuges.

50 CFR Part 29

Public lands-mineral resources, Public lands-rights-of-way, Wildlife refuges.

For the reasons set forth in the preamble, we propose to amend parts 25, 26, and 29 of Title 50, Chapter I, Subchapter C of the Code of Federal Regulations as follows:

PART 25—[AMENDED]

1. The authority citation for part 25 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i, 3901 *et seq.*; and Pub.L. 102–402, 106 Stat. 1961.

2. We propose to amend § 25.12 by:

a. Revising the heading;

b. Amending paragraph (a) by revising and placing in alphabetical order the definitions of ''Coordination area,'' ''National wildlife refuge, and refuge'' and ''National Wildlife Refuge System, and Refuge System;'' and

c. Adding the definitions of ''Compatible use,'' ''Compatibility determination,'' ''Comprehensive Conservation Plan,'' ''Conservation, and Management,'' ''Director,'' ''Fish, Wildlife, and Fish and wildlife,'' ''National Wildlife Refuge System Mission, and Refuge System Mission,'' ''Plant,'' ''Purpose(s) of the refuge,'' ''Refuge Manager,'' ''Refuge use, and Use of a refuge,'' ''Refuge management economic activity,'' ''Refuge management activity,'' ''Regional Director,'' ''Secretary,'' ''Service, and We'' ''Sound professional judgment,'' ''State, and United States,'' ''Wildlife-dependent recreational use, and Wildlife-dependent recreation,'' and ''You'' in alphabetical order to read as follows:

§ 25.12 What do the following terms mean?

(a) * * *

Compatible use means a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, in the sound professional judgment of the Refuge Manager, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System Mission or the major purposes of the affected national wildlife refuge.

Compatibility determination means a written determination signed and dated by the Refuge Manager, signifying that a proposed or existing use of a national wildlife refuge is either a compatible use or a not compatible use. The Director delegates authority to make this determination through the Regional Director, to the Refuge Manager.

Comprehensive Conservation Plan means a document that describes the desired future conditions of a national wildlife refuge, and provides long-range guidance and management direction for a Refuge Manager to accomplish the purposes of the affected national wildlife refuge, contribute to the National Wildlife Refuge System Mission, and to meet other relevant mandates.

Conservation, and *Management* mean to sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods, and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–668ee), protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking.

Coordination area means a wildlife management area made available to a State: by cooperative agreement between the U. S. Fish and Wildlife Service and a State agency having control over wildlife resources pursuant to section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664); or by long-term leases or agreements pursuant to title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 *et seq.*). The States manage coordination areas as a part of the National Wildlife Refuge System.

Director means the Director, U.S. Fish and Wildlife Service or the authorized representative of such official.

* * * * *

Fish, Wildlife, and *Fish and wildlife* mean any member of the animal kingdom in a wild, unconfined state, whether alive or dead, including a part, product, egg, or offspring of the member.

* * * * *

National wildlife refuge, and *Refuge* mean a designated area of land, water, or an interest in land or water located within the external boundaries of the National Wildlife Refuge System but does not include coordination areas.

National Wildlife Refuge System, and *Refuge System* mean all lands, waters, and interests therein administered by, or subject to the jurisdiction of, the U.S. Fish and Wildlife Service as wildlife refuges, wildlife ranges, wildlife management areas, waterfowl production areas, and other areas administered by the U.S. Fish and Wildlife Service for the protection and conservation of fish and wildlife, including those that are threatened with extinction.

National Wildlife Refuge System Mission, and *Refuge System Mission* mean to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

* * * * *

Plant means any member of the plant kingdom in a wild, unconfined state, including any plant community, seed, root, or other part of a plant.

Purpose(s) of the refuge means the purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a national wildlife refuge,

national wildlife refuge unit, or national wildlife refuge subunit.

Refuge Manager means the person who is directly in charge of a national wildlife refuge.

Refuge use, and *Use of a refuge* mean a recreational use (including refuge actions associated with a recreational use or other general public use), refuge management economic activity, or other use of a national wildlife refuge by the public or other non-Service entity.

Refuge management economic activity means any refuge management activity on a national wildlife refuge which results in generation of income or in a commodity which is or can be sold for income or revenue or traded for goods or services. Examples include: farming, grazing, haying, timber harvesting, and trapping. Specifically excluded from this definition are refuge management activities which generate commodities not sold for income or revenue and not traded for goods or services, on or off a national wildlife refuge.

Refuge management activity means an activity conducted by the Service or a Service-authorized agent to fulfill all purposes or at least one or more purposes of the national wildlife refuge, or the National Wildlife Refuge System Mission. Service-authorized agents include contractors, cooperating agencies, cooperating associations, friends organizations, and volunteers.

Regional Director means the official in charge of a region of the U.S. Fish and Wildlife Service or the authorized representative of such official.

Secretary means the Secretary of the Interior or the authorized representative of such official.

Service, and *We* means the U.S. Fish and Wildlife Service, Department of the Interior.

Sound professional judgment means a finding, determination, or decision that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), and other applicable laws. Included in this finding, determination, or decision is a Refuge Manager's field experience and a Refuge Manager's knowledge of the particular affected refuge's resources.

State, and *United States* mean one or more of the States of the United States, Puerto Rico, American Samoa, the Virgin Islands, Guam, and the territories and possessions of the United States.

* * * * *

Wildlife-dependent recreational use, and *Wildlife-dependent recreation* mean a use of a national wildlife refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation. The National Wildlife Refuge System Administration Act of 1966, as amended, specifies that these are the six priority general public uses of the National Wildlife Refuge System.

* * * * *

You means the public.

3. We propose to revise § 25.21 to read as follows:

§ 25.21 When and how do we open and close areas of the National Wildlife Refuge System to public access and use or continue a use?

(a) Except as provided below, all areas acquired or withdrawn for inclusion in the National Wildlife Refuge System are closed to public access until and unless we open the area for a use or uses in accordance with the NWRSAA–1966, the RRA–1962 and this subchapter C. We may open an area by regulation, individual permit, or public notice, in accordance with § 25.31 of this subchapter.

(b) We may open an area in the National Wildlife Refuge System for any refuge use, or expand, renew, or extend an existing refuge use only after the Refuge Manager determines that it is a compatible use and not inconsistent with any applicable law. Lands subject to the patent restrictions imposed by Section 22(g) of the Alaska Native Claims Settlement Act are subject to the compatibility requirements of Part 25 and Part 26 of 50 CFR. The Refuge Manager may temporarily allow or initiate any refuge use without making a compatibility determination if it is necessary to protect the health and safety of the public or any fish or wildlife population.

(c) When we add lands to the National Wildlife Refuge System, the Refuge Manager will identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of those lands, existing wildlife-dependent recreational public uses (if any) determined to be compatible that we will permit to continue on an interim basis, pending completion of the Comprehensive Conservation Plan for the national wildlife refuge. We will make these compatibility determinations in accordance with procedures in § 26.41 of this subchapter.

(d) In the event of a threat or emergency endangering the health and safety of the public or property or to protect the resources of the area, the Refuge Manager may close or curtail refuge uses of all or any part of an opened area to public access and use in accordance with the provisions in § 25.31, without advance notice. See 50 CFR 36.42 for procedures on closing Alaska national wildlife refuges.

(e) We will re-evaluate compatibility determinations for existing wildlife-dependent recreational uses when conditions under which the permitted use change significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a Comprehensive Conservation Plan, or at least every 15 years, whichever is earlier.

(f) Except for uses specifically authorized for a period longer than 10 years (such as rights-of-way), we will re-evaluate compatibility determinations for all other existing uses when conditions under which the permitted use change significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a Comprehensive Conservation Plan, or at least every 10 years, whichever is earlier.

(g) For uses specifically authorized for a period longer than 10 years (such as rights-of-way), our re-evaluation will examine compliance with the terms and conditions of the authorization, not the authorization itself. We will monitor and review the activity to ensure that the permittee carries out all permit terms and conditions. We will make a new compatibility determination prior to extending or renewing such long-term uses at the expiration of the authorization.

4. We propose to amend § 25.44 by:

a. Revising the heading and paragraphs (b) and (c)(1);

b. Removing paragraph (d); and

c. Redesignating paragraph (e) as paragraph (d) to read as follows:

§ 25.44 How do we grant permits for easement area uses?

* * * * *

(b) We require permits for use of easement areas administered by us where proposed activities may affect the property interest acquired by the United States. Applications for permits will be submitted in writing to the Regional Director or a designee. We may grant special use permits to owners of servient estates, or to third parties with the owner's agreement, by the Regional Director or a designee, upon written determination that such permitted use is compatible. If we ultimately determine that the requested use will not affect the United States' interest, the Regional Director will issue a letter of non-objection.

(c) * * *

(1) The permitted use is compatible; and

* * * * *

PART 26—[AMENDED]

5. The authority citation for part 26 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 715i; Pub. L. 96–315 (94 Stat. 958) and Pub. L. 98–146 (97 Stat. 955).

6. We propose to add § 26.41 to read as follows:

§ 26.41 What is the process for determining if a use of a national wildlife refuge is a compatible use?

The Refuge Manager will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge, unless the Refuge Manager has determined that the use is a compatible use. This section provides guidelines for making compatibility determinations, and procedures for documenting compatibility determinations and for periodic review of compatibility determinations. We will make all compatibility determinations in writing.

(a) *Steps for preparing compatibility determinations.* All compatibility determinations will include the following information:

(1) The proposed or existing use;

(2) The name of the national wildlife refuge;

(3) The authorities used to establish the national wildlife refuge;

(4) The major purposes of the national wildlife refuge;

(5) The National Wildlife Refuge System Mission;

(6) The nature and extent of the use including the following:

(i) What is the use?

(ii) Where would the use be conducted?

(iii) When would the use be conducted?

(iv) How would the use be conducted?;

(7) An analysis of costs for administering and managing each use;

(8) The anticipated impacts of the use on the national wildlife refuge's major purposes and the National Wildlife Refuge System Mission;

(9) A logical explanation describing how the proposed use affects fulfilling the national wildlife refuge's major purposes and the National Wildlife Refuge System Mission;

(10) The amount of opportunity for public review and comment provided;

(11) Whether the use is compatible or not compatible (does it or will it materially interfere with or detract from the fulfillment of the National Wildlife Refuge System Mission or the major purposes of the national wildlife refuge);

(12) Stipulations necessary to ensure compatibility;

(13) The name of the Regional Office Supervisor or designee that was consulted with and date of consultation prior to approving each compatibility determination; and

(14) The Refuge Manager's signature and date signed.

(b) *Making a use compatible through replacement of lost habitat values or other compensation.* We will not allow making proposed refuge uses compatible through replacement of lost habitat values or other compensation. If we cannot make the proposed use compatible through stipulations we cannot allow the use.

(c) *Termination of uses that are not compatible.* When we determine an existing use is not compatible, we will terminate or modify the use to make it compatible as expeditiously as practicable.

PART 29—[AMENDED]

7. The authority citation for part 29 continues to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, secs. 5, 10, 45 Stat. 449, 1224, secs. 4, 2, 48 Stat. 402, as amended, 1270, sec. 4, 76 Stat. 645; 5 U.S.C. 301, 16 U.S.C. 668dd, 685, 725, 690d, 715i, 664, 43 U.S.C. 315a, 16 U.S.C. 460k; 80 Stat. 926.

8. We propose to revise § 29.1 to read as follows:

§ 29.1 May we allow economic uses on national wildlife refuges?

We may authorize public or private economic use of the natural resources of any wildlife refuge area, in accordance with 16 U.S.C. 715s, where the use may contribute to the administration of the area. We may authorize economic use by appropriate permit only when we have determined the activity on a wildlife refuge area to be compatible. Persons exercising economic privileges on refuge areas will be subject to the applicable provisions of this subchapter and of other applicable laws and regulations governing wildlife refuge areas. Permits for economic use will contain such terms and conditions that we determine to be necessary for the proper administration of the resources. Economic use in this section includes but is not limited to grazing livestock, harvesting hay and stock feed, removing timber, firewood or other natural products of the soil, removing shell, sand or gravel, cultivating areas, or engaging in operations that facilitate approved programs on wildlife refuge areas.

9. We propose to revise § 29.3 to read as follows:

§ 29.3 What are nonprogram uses of national wildlife refuges?

Uses of wildlife refuge areas that make no contribution to the primary objectives of the refuge or to the objectives of the National Wildlife Refuge System are nonprogram uses. We may grant permission for such uses only when we determine they are compatible.

10. We propose to amend § 29.21 by:

a. Revising the heading;

b. Removing the paragraph designations;

c. Revising and placing in alphabetical order the definition of ''Compatible use'';

d. Removing ''Secretary,'' ''Service,'' and ''Regional Director''; and

e. Placing the remaining definitions in alphabetical order to read as follows:

§ 29.21 What do the following terms mean?

Compatible use means a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, in the sound professional judgment of the Refuge Manager, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System Mission or the major purposes of the affected national wildlife refuge. The term ''inconsistent'' in section 28(b)(1) of the Mineral Leasing Act of 1920, as amended by Pub. L. 93–153, means a use that is not compatible.

* * * * *

11. We propose to amend § 29.21–7 by removing paragraph (c) and revising the heading to read as follows:

§ 29.21–7 What payment do we require for use and occupancy of national wildlife refuge lands?

Dated: May 26, 1999.

Donald J. Barry,

Assistant Secretary, Fish, Wildlife and Parks.

[FR Doc. 99–22992 Filed 9–8–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Compatibility Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We propose to establish in policy, the process for determining whether or not a use of a national wildlife refuge is a compatible use. This draft compatibility policy incorporates the compatibility provisions of the National Wildlife Refuge System Improvement Act of 1997 (NWRSIA–1997), that amends the National Wildlife Refuge System Administration Act of 1966 (NWRSAA–1966), into our policy as Part 603 Chapter 3 of the Fish and Wildlife Service Manual. Published concurrently in this **Federal Register** are our proposed compatibility regulations describing the process for determining whether or not a use of a national wildlife refuge is a compatible use.

DATES: Submit comments on or before November 8, 1999.

ADDRESSES: Send comments concerning this draft compatibility policy via mail, fax or email to: Chief, Division of Refuges, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; fax (703)358–2248; e-mail Compatibility__Policy__Comments@fws. gov.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Refuges, U.S. Fish and Wildlife Service, Telephone (703) 358–1744.

SUPPLEMENTARY INFORMATION: The NWRSIA–1997 amends and builds upon the NWRSAA–1966, providing an ''Organic Act'' for the National Wildlife Refuge System. It clearly establishes that wildlife conservation is the singular National Wildlife Refuge System Mission, provides guidance to the Secretary of the Interior (Secretary) for management of the National Wildlife Refuge System, provides a mechanism for national wildlife refuge planning, and gives Refuge Managers uniform direction and procedures for making decisions regarding wildlife conservation and uses of the National Wildlife Refuge System.

The NWRSAA–1966 required the Secretary, before permitting uses, to ensure that those uses are compatible with the purposes of the national wildlife refuge. We built this legal requirement into our policy and regulation. For 32 years, the compatibility standard for national wildlife refuge uses has helped us manage national wildlife refuge lands sensibly and in keeping with the general goal of putting wildlife conservation first. The NWRSIA–1997 maintains the compatibility standard as provided in the NWRSAA–1966, provides significantly more detail regarding the compatibility standard and compatibility determination process, and requires that we promulgate the compatibility process in regulations. This policy will ensure that compatibility becomes a more effective conservation standard, more consistently applied across the entire National Wildlife Refuge System, and more understandable and open to involvement by the public.

Compatibility and the NWRSIA–1997

The NWRSIA–1997 includes a number of provisions that specifically address compatibility. The following is a summary of those provisions and how they apply to us.

We will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge, unless we have determined that the use is a compatible use and that the use is not inconsistent with public safety. We may make compatibility determinations for a national wildlife refuge concurrently with the development of a Comprehensive Conservation Plan.

On lands added to the National Wildlife Refuge System after March 25, 1996, we will identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational public uses (if any) that we will permit to continue on an interim basis pending completion of a Comprehensive Conservation Plan for the national wildlife refuge.

We may authorize wildlife-dependent recreational uses on a national wildlife refuge when we determine they are compatible uses and are not inconsistent with public safety. We are not required to make any other determinations or findings to comply with the NWRSAA–1966 or the Refuge Recreation Act of 1962 (RRA–1962) for wildlife-dependent recreational uses to occur except for consideration of consistency with State laws and regulations.

Compatibility determinations in existence on the date of enactment of the NWRSIA–1997, October 9, 1997, will remain in effect until and unless modified. In addition, we will make compatibility determinations prepared during the period between enactment of the NWRSIA–1997 and the effective date of the compatibility regulations published concurrently with this notice under the existing compatibility process. After the effective date of the compatibility regulations, we will make compatibility determinations and re-evaluations of compatibility determinations under the compatibility process in the regulations.

By October 9, 1999, we will issue final regulations establishing the process for determining whether or not a use of a national wildlife refuge is a compatible use. These regulations will:

1. Identify the refuge official responsible for making compatibility determinations;
2. Require an estimate of the time-frame, location, manner, and purpose of each use;
3. Require the identification of the effects of each use on national wildlife refuge resources and purposes of each national wildlife refuge;
4. Require that compatibility determinations be made in writing;
5. Provide for the expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the affected national wildlife refuge's purposes or the National Wildlife Refuge System Mission;
6. Provide for the elimination or modification of any use as expeditiously as practicable after we make a determination that the use is not a compatible use;
7. Require, after an opportunity for public comment, reevaluation of each existing use, other than wildlife-dependent recreational uses, if conditions under which the permitted use change significantly or if there is significant new information regarding the effects of the use, but not less frequently than once every 10 years, to ensure that the use remains a compatible use. In the case of any use authorized for a period longer than 10 years (such as an electric utility right-of-way), the reevaluation will examine compliance with the terms and conditions of the authorization, not examine the authorization itself;
8. Require, after an opportunity for public comment, reevaluation of each existing wildlife-dependent recreational use when conditions under which the permitted use change significantly or if there is significant new information regarding the effects of the use, but not less frequently than in conjunction with each preparation or revision of a comprehensive conservation plan or at least every 15 years, whichever is earlier; and

9. Provide an opportunity for public review and comment on each evaluation of a use, unless we have already provided an opportunity during the development or revision of a Comprehensive Conservation Plan for the national wildlife refuge or have already provided an opportunity during routine, periodic determinations of compatibility for wildlife-dependent recreational uses.

Purpose of This Draft Policy

The purpose of this draft policy is to establish in policy, the process for determining compatibility of proposed national wildlife refuge uses and procedures for documentation and periodic review of existing uses, and to ensure that we administer proposed and existing uses according to the compatibility provisions of the NWRSIA–1997. Published concurrently in this **Federal Register** are our proposed compatibility regulations. This draft compatibility policy reflects the proposed compatibility regulations and provides additional detail for each step in the compatibility determination process.

Fish and Wildlife Service Directives System

Because many of our field stations are located in remote areas across the United States, it is important that all employees have available and know the current policy and management directives that affect their daily activities. The Fish and Wildlife Service Directives System, consisting of the Fish and Wildlife Service Manual, Director's Orders, and National Policy Issuances, is the vehicle for issuing the standing and continuing policy and management directives of the Service. New directives are posted on the Internet upon approval, ensuring that all employees have prompt access to the most current guidance.

The Fish and Wildlife Service Manual contains our standing and continuing directives with which our employees must comply and has regulatory force and effect within the Service. We use it to implement our authorities and to ''step down'' our compliance with Statutes, Executive orders, and Departmental directives. It establishes the requirements and procedures to assist our employees in carrying out our authorities, responsibilities, and activities.

Director's Orders are limited to temporary policy, procedures, delegations of authority, emergency regulations, special assignments of functions, and initial functional statements on the establishment of new organizational units. All Director's Orders must be converted as soon as practicable to appropriate parts of the Fish and Wildlife Service Manual or removed. Material appropriate for immediate inclusion in the Fish and Wildlife Service Manual generally is not issued as a Director's Order.

National Policy Issuances promulgate the Director's national policies for managing the Service and its programs. These policies are necessarily broad and generally require management discretion or judgment in their implementation. They represent the Director's expectations of how the Service and its employees will act in carrying out their official responsibilities.

The Fish and Wildlife Service Manual, Director's Orders, and National Policy Issuances are available on the Internet at http://www.fws.gov/directives/direct.html. When finalized, we will incorporate this compatibility policy into the Fish and Wildlife Service Manual as Part 603 Chapter 3.

Comment Solicitation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Chief, Division of Refuges, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203. You may comment via the Internet to: Compatibility__Policy__Comments@fws. gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include: ''Attn: 1018–AE98'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703)358–1744. You may also fax comments to: Chief, Division of Refuges, (703)358–2248. Finally, you may hand-deliver comments to the address mentioned above.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We seek public comments on this draft compatibility policy and will take into consideration comments and any additional information received during the 60-day comment period.

We published a notice in the **Federal Register** on January 23, 1998 (63 FR 3583) notifying the public that we would be revising the Fish and Wildlife Service Manual, establishing regulations as they relate to the NWRSIA–1997, and offering to send copies of specific draft Fish and Wildlife Service Manual chapters to anyone who would like to receive them. We will mail a copy of this draft Fish and Wildlife Service Manual compatibility chapter to those who requested one, along with a copy of the proposed compatibility regulations published concurrently in this **Federal Register**. In addition, this draft Fish and Wildlife Service Manual compatibility chapter and the proposed compatibility regulations will be available on the National Wildlife Refuge System web site (http://refuges.fws.gov) during the 60-day comment period.

Required Determinations

We have analyzed the impacts of this policy in concert with the proposed rule published concurrently in today's issue of the **Federal Register**. For compliance with applicable laws and Executive orders affecting the issuance of rules and policies, see the ''Supplementary Information'' section of the proposed rule.

Primary Author

J. Kenneth Edwards, Refuge Program Specialist, Division of Refuges, U.S. Fish and Wildlife Service, is the primary author of this notice.

Draft Compatibility Policy

FISH AND WILDLIFE SERVICE

NATIONAL WILDLIFE REFUGE SYSTEM USES

Refuge Management
Part 603 National Wildlife Refuge System Uses
Chapter 3 Compatibility
603 FW 3.1

3.1 What is the purpose of this chapter? This chapter provides guidance for determining compatibility of proposed and existing uses of national wildlife refuges.

3.2 What does this policy apply to? This policy applies to all proposed and

existing uses of national wildlife refuges where we have jurisdiction over such uses.

3.3 What is the compatibility policy? The Refuge Manager will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge, unless the Refuge Manager has determined that the use is a compatible use.

3.4 What are the objectives of this chapter?

A. To provide guidelines for determining compatibility of proposed national wildlife refuge uses and procedures for documentation and periodic review of existing national wildlife refuge uses; and

B. To ensure that we administer proposed and existing national wildlife refuge uses according to laws, regulations, and policies concerning compatibility.

3.5 What are our statutory authorities for requiring uses of national wildlife refuges to be compatible?

A. National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd–668ee (Refuge Administration Act). This law states that ''The Secretary is authorized, under such regulations as he may prescribe, to—(A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible'' and that ''* * * the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety.'' The law also provides that, in administering the Refuge System, ''* * * the Secretary is authorized to * * * Issue regulations to carry out this Act.''

A significant goal of the Refuge Administration Act is to ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for present and future generations of Americans. Fragmentation of the Refuge System's wildlife habitats is a direct threat to the integrity of the Refuge System, both today and in the decades ahead. Uses that we reasonably may anticipate to reduce the quality or quantity or fragment habitats on a refuge will not be compatible.

B. Refuge Recreation Act of 1962, 16 U.S.C. 460k (Refuge Recreation Act). This law requires that any recreational use of a refuge must be compatible with the primary purposes for which the refuge was established.

C. Alaska National Interest Lands Conservation Act of 1980, 16 U.S.C. 140hh–3233, 43 U.S.C. 1602–1784 (ANILCA). Section 304 of the ANILCA adopted the compatibility standard of the Refuge Administration Act for Alaska refuges.

3.6 What do these terms mean?

A. Compatible use means a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, in the sound professional judgment of the Refuge Manager, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System Mission or the major purposes of the affected national wildlife refuge.

B. Compatibility determination means a written determination signed and dated by the Refuge Manager, signifying that a proposed or existing use of a national wildlife refuge is either a compatible use or a not compatible use. The Director delegates authority to make this determination through the Regional Director, to the Refuge Manager.

C. Comprehensive Conservation Plan means a document that describes the desired future conditions of a national wildlife refuge, and provides long-range guidance and management direction for a Refuge Manager to accomplish the purposes of the affected national wildlife refuge, contribute to the National Wildlife Refuge System Mission, and to meet other relevant mandates.

D. Conservation, and Management mean to sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods, and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking.

E. Coordination area means a wildlife management area made available to a State: (1) By cooperative agreement between the U.S. Fish and Wildlife Service and a State agency having control over wildlife resources pursuant to section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664); or (2) by long-term leases or agreements pursuant to title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 et seq.). The States manage coordination areas as a part of the National Wildlife Refuge System. The compatibility standard does not apply to coordination areas.

F. Director means the Director, U.S. Fish and Wildlife Service or the authorized representative of such official.

G. Fish, Wildlife, and Fish and wildlife mean any member of the animal kingdom in a wild, unconfined state, whether alive or dead, including a part, product, egg, or offspring of the member.

H. National wildlife refuge, and Refuge mean a designated area of land, water, or an interest in land or water located within the external boundaries of the National Wildlife Refuge System but does not include coordination areas.

I. National Wildlife Refuge System, and Refuge System mean all lands, waters, and interests therein administered by, or subject to the jurisdiction of, the U.S. Fish and Wildlife Service as wildlife refuges, wildlife ranges, wildlife management areas, waterfowl production areas, and other areas administered by the U.S. Fish and Wildlife Service for the protection and conservation of fish and wildlife, including those that are threatened with extinction. A complete listing of all areas of the Refuge System is in the current annual ''Report of Lands Under Control of the U.S. Fish and Wildlife Service.''

J. National Wildlife Refuge System Mission, and Refuge System Mission mean to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

K. Plant means any member of the plant kingdom in a wild, unconfined state, including any plant community, seed, root, or other part of a plant.

L. Purpose(s) of the refuge means the purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a national wildlife refuge, national wildlife refuge unit, or national wildlife refuge subunit.

M. Refuge Manager means the person who is directly in charge of a national wildlife refuge.

N. Refuge use, and Use of a refuge mean a recreational use (including refuge actions associated with a recreational use or other general public

use), refuge management economic activity, or other use of a national wildlife refuge by the public or other non-Service entity.

O. Refuge management economic activity means any refuge management activity on a national wildlife refuge which results in generation of income or in a commodity which is or can be sold for income or revenue or traded for goods or services. Examples include: farming, grazing, haying, timber harvesting, and trapping. Specifically excluded from this definition are refuge management activities which generate commodities not sold for income or revenue and not traded for goods or services, on or off a national wildlife refuge.

P. Refuge management activity means an activity conducted by the Service or a Service-authorized agent to fulfill all purposes or at least one or more purposes of the national wildlife refuge, or the National Wildlife Refuge System Mission. Service-authorized agents include contractors, cooperating agencies, cooperating associations, friends organizations, and volunteers.

Q. Regional Director means the official in charge of a region of the U.S. Fish and Wildlife Service or the authorized representative of such official.

R. Secretary means the Secretary of the Interior or the authorized representative of such official.

S. Service, and We mean the U.S. Fish and Wildlife Service, Department of the Interior.

T. Sound professional judgment means a finding, determination, or decision that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), and other applicable laws. Included in this finding, determination, or decision is a Refuge Manager's field experience and a Refuge Manager's knowledge of the particular affected refuge's resources.

U. State, and United States mean one or more of the States of the United States, Puerto Rico, American Somoa, the Virgin Islands, Guam, and the territories and possessions of the United States.

V. Wildlife-dependent recreational use, and Wildlife-dependent recreation mean a use of a national wildlife refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation. The National Wildlife Refuge System Administration Act of 1966, as amended, specifies that these are the six priority general public uses of the National Wildlife Refuge System.

3.7 What are our responsibilities?

A. Director.

(1) Provides national policy for making compatibility determinations to ensure that such determinations comply with all applicable authorities.

B. Regional Director.

(1) Ensures that Refuge Managers follow laws, regulations, and policies when making compatibility determinations.

(2) Notifies the Director regarding controversial or complex compatibility determinations.

C. Refuge Manager.

(1) Determines if a proposed or existing use is subject to the compatibility standard.

(2) Determines whether a use is compatible or not compatible. The Director delegates the authority to make this determination, through the Regional Director, to the Refuge Manager.

(3) Consults with the Regional Office supervisor or designee prior to approving each compatibility determination.

(4) Documents all compatibility determinations in writing.

(5) Ensures that we provide for public review and comment opportunities for all compatibility determinations, unless previously provided.

3.8 What is the compatibility standard for Alaska refuges?

A. The Refuge Administration Act, as amended, establishes the same standard for compatibility for Alaska refuges as for other national wildlife refuges, but it specifically acknowledges that the ANILCA provisions take precedence if any conflict arises between the two laws. Additionally, the provisions of the ANILCA are the primary guidance Refuge Managers should apply when examining issues regarding subsistence use. We may alter the compatibility process, in some cases, for Alaska refuges to include additional procedural steps, such as when reviewing applications for oil and gas leasing on non-North Slope lands (ANILCA Sec. 1008) and for applications for transportation and utility systems (ANILCA Sec. 1104).

B. Alaska refuges established before the passage of the ANILCA have two sets of purposes. Purposes for pre-ANILCA refuges (in effect on the day before the enactment of the ANILCA) remain in force and effect, except to the extent that they may be inconsistent with the ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts control. However, the original purposes for pre-ANILCA refuges apply only to those portions of the refuge established by the prior executive order or public land order, and not to those portions of the refuge added by the ANILCA.

C. Section 22(g) of the Alaska Native Claims Settlement Act provides that patents issued to Village Corporations for selected land within the boundaries of a refuge existing on December 18, 1971, the signing date of the Act, will contain provisions that these lands remain subject to laws and regulations governing the use and development of such refuges. This includes application of the compatibility standard in accordance with the Service's compatibility rules and procedures with regard to such use and development.

3.9 When is a compatibility determination required?

A. We require a compatibility determination for all refuge uses as defined by the term ''refuge use'' and must include in the analysis consideration of all associated facilities, structures, and improvements, including those constructed or installed by us or at our direction. This requirement will apply to all such facilities, structures, improvements, and refuge actions associated with uses that we approve on or after the effective date of this policy and to the replacement or major repair or alteration of facilities, structures, and improvements associated with already approved uses.

B. Facilities, structures, and improvements commonly associated with recreational public uses include: campgrounds/campsites; environmental education centers; boat/fishing docks; parking lots; boat ramps; roads; trails; viewing platforms/towers; and visitor centers.

C. Facilities, structures, and improvements commonly associated with refuge management economic activities include: loading/unloading areas; construction, operation, and maintenance buildings; parking lots; roads and trails; fences; stock ponds and other livestock watering facilities; and crop irrigation facilities.

D. We will make compatibility determinations for such facilities, structures, and improvements at the same time we make the compatibility determination for the use or activity in question.

3.10 When is a compatibility determination not required?

A. Refuge management activity. We do not require a compatibility determination for refuge management activities as defined by the term ''refuge management activity'' except for ''refuge management economic activities.'' Examples include: prescribed burning;

water level management; invasive species control; routine scientific monitoring, studies, surveys, and censuses; historic preservation activities; law enforcement activities; and maintenance of existing refuge facilities, structures, and improvements.

B. Other exceptions.

1. There are other circumstances under which the requirements of compatibility may not be applicable. The most common of these exceptions involves property rights that are not vested in the Federal Government, such as reserved rights to explore and develop minerals or oil and gas beneath a refuge. In some cases, these exceptions may include water rights, easements, or navigability issues. Exceptions may apply when there are rights or interests imparted by a treaty or other legally binding agreement, where primary jurisdiction of refuge lands falls to an agency other than us, or where legal mandates supersede those requiring compatibility. Where reserved rights or legal mandates provide that we must allow certain activities, we should not prepare a compatibility determination. In the case of reserved rights, the Refuge Manager should work with the owner of the property interest to develop stipulations in a special use permit or other agreement to alleviate or minimize adverse impacts to the refuge.

2. Communication and cooperation between the Refuge Manager and the owner of reserved rights will help protect refuge resources without infringing upon privately-held rights. Refuge Managers may find it helpful in these instances to secure legal advice from the Department of the Interior Solicitor's Office.

3. Compatibility provisions of the Refuge Administration Act do not apply to Department of Defense or other overflights above a refuge. However, other Federal laws (e.g., Airborne Hunting Act, Endangered Species Act, Bald Eagle Protection Act), may govern overflights above a refuge. For military overflights, active communication and cooperation between the Refuge Manager and the local base commander will be the most effective way to protect refuge resources.

4. Compatibility requirements apply to activities on bodies of water ''in'' or ''within'' any area of the Refuge System. Under 50 CFR 25.11, this is effectively to the extent of the ownership interest of the United States in lands or waters. Where activities on water bodies not within an area of the Refuge System are affecting refuge resources, the Refuge Manager should seek State cooperation in controlling the activities. If necessary, the refuge manger should consider refuge-specific regulations that would address the problem.

5. Compatibility provisions of the Refuge Administration Act do not apply to activities authorized, funded, or conducted by another Federal agency which has primary jurisdiction over the area where a refuge or a portion of a refuge has been established, if those activities are conducted in accordance with a memorandum of understanding between the Secretary or the Director and the head of the Federal agency with primary jurisdiction over the area.

C. Emergencies. The Refuge Administration Act states that the Secretary may temporarily suspend, allow, or initiate any use in a refuge in the Refuge System if the Secretary determines it is necessary to act immediately in order to protect the health and safety of the public or any fish or wildlife population. Authority to make decisions under this emergency power is delegated to the Refuge Manager. Temporary actions should not exceed 12-months and will usually be of shorter duration. Such emergency actions are not subject to the compatibility determination process as outlined in this chapter. When using this authority, the Refuge Manager will notify the Regional Office supervisor or designee in advance of the action, or in cases where the nature of the emergency requires immediate response, as soon as possible afterwards, and typically no later than the start of business on the first normal workday following the emergency action. The Refuge Manager will create a written record (memorandum to the file) of the decision, the reasons supporting it, and why it was necessary to protect the health and safety of the public or any fish or wildlife population.

D. Denying a proposed use without determining compatibility.

1. The Refuge Manager should deny a proposed use without determining compatibility if any of the following situations exist:

(a) the proposed use is inconsistent with any applicable law or regulation (e.g., Wilderness Act, Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act);

(b) the proposed use is inconsistent with the goals or objectives in an approved refuge management plan (e.g., Comprehensive Conservation Plan, Comprehensive Management Plan, Master Plan or step-down management plan);

(c) the proposed use has already been considered in an approved refuge management plan and was not accepted;

(d) the proposed use is inconsistent with any applicable Executive Order, or written Department of the Interior or Service policy;

(e) the proposed use is inconsistent with public safety;

(f) the proposed use is a use other than a wildlife-dependent recreational use that is not manageable within the available budget and staff; or

(g) the proposed use conflicts with other resource or management objectives provided that the Refuge Manager specifies those objectives in denying the use.

2. A compatibility determination should only be prepared for a proposed use after the Refuge Manager has determined that we have jurisdiction over the use and has considered items (a) through (g) above (see Exhibit 1).

E. Existing compatibility determinations. Compatibility determinations in existence prior to the effective date of this policy will remain in effect until and unless modified and will be subject to periodic re-evaluation as described in section 3.11 G. Any use specifically authorized for a period longer than 10 years (such as rights-of-way) is subject to a compatibility determination at the time of the initial application and when the term expires and we receive a request for renewal. We will use periodic re-evaluations for such long-term uses to review compliance with permit terms and conditions.

3.11 What are considerations when applying compatibility?

A. Sound professional judgment.

1. In determining what is a compatible use, the Refuge Administration Act relies on the ''sound professional judgment'' of the Director. The Director delegates authority to make compatibility determinations through the Regional Director to the Refuge Manager. Therefore, it is the Refuge Manager who is required and authorized to exercise sound professional judgment. Compatibility determinations are inherently complex and require the Refuge Manager to consider their field experiences and knowledge of a refuge's resources, particularly its biological resources and make conclusions that are consistent with principles of sound fish and wildlife management and administration, available scientific information, and applicable laws.

2. The Refuge Manager must also consider the extent to which available resources (funding, personnel, and facilities) are adequate to develop, manage, and maintain the proposed use so as to ensure compatibility. The Refuge Manager must make reasonable efforts to ensure that the lack of resources is not an obstacle to permitting otherwise compatible

wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation). If reasonable efforts do not yield adequate resources to develop, manage, and maintain the wildlife-dependent recreational use, the use will not be compatible because the Service will lack the administrative means to ensure proper management of the public activity on the refuge.

3. Refuge Managers are reminded, that unless otherwise provided for in law or other legally binding directive, permitting uses of national wildlife refuges is a determination vested by law in the Service. Under no circumstances (except emergency provisions necessary to protect the health and safety of the public or any fish or wildlife population) may we authorize any use not determined to be compatible.

B. Materially interfere with or detract from.

1. When completing compatibility determinations, Refuge Managers use sound professional judgment to determine if a use will materially interfere with or detract from the fulfillment of the Refuge System Mission or the major purpose(s) of the refuge. Compatibility, therefore, is a threshold issue, and the proponent(s) of any use or combination of uses must demonstrate to the satisfaction of the Refuge Manager that the proposed use(s) pass this threshold test. The burden of proof is on the proponent to show that they pass; not on the Refuge Manager to show that they surpass. Some uses, like a proposed construction project on or across a refuge that affects the flow of water through a refuge, may exceed the threshold immediately, while other uses, such as boat fishing in a small lake with a colonial nesting bird rookery may be of little concern if it involves few boats, but of increasing concern with growing numbers of boats. Likewise, when considered separately, a use may not exceed the compatibility threshold, but when considered cumulatively in conjunction with other existing or planned uses, a use may exceed the compatibility threshold.

2. A use that has a tangible adverse effect will ''materially interfere with or detract.'' That effect should be one where we can reasonably foresee a lingering or continued adverse effect or influence on refuge resources. For example, the removal of a number of individual animals from a refuge through regulated hunting, trapping or fishing would in many instances help the Refuge Manager manage for improving the health of wildlife populations. However, the take of even one individual of a threatened or endangered species could significantly impact the refuge's ability to manage for and perpetuate that species. Likewise, wildlife disturbance which is very limited in scope or duration may not result in a tangible, lingering or continued adverse effect on refuge resources. However, even unintentional harassment or disturbance during critical biological times, in critical locations, or repeated over time may exceed the compatibility threshold.

3. The Refuge Manager must consider not only the direct impacts of a use but also the indirect impacts associated with the use and the cumulative impacts of the use when conducted in conjunction with other existing or planned uses of the refuge, and uses of adjacent lands or waters that may exacerbate the effects of a refuge use.

C. Making a use compatible through replacement of lost habitat values or other compensation. We will not allow making proposed refuge uses compatible through replacement of lost habitat values or other compensation. If we cannot make the proposed use compatible through stipulations we cannot allow the use.

D. Refuge-specific analysis. We must base compatibility determinations on a refuge-specific analysis of reasonably anticipated impacts of a particular use on refuge resources. We should base this refuge-specific analysis on information readily available to the Refuge Manager, including field experience and familiarity with refuge resources, or made available to the Refuge Manager by the State, Tribes, proponent of the use, or through the public review and comment period. Refuge-specific analysis need not rely on refuge-specific biological impact data, but may be based on information derived from other areas or species which are similarly situated and therefore relevant to the refuge-specific analysis. We do not require Refuge Managers to independently generate data to make determinations. If available information to the Refuge Manager is insufficient to document that a proposed use is compatible, then the Refuge Manager would be unable to make an affirmative finding of compatibility and we must not authorize or permit the use.

E. Relationship to management plans. The Refuge Manager will usually complete compatibility determinations as part of the Comprehensive Conservation Plan or step-down management plan process for individual uses, specific use programs, or groups of related uses described in the plan. The Refuge Manager will incorporate compatibility determinations prepared concurrently with a plan as an appendix to the plan. These compatibility determinations may summarize and incorporate by reference what the Refuge Manager addressed in detail in the Comprehensive Conservation Plan, step-down management plan, or associated National Environmental Policy Act (NEPA) document.

F. Managing conflicting uses. The Refuge Manager may need to allocate uses in time and/or space to reduce or eliminate conflicts among users of the refuge. If this cannot be done, the Refuge Manager may need to terminate or disallow one or more of the uses. The Refuge Administration Act does not prioritize among the six wildlife-dependent recreational uses. Therefore, in the case of direct conflict between these priority uses, the Refuge Manager should evaluate, among other things, which use most directly supports long-term attainment of refuge purposes and the Refuge System Mission. This same analysis would support a decision involving conflict between two non-priority public uses. Where there are conflicts between priority and non-priority uses, priority uses take precedence.

G. Re-evaluation of uses.

1. We will re-evaluate compatibility determinations for existing wildlife-dependent recreational uses when conditions under which the permitted use changes significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a Comprehensive Conservation Plan, or at least every 15 years, whichever is earlier. In addition, a Refuge Manager always may re-evaluate the compatibility of a use at any time.

2. Except for uses specifically authorized for a period longer than 10 years (such as rights-of-way), we will re-evaluate compatibility determinations for all other existing uses when conditions under which the permitted use changes significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a Comprehensive Conservation Plan, or at least every 10 years, whichever is earlier. Again, a Refuge Manager always may re-evaluate the compatibility of a use at any time.

3. For uses specifically authorized for a period longer than 10 years (such as long-term rights-of-way), our re-evaluation will examine compliance with the terms and conditions of the authorization, not the authorization itself. However, we will frequently monitor and review the activity to ensure that all permit terms and

conditions are being carried out. We will make a new compatibility determination prior to extending or renewing such long-term uses at the expiration of the authorization.

H. Public review and comment. An opportunity for public review and comment is required for all compatibility determinations. For compatibility determinations prepared concurrently with Comprehensive Conservation Plans or step-down management plans, we can achieve public review and comment concurrently with the public review and comment of the draft plan and associated NEPA document. For compatibility determinations prepared separate from a plan, we will determine the appropriate level of opportunity for public review and comment through a tiered approach based on complexity, controversy, and level of impact to the refuge. See 3.12 A10 for details on public review and comment.

3.12 What are the steps for preparing compatibility determinations?

A. The following steps outline the procedure for reviewing uses for compatibility. To maintain consistency, we will use the format provided in Exhibit 2 for documenting all compatibility determinations.

1. Use. Identify the use. A use may be proposed or existing, and may be an individual use, a specific use program, or a group of related uses. The Refuge Manager will determine whether to consider a use individually, a specific use program, or in conjunction with a group of related uses. However, whenever practicable, the Refuge Manager should concurrently consider related uses or uses that are likely to have similar effects, in order to facilitate analysis of cumulative effects and to provide opportunity for effective public review and comment.

2. Refuge name. Identify the name of the refuge.

3. Establishing and acquisition authority(ies). Identify the specific authority(ies) used to establish the refuge (e.g., Executive Order, public land order, Secretarial Order, refuge-specific legislation, or general legislation).

4. Refuge purpose(s). Identify the purpose(s) of the refuge from the documents identified in 3.12 A3. For a use proposed for designated wilderness areas within the Refuge System, the Refuge Manager must first analyze whether the activity can be allowed under the terms of the Wilderness Act (16 U.S.C. sections 1131–36). If so, the Refuge Manager must then determine whether the activity is compatible. As a matter of policy, the Refuge Manager will also analyze whether the activity is compatible with the purposes of the Wilderness Act, which makes such purposes supplemental to those of the national wildlife refuge.

5. National Wildlife Refuge System Mission. The Mission of the National Wildlife Refuge System is ''to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.''

6. Description of use. Describe the nature and extent of the use. The Refuge Manager may work with the proponent(s) of a use to gather information required in items (a) through (e) below to describe the proposed use. If the use is described in sufficient detail in a Comprehensive Conservation Plan, step-down management plan, other plan, or associated NEPA document, the Refuge Manager may provide a summary of the use and reference the plan or NEPA document.

At a minimum, the Refuge Manager must address and include the following in the compatibility determination:

(a) What is the use?

(b) Where would the use be conducted? Describe the specific areas of the refuge that will be used: habitat types and acres involved; key fish, wildlife, and plants that occur in or use that habitat; and the proportion of total refuge acreage and the specific habitat type involved. Include a description of other areas that may be affected incidental to the specific use, such as access to the destination area and storage of equipment. This information may be described in writing and on a map.

(c) When would the use be conducted? Describe the time of year and day, and duration of the use.

(d) How would the use be conducted? Describe the techniques to be used, types of equipment required, and number of people per given period. Include supporting uses and facilities as appropriate, e.g., boating and boat ramps to support fishing, camping and campsites to support hunting, etc.

(e) Why is this use being proposed? Describe the reason for the use and the need to conduct the use on the refuge. Consider the extent to which other areas in the vicinity provide similar opportunities.

7. Availability of resources.

a. Complete an analysis of costs for administering and managing each use. Implicit within the definition of sound professional judgment is that adequate resources (including financial, personnel, facilities, and other infrastructure) exist or can be provided by the Service or a partner to properly develop, operate, and maintain the use in a way that will not materially interfere with or detract from fulfillment of the refuge purpose(s) and the Refuge System Mission. If resources are lacking for establishment or continuation of wildlife-dependent recreational uses, the Refuge Manager will make reasonable efforts to obtain additional resources or outside assistance from States, other public agencies, local communities, and/or private and non-profit groups before determining that the use is not compatible. If adequate resources cannot be secured, the use will be found not compatible and cannot be allowed. Efforts to find additional funding must be documented on the compatibility determination form.

b. For many refuges, analysis of available resources will have been made for general categories of uses when preparing Comprehensive Conservation Plans, step-down management plans, other plans, or NEPA documents. If the required and available resources are described in sufficient detail in a Comprehensive Conservation Plan, step-down management plan, other plan, or associated NEPA document, provide a summary of the required and available resources for the use and reference the plan or NEPA document. If not sufficiently covered in the planning document, the following should be documented in the compatibility determination:

(i) Resources involved in the administration and management of the use.

(ii) Special equipment, facilities or improvements necessary to support the use. Itemize expenses such as costs associated with special equipment, physical changes or improvements necessary on the refuge that would be required to comply with disabled access requirements.

(iii) Maintenance costs associated with the use (e.g., trail maintenance and mowing, signing, garbage pickup or sanitation costs, parking areas, road repair or grading, building or structure repair, including blinds, boat ramps, kiosks, etc.).

(iv) Monitoring costs (e.g., biological surveys, maintenance of control sites, etc) to assess the impact of uses over time.

c. This analysis of cost for administering and managing each use will only include the incremental increase above general operational costs

that we can show as being directly caused by the proposed use.

d. Offsetting revenues, such as entrance fees and user fees that are returned to the refuge, should be documented in determining the costs to administer individual or aggregated uses.

8. Anticipated impacts of the use.

a. Identify and describe the reasonably anticipated impacts of the use. In assessing the potential impacts of a proposed use on the refuge purpose(s) and the Refuge System Mission, Refuge Managers will use and cite available sources of information, as well as their best professional judgment, to substantiate their analysis. Sources may include planning documents, environmental assessments, environmental impact statements, annual narratives, information from previously-conducted or ongoing research, data from refuge inventories or studies, published literature on related biological studies, State conservation management plans, field management experience, etc. Refuge Managers are not required to independently generate data on which to base compatibility determinations. The Refuge Manager may work with the proponent of the use to gather additional information before making the determination. If available information to the Refuge Manager is insufficient to document that a proposed use is compatible, then the Refuge Manager would be unable to make an affirmative finding of compatibility and we must not authorize or permit the use.

b. Refuge Managers should distinguish between long-term and short-term impacts. For example, a use may initially only be expected to cause minor impacts to the resource, however, the cumulative impacts over time may become quite substantial. Other uses may have impacts which are very short in duration but very significant while they are occurring, or are the converse: very long in duration but very insignificant in effect.

c. Direct impacts on refuge resources, such as wildlife disturbance or destruction of habitats, may be easily predicted. However, the analysis of impacts must also address indirect and cumulative effects that may be reasonably associated with a specific use. A use with little potential for impact on its own may contribute to more substantive cumulative impacts on refuge resources when conducted in conjunction with or preceding or following other uses, and when considered in conjunction with proposed or existing uses of lands and waters adjacent to the refuge.

d. If the anticipated impacts of the use are described in sufficient detail in a Comprehensive Conservation Plan, step-down management plan, other plan, or associated NEPA document, Refuge Managers may provide a summary of the anticipated impacts of the use and reference the plan or NEPA document.

9. Justification. After completing the steps described above, the Refuge Manager will provide a logical explanation for the determination. The justification must describe how the proposed use is reasonably expected to affect fulfilling the refuge's major purpose(s) and the Refuge System Mission.

10. Public review and comment.

a. The Refuge Manager must provide for public review and comment on the proposed refuge uses(s) before issuing a final compatibility determination. Public review and comment, includes actively seeking to identify individuals and organizations that reasonably might be affected by, or interested in, a refuge use. Additionally, public review and comment will offer the public the opportunity to provide relevant information and express their views on whether or not a use is compatible. The extent and complexity of public review and comment that is necessary or appropriate will be determined by the Refuge Manager. For example, significantly modifying a popular hunting, fishing, or wildlife observation program would likely be controversial and would require considerable opportunity for public review and comment; whereas, temporarily closing a small portion of a wildlife observation trail would likely require much less opportunity for public review and comment. For compatibility determinations prepared concurrently with Comprehensive Conservation Plans or step-down management plans, public involvement can be achieved concurrently with the public review and comment of the draft plan and associated NEPA document. For compatibility determinations prepared separate from a plan, the level of public review and comment will be handled through the following tiered approach.

b. For minor, incidental, or one-time uses which have been shown by past experience at this or other refuges in the Refuge System to result in no significant, cumulative, lingering or continuing adverse impacts to the refuge and would likely generate minimal public interest, the public review and comment requirement can be accomplished by posting a notice of the proposed determination at the refuge headquarters so as to maximize the opportunity for comment as is practicable. For all other uses, at a minimum, the Refuge Manager will solicit public comment by placing a public notice in a newspaper with wide local distribution. The notice must contain, at a minimum: a brief description of the compatibility determination process, a description of the use that is being evaluated, the types of information that may be used in completing the evaluation, how to provide comments, when comments are due, and how people may be informed of the decision the Refuge Manager will make regarding the use. The public will be given at least 14 calendar days to provide comments following the day the notice is published. This period may be reduced by the Refuge Manager when there is not sufficient time to provide the full 14-days.

c. For evaluations of controversial or complex uses, the Refuge Manager should expand the public review and comment process to allow for additional opportunities for comment. This may include newspaper or radio announcements, notices or postings in public places, notices in the **Federal Register**, letters to potentially interested people such as adjacent landowners, holding public meetings, or extending the comment period.

d. Public review and comment efforts must be documented on the compatibility determination form and relevant information retained with compatibility determinations as part of the administrative record. The documentation must include a description of the process used, a summary of comments received, and a description of any actions taken because of the comments received. All written public comments will be retained in the administrative record. If a Comprehensive Conservation Plan or NEPA document is being prepared, this information would be included in these documents as part of the administrative record.

11. Use is compatible or not compatible. Identify whether the use is compatible or not compatible. This is where the Refuge Manager states whether the use materially interferes with or detracts from fulfilling the National Wildlife Refuge System Mission or the major purposes of the refuge.

12. Stipulations necessary to ensure compatibility.

a. Describe any stipulations necessary to ensure compatibility. If a use is not compatible as initially proposed, it may be modified with stipulations that avoid or minimize potential adverse impacts, making the use compatible. It is not the responsibility of the Refuge Manager to

develop a sufficient set of stipulations so as to make an otherwise not compatible proposed use, compatible. If the use cannot be modified with stipulations to ensure compatibility, the use cannot be allowed.

b. Protective stipulations in the compatibility determination for a particular use should specify the manner in which that use must be carried out to ensure compatibility. Stipulations must be detailed and specific. They may identify such things as limitations on time (daily, seasonal, or annual) or space where a use could be safely conducted, the routes or forms of access to be used, and any restrictions on the types of equipment to be used or number of people to be involved. Monitoring of the use must be sufficient to evaluate compliance with stated conditions and swift action must be taken to correct or respond to any serious deviations.

13. Consultation with Regional Office. Prior to approving each compatibility determination, the Refuge Manager will consult with their Regional Office supervisor or designee. The consultation will be documented by recording on the compatibility determination form the date and name of person consulted with.

14. Signature. The Refuge Manager will sign and date the compatibility determination.

15. Mandatory 10 or 15-year re-evaluation date. At the time the compatibility determination is made, the Refuge Manager will insert the required maximum 10-year re-evaluation date for uses other than wildlife-dependent recreational uses or a 15-year maximum re-evaluation date for wildlife-dependent recreational uses.

3.13 How do we expedite the compatibility determination process? The Refuge Administration Act provides for expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the purpose(s) of the refuge or the Refuge System Mission. The intent of this provision is to reduce the administrative burden on the Refuge Manager and speed the compatibility determination process for uses that are frequently found to be compatible. For minor, incidental, or one-time uses which have been shown to have no significant, cumulative, lingering, or continuing adverse impacts to the refuge and would likely generate minimal public interest, the time period for an opportunity for public review and comment may be reduced to the time available.

3.14 What do we do with existing uses that are not compatible? Existing uses determined to be not compatible will be terminated or modified to make the use compatible as expeditiously as practicable.

3.15 May we deny uses that are compatible? A determination that a use is compatible does not require the use to be allowed. Determinations on whether to allow otherwise compatible uses are based on compliance with other laws, the Refuge System Mission, policy, refuge purposes, availability of resources to manage the use, possible conflicts with other uses, public safety, and other administrative factors. The Refuge Manager must clearly document and describe in writing the administrative reasons for not permitting a compatible use. Usually, a Refuge Manager will make this decision prior to making a compatibility determination and completing one will be unnecessary.

3.16 What are the procedures for appealing a permit denial? Procedures for appealing a permit denial are provided in 50 CFR 25.45 (special use permits), 50 CFR 29.23 (rights-of-way), 50 CFR 36.41(b) (special use permits for refuges in Alaska), or 43 CFR 36.8 (rights-of-way for Alaska).

3.17 Compatibility on Lands Added to the National Wildlife Refuge System.

A. When we add lands to the National Wildlife Refuge System, the Refuge Manager assigned management responsibility for the land to be acquired, will identify prior to acquisition, withdrawal, transfer, reclassification, or donation of those lands, existing wildlife-dependent recreational public uses (if any) determined to be compatible that we will permit to continue on an interim basis, pending completion of the Comprehensive Conservation Plan. For this purpose, the Refuge Manager will make a pre-acquisition compatibility determination that will apply to existing wildlife-dependent recreational public uses that may be allowed, if determined to be compatible during the interim between acquisition and completion of the Comprehensive Conservation Plan. The purpose of this policy is to inform the public, prior to acquisition, which wildlife-dependent recreational public uses will be allowed to continue on newly acquired lands. Such decisions must be based on the compatibility standards and procedures outlined in this chapter. These pre-acquisition compatibility determinations for continuing existing wildlife-dependent recreational public uses will be made in writing, using the format in Exhibit 2.

B. Pre-acquisition compatibility determinations only apply to existing wildlife-dependent recreational public uses and are intended to be short term in nature, bridging the gap between acquisition of refuge lands and completion of refuge Comprehensive Conservation Plans. They should be made in conjunction with the preparation and release of appropriate pre-acquisition Realty documentation, prepared pursuant to NEPA. Pre-acquisition compatibility determinations should document the type, level and location of wildlife-dependent recreational public uses that are presently occurring on lands proposed for acquisition.

3.18 What is the relationship of compatibility to NEPA?

A. Analysis done to comply with NEPA with regard to proposed actions are closely related to the compatibility determination process because the NEPA process requires analysis of the impacts of a proposed action on the natural, cultural, and physical environment, and requires public participation in the decision-making process. The information developed in complying with NEPA will be useful in completing compatibility determinations.

B. Comprehensive Conservation Plans and step-down management plans will have associated NEPA compliance documentation, and Refuge Managers should ensure that the analysis in the NEPA document adequately covers the factors that are relevant to compatibility determinations. If this is done, it will only be necessary to summarize and reference the analysis and conclusion in the compatibility determination. Final compatibility determinations should be deferred until the NEPA document is completed and a decision is made on the proposed action. Public involvement efforts should be undertaken concurrently to the extent practicable.

C. A decision to allow a proposed use, or terminate or significantly modify an existing use made independent of a formal planning process should be accompanied by appropriate NEPA documentation. However, if a proposed use is not authorized, as a result of a compatibility determination, no action results that would require NEPA documentation. NEPA compliance for authorizations of uses that are categorically excluded should be documented with an Environmental Action Statement as described in 550 FW 3. The Refuge Manager may work with the proponent(s) of a use to provide the appropriate NEPA documentation.

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Exhibit 1

Compatibility Determination Flowchart

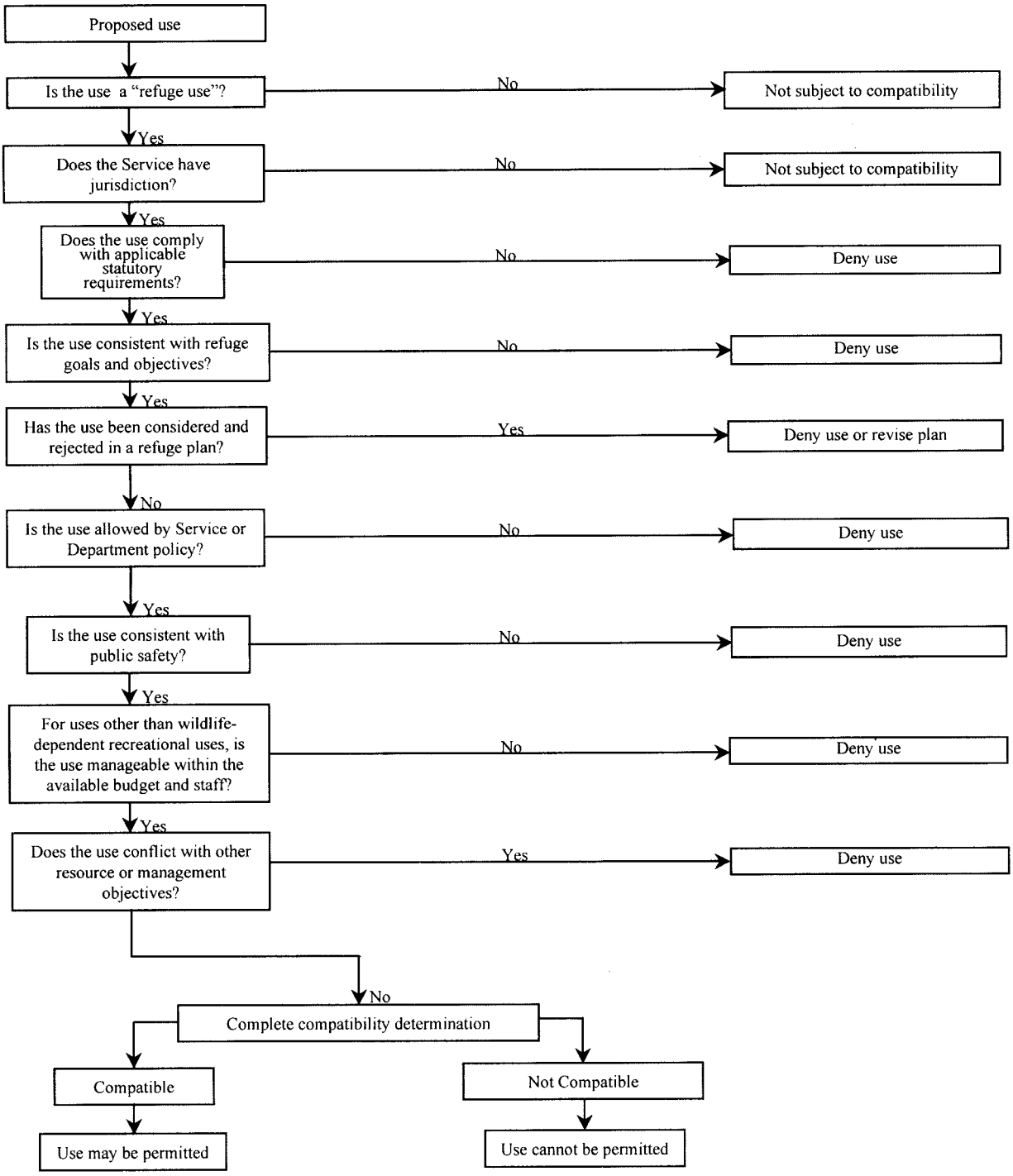

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Exhibit 2—Compatibility Determination

Use:
Refuge Name:
Establishing and Acquisition Authority(ies):
Refuge Purpose(s):
National Wildlife Refuge System Mission:
Description of Use:
Availability of Resources:
Anticipated Impacts of the Use:
Justification:
Public Review and Comment:
Use is Compatible or Not Compatible (circle one):
Stipulations Necessary to Ensure Compatibility:
Consultation with Regional Office:
Signature:
Refuge Manager:

_____

(Signature/Date)

Mandatory 10 or 15-year Reevaluation Date: _____

Dated: May 26, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–22993 Filed 9–8–99; 8:45 am]

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Thursday, September 9, 1999

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 211/P.L. 106–48

To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the ''Thomas S. Foley United States Courthouse'', and the plaza at the south entrance of such building and courthouse as the ''Walter F. Horan Plaza''. (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49

Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50

Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106–51

Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52

Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53

Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54

For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55

To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

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