8–18–97
Vol. 62 No. 159

federal register

Monday
August 18, 1997

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(ISSN 0097–6326)

8–18–97
Vol. 62 No. 159
Pages 43917–44066

federal register

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 9, 1997 at 9:00 am.
Office of the Federal Register

WHERE: Conference Room
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RESERVATIONS: 202–523–4538

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WHEN: September 23, 1997 at 9:00 am.

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Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AF03

1997 Marketing Quotas and Price Support Levels for Fire-Cured (type 21), Fire-Cured (types 22–23), Dark Air-Cured (types 35–36), Virginia Sun-Cured (type 37), and Cigar-Filler and Binder (types 42–44 and 53–55) Tobaccos

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

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify the national marketing quotas and price support levels for the 1997 crops for several kinds of tobacco announced by press release on February 27, 1997.

In accordance with the Agricultural Adjustment Act of 1938, as amended (the 1938 Act), the Secretary determined the 1997 marketing quotas to be as follows: fire-cured (type 21), 2.395 million pounds; fire-cured (types 22–23), 43.4 million pounds; dark air-cured (types 35–36), 9.88 million pounds; Virginia sun-cured (type 37), 156,400 pounds; and cigar-filler and binder (types 42–44 and 53–55), 8.4 million pounds.

Quotas are necessary to adjust the production levels of certain tobaccos to more fully reflect supply and demand conditions, as provided by statute.

In addition, in accordance with the Agricultural Act of 1949 as amended (the 1949 Act), the Secretary determined the 1997 levels of price support to be as follows (in cents per pound): fire-cured (type 21), 149.8; fire-cured (types 22–23), 162.3; dark air-cured (types 35–36), 139.8; Virginia sun-cured (type 37), 132.6; and cigar-filler and binder (types 42–44 and 53–55), 116.9. Price supports are generally necessary to maintain grower income.

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0514, Phone 202–720–5346.

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, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because Farm Service Agency (FSA) is not 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.

Paperwork Reduction Act

The amendments to 7 CFR parts 723 and 1464 set forth in this final rule do not contain information collections that require clearance through the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35.

Unfunded Federal Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (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

This final rule is issued pursuant to the provisions of the 1938 Act and the 1949 Act.

On February 27, 1997, the Secretary determined and announced the national marketing quotas and price support levels for the 1997 crops of fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), and cigar-filler and binder (types 42–44 and 53–55) tobaccos. A number of related determinations were made at the same time which this final rule affirms. On the same date, the Secretary also announced that referenda would be conducted by mail with respect to fire-cured (types 21–23) and dark air-cured (types 35–36) tobaccos.

During March 24–27, 1997, eligible producers of fire-cured (types 21–23) and dark air-cured (types 35–36) tobacco voted in separate referenda to determine whether such producers favor marketing quotas for the 1997, 1998 and 1999 marketing years (MYs) for these tobaccos. Of the producers voting, 90.6 percent favored marketing quotas for fire-cured (types 21–23) tobacco while 89.6 percent favored marketing quotas for dark air-cured (types 35–36) tobacco. Accordingly, quotas and price supports for fire-cured (types 21–23) and dark air-cured (types 35–36) tobacco are in effect for the 1997 MY.

In accordance with section 312(a) of the 1938 Act, the Secretary of Agriculture was required to proclaim not later than March 1 of any MY with respect to any kind of tobacco, other than burley and flue-cured tobacco, a national marketing quota for any such kind of tobacco for each of the next 3 MYs if such MY was the last year of 3 consecutive years for which marketing quotas previously proclaimed will be in effect. With respect to fire-cured (types 21–23) and dark air-cured (types 35–36) tobaccos, the 1996 MY is the last year of 3 such consecutive years. Accordingly, subject to producer approval, marketing quotas for these tobaccos have been proclaimed for each of the 3 MYs beginning October 1, 1997; October 1, 1998; and October 1, 1999. Quotas for the other tobaccos covered by this notice were approved in referenda which are still effective.

Because of producer approval of quotas, sections 312 and 313 of the 1938 Act required that the Secretary

announce the reserve supply level and the total supply of fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), and cigar-filler and binder (types 42–44 and 53–55) tobaccos for the MY beginning October 1, 1997.

The Secretary also announces the amounts of the national marketing quotas, national acreage allotments, national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (1) new farms and (2) making corrections and adjusting inequities in old farm allotments.

Under the 1949 Act, price support is required to be made available for each crop of a kind of tobacco for which marketing quotas are in effect or for which marketing quotas have not been disapproved by producers. With respect to the 1997 crop of the five kinds of tobacco that are the subject of this notice, the respective maximum level of price support for these kinds is determined in accordance with section 106 of the 1949 Act. Announcement of the price support levels for these five kinds of tobacco are normally made before the planting seasons. Under the provisions of Section 1108(c), of Pub. L. No. 99–272, the price support level announcements do not require prior rulemaking. For the 1997 crops, the price support announcements were made on February 27, 1997, at the same time the quota announcements were made. Quota and price support determinations for burley and flue-cured tobacco are made separately and are the subject of separate notices.

Quotas and Related Determinations

Statutory Provisions

Section 312(b) of the 1938 Act provides, in part, that the national marketing quota for a kind of tobacco is the total quantity of that kind of tobacco that may be marketed so that a supply of such tobacco equal to its reserve supply level is made available during the MY.

Section 313(g) of the 1938 Act provides that the Secretary may convert the national marketing quota into a national acreage allotment for apportionment to individual farms.

Since producers of these kinds of tobacco generally produce considerably less than their respective national acreage allotments allow, a larger effective quota is necessary to make available production equal to the reserve supply level. Further, under section 312(b) of the 1938 Act the amount of the national marketing quota may, not later than the following March 1, be increased by not more than 20 percent over the straight formula amount if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restriction of marketings in adjusting the total supply to the reserve supply level.

Section 301(b)(14)(B) of the 1938 Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to ensure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. "Normal supply" is defined in section 301(b)(10)(B) of the 1938 Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic use and 65 percent of a normal year's exports as an allowance for a normal year's carryover.

Normal year's domestic consumption is defined in section 301(b)(11)(B) of the 1938 Act as the average quantity produced and consumed in the United States during the 10 MYs immediately preceding the MY in which such consumption is determined, adjusted for current trends in such consumption. Normal year's exports is defined in section 301(b)(12) of the 1938 Act as the average quantity produced in and exported from the United States during the 10 MYs immediately preceding the MY in which such exports are determined, adjusted for current trends in such exports.

Also, under section 313(g) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 1 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities and for establishing allotments for new farms. The Secretary has determined that the national reserve, noted herein, for the 1997 crop of each of these kinds of tobacco is adequate for these purposes.

The Proposed Rule

On January 27, 1997, a proposed rule was published in the **Federal Register** (62 FR 3830) in which interested persons were requested to comment with respect to setting quotas for the tobacco kinds addressed in this notice.

Discussion of Comments

Twenty-five written responses were received during the comment period which ended February 12, 1997. A summary of these comments by kind of tobacco follows:

(1) *Fire-cured (type 21) tobacco.* Eleven comments were received. One recommended no change from the 1996 quota, while 10 others recommended a 15 percent increase in 1997 quotas.

(2) *Fire-cured (types 22–23) tobacco.* Five comments were received. They ranged from recommending no change to recommending a 10 percent increase in 1997 quotas.

(3) *Dark air-cured (types 35–36) tobacco.* Six comments were received. All recommended a 10 percent increase in the quota.

(4) *Virginia sun-cured (type 37) tobacco.* Three comments were received. They recommended a quota increase of between 15 and 20 percent.

(5) *Cigar-filler and binder (types 42–44 and 53–55) tobacco.* No comments were received.

Quota and Related Determinations

Based on a review of these comments and the latest available statistics of the Federal Government, which appear to be the most reliable data available, the following determinations were made for the five subject tobacco kinds:

(1) Fire-Cured (type 21) Tobacco

The average annual quantity of fire-cured (type 21) tobacco produced in the United States that is estimated to have been consumed in the United States during the 10 MYs preceding the 1996 MY was approximately 0.7 million pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1996 MY was 2.2 million pounds (farm sales weight basis). Both domestic use and exports have trended sharply downward. Because of these considerations, a normal year's domestic consumption has been determined to be 0.7 million pounds, and a normal year's exports have been determined to be 1.5 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 3.78 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1996, of 2.8 million pounds. The 1996 crop is estimated to be 1.7 million pounds. Therefore, total supply for the 1996 MY is 4.5 million pounds. During the 1996 MY, it is estimated that disappearance will total approximately 2.4 million pounds. Deducting this disappearance from total supply results in a 1997 MY beginning stock estimate of 2.1 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1997, is 1.68 million pounds. This represents the

quantity that may be marketed that will make available during the 1997 MY a supply equal to the reserve supply level. More than 80 percent of the announced national marketing quota is expected to be produced. Accordingly, it has been determined that a 1997 national marketing quota of 1.996 million pounds is necessary to make available production of 1.68 million pounds. As permitted by section 312(b) of the 1938 Act, it was further determined that the 1997 national marketing quota should be increased by 20 percent over the normal formula amount in order to avoid undue restriction of marketings. This determination took into account the size of last year's quota the comments, the long storage time for this tobacco, and the possibility of changes in demand over expected demand.

Thus, the national marketing quota for the 1997 crop is 2.395 million pounds.

In accordance with section 313(g) of the 1938 Act, dividing the 1997 national marketing quota of 2.395 million pounds by the 1992–96, 5-year national average yield of 1,590 pounds per acre results in a 1997 national acreage allotment of 1,506.29 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 1.125 is determined by dividing the national acreage allotment for the 1997 MY, less a national reserve of 14.38 acres, by the total of the 1997 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(2) Fire-Cured (types 22–23) Tobacco

The average annual quantity of fire-cured (types 22–23) tobacco produced in the United States that is estimated to have been consumed in the United States during the 10 years preceding the 1996 MY was approximately 18.7 million pounds. The average annual quantity produced in the United States and exported during the 10 MYs preceding the 1996 MY was 16.2 million pounds (farm sales weight basis). Domestic use has trended upward while exports have varied. Because of these considerations, a normal year's domestic consumption has been determined to be 30.0 million pounds, and a normal year's exports have been determined to be 18.2 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 118.1 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1996, of 80.2 million pounds. The 1996 crop is estimated to be 42.3 million pounds. Therefore, total supply for the 1996 MY. is 122.5 million pounds. During the 1996 MY, it is estimated that disappearance will total approximately 39.0 million pounds. Deducting this disappearance from total supply results in a 1997 MY beginning stock estimate of 83.5 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1997, is 34.6 million pounds. This represents the quantity that may be marketed that will make available during the 1997 MY a supply equal to the reserve supply level. About 95 percent of the announced national marketing quota is expected to be produced. Accordingly, it has been determined that a 1997 national marketing quota of 36.2 million pounds is necessary to make available production of 34.6 million pounds.

Utilizing section 312(b) of the 1938 Act, it was further determined, for the same reasons as with type 21 tobacco, that the 1997 national marketing quota should be increased by 20 percent over the normal formula amount in order to avoid undue restriction of marketings. Thus, the national marketing quota for the 1997 crop is 43.4 million pounds.

In accordance with section 313(g) of the 1938 Act, dividing the 1997 national marketing quota of 43.4 million pounds by the 1992–96, 5-year average yield of 2,551 pounds per acre results in a 1997 national acreage allotment of 17,012.94 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 1.025 is determined by dividing the national acreage allotment for the 1997 MY, less a national reserve of 136.93 acres, by the total of the 1997 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(3) Dark Air-Cured (types 35–36) Tobacco

The average annual quantity of dark air-cured (types 35–36) tobacco produced in the United States that is estimated to have been consumed in the United States during the 10 MYs preceding the 1996 MY was approximately 9.6 million pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1996 MY was 1.7 million pounds (farm sales weight basis). Domestic use has been erratic while exports have trended downward. Because of these considerations, a normal year's domestic consumption has been determined to be 9.9 million pounds, and a normal year's exports have been determined to be 1.5 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 31.2 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1996, of 25.1 million pounds. The 1996 crop is estimated to be 9.1 million pounds. Therefore, total supply for the 1996 MY is 34.2 million pounds. During the 1996 MY, it is estimated that disappearance will total approximately 10.5 million pounds. Deducting this disappearance from total supply results in a 1997 MY beginning stock estimate of 23.7 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1997, is 7.5 million pounds. This represents the quantity that may be marketed that will make available during the 1997 MY a supply equal to the reserve supply level. About 90 percent of the announced national marketing quota is expected to be produced. Accordingly, it has been determined that a national marketing quota of 8.23 million pounds is necessary to make available production of 7.5 million pounds. Utilizing section 312(b) of the 1938 Act, it was further determined that the 1997 national marketing quota should be increased by 20 percent over the normal formula amount in order to avoid undue restriction of marketings. This determination took into account the same factors as with type 21 and industry preferences. This results in a national marketing quota for the 1997 MY of 9.88 million pounds. Otherwise, the quota would be well below the level for the 1996 crop.

In accordance with section 313(g) of the 1938 Act, dividing the 1997 national marketing quota of 9.88 million pounds by the 1992–96, 5-year average yield of 2,312 pounds per acre results in a 1997 national acreage allotment of 4,273.36 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 1.05 is determined by dividing the national acreage allotment for the 1997 MY, less a national reserve of 39.83 acres, by the total of the 1997 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(4) Virginia Sun-Cured (Type 37) Tobacco

The average annual quantity of Virginia sun-cured (type 37) tobacco produced in the United States that is estimated to have been consumed in the United States during the 10 MYs preceding the 1996 MY was approximately 110,000 pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1996 MY was approximately 90,000 pounds (farm sales weight basis). Both domestic use and exports have shown a sharp downward trend. Because of these considerations, a normal year's domestic consumption has been determined to be 40,000 pounds, and a normal year's exports have been determined to be 24,000 pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 150,000 pounds.

Manufacturers and dealers reported stocks held on October 1, 1996, of 50,000 pounds. The 1996 crop is estimated to be 120,000 pounds. Therefore, total supply for the 1996 MY is 170,000 pounds. During the 1996 MY, it is estimated that disappearance will total approximately 120,000 pounds. Deducting this disappearance from total supply results in a 1997 MY beginning stock estimate of 50,000 pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1996, is 100,000 pounds. This represents the quantity that may be marketed that will make available during the 1997 MY a supply equal to the reserve supply level. Less than two-thirds of the announced national marketing quota is expected to be produced. Accordingly, it has been determined that a 1997 national marketing quota of 156,400 pounds is necessary to make available production of 100,000 pounds. Thus, the national marketing quota for the 1997 crop is 156,400 pounds which is greater than the preceding quota by about 6 percent and should not unduly restrict marketings.

In accordance with section 313(g) of the 1938 Act, dividing the 1997 national marketing quota of 156,400 pounds by the 1992–96, 5-year average yield of 1,375 pounds per acre results in a 1997 national acreage allotment of 113.75 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 1.15 is determined by dividing the national acreage allotment for the 1997 MY, less a national reserve of 1.09 acres, by the total of the 1997 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(5) Cigar-Filler and Binder (types 42–44 and 53–55) Tobacco

The average annual quantity of cigar-filler and binder (types 42–44 and 53–55) tobacco produced in the United States that is estimated to have been consumed in the United States during the 10 MYs preceding the 1996 MY was approximately 13.8 million pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1996 MY was less than 100,000 pounds (farm sales weight). Domestic use has trended downward and exports are very small. Based on these considerations, a normal year's domestic consumption has been determined to be 7.8 million pounds, and a normal year's exports has been determined to be zero pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 22.6 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1996, of 21.8 million pounds. The 1996 crop is estimated to be 4.6 million pounds. Therefore, total supply for the 1996 MY is 26.4 million pounds. During the 1996 MY, it is estimated that disappearance will total about 8.8 million pounds. Deducting this disappearance from total supply results in a 1997 MY beginning stock estimate of 17.6 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1997, is 5.0 million pounds. This represents the quantity that may be marketed that will make available during the 1997 MY a supply equal to the reserve supply level. Slightly more than 70 percent of the announced national marketing quota is expected to be produced. Accordingly, it has been determined that a 1997 national marketing quota of 7.0 million pounds is necessary to make available production of 5.0 million pounds. As permitted by section 312(b) of the 1938 Act, it was further determined that the 1997 national marketing quota should be increased by 20 percent over the normal formula amount in order to avoid undue restriction of marketings. This results in a 1997-crop national marketing quota of 8.4 million pounds. This determination reflects that there are short reserve supplies and takes into account possible changes in expected demand and the fact that even with this adjustment the new quota will be less than the 1996 crop quota.

In accordance with section 313(g) of the 1938 Act, dividing the 1997 national marketing quota of 8.4 million pounds by the 1992–96, 5-year average yield of 1,876 pounds per acre results in a 1997 national acreage allotment of 4,477.61 acres.

Pursuant to the provisions of section 313(g), of the 1938 Act, a national factor of 1.0 is determined by dividing the national acreage allotment for the 1997 MY, less a national reserve of 9.21 acres, by the total of the 1997 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(6) Referendum Results for Fire-Cured (Types 21–23) and Dark Air-Cured (Types 35–36) Tobaccos

Because of the results of producer referenda, marketing quotas shall be in effect for the 1997 MY for fire-cured (types 21–23) and dark air-cured (types 35–36) tobacco. In referenda held March 24–27, 1997, 90.6 percent of producers of fire-cured (types 21–23) and 89.6 percent of producers of dark air-cured (types 35–36) tobaccos voted in favor of marketing quotas.

REFERENDA DATA

Kind of tobacco	Total votes	Yes votes	No votes	Percent yes votes
Fire-cured (types 21–23)	4,405	3,992	413	90.6
Dark air-cured (types 35–36)	4,350	3,898	452	89.6

Price Support

Statutory Provisions

Section 106(f)(6)(A) of the 1949 Act provides that the level of support for the 1997 crop of a kind of tobacco (other than flue-cured and burley) shall be the level in cents per pound at which the 1996 crop of such kind of tobacco was supported, plus or minus, as appropriate, the amount by which (i) the basic support level for the 1997 crop, as it would otherwise be determined under section 106(b) of the 1949 Act, is greater or less than (ii) the support level for the 1996 crop, as it would otherwise be determined under section 106(b). To the extent that the price support level would be increased as a result of that comparison, section 106(f) provides that the increase may be modified using the provisions of 106(d). Under 106(d), the Secretary may reduce the level of support for grades the Secretary determines will likely be in excess supply so long as the weighted level of support for all grades maintains at least 65 percent of the increase in the price support (from the previous year). The Secretary must consult with the appropriate tobacco associations and take into consideration the supply and anticipated demand for the tobacco, including the effect of the action on other kinds of quota tobacco. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the Secretary is required to consider the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, and anticipated domestic and export demand, based on the maturity, uniformity, and stalk position of such tobacco.

Section 106(b) of the 1949 Act provides that the "basic support level" for any year will be determined by multiplying the support level for the 1959 crop of such kind of tobacco by the ratio of the average of the index of prices paid by farmers, including wage rates, interest and taxes (referred to as the "parity index") for the 3 previous calendar years to the average index of such prices paid by farmers, including wage rates, interest and taxes for the 1959 calendar year.

In addition, section 106(f)(6)(B) of the 1949 Act provides that to the extent requested by the board of directors of an association, through which price support is made available to producers (producer association), the Secretary may reduce the support level determined under section 106(f)(6)(A) of the 1949 Act for the respective kind of tobacco to more accurately reflect the market value and improve the marketability of such tobacco. Accordingly, the price support level for a kind of tobacco set forth in this rule could be reduced if such a request is made.

Price Support Determinations

The following levels of price support for the 1996 crops of various kinds of tobacco, which were determined in accordance with section 106(f)(6)(A) of the 1949 Act, are as follows:

Kind and type	Support level (cents per pound)
Virginia fire-cured (type 21)	145.5
KY-TN fire-cured (types 22–23)	155.7
Dark air-cured (types 35–36)	133.9
Virginia sun-cured (type 37)	128.8
Cigar-filler and binder (types 42–44 and 53–55)	112.0

For the 1997 crop year:

(1) Average parity indexes for calendar year periods 1993–1995 and 1994–1996 are as follows:

Year	Index	Year	Index
1993	1,355	1994	1,399
1994	1,399	1995	1,443
1995	1,443	1996	1,504
Average	1,399	Average	1,449

(2) Average parity index, calendar year 1959 = 298.

(3) 1996 ratio of 1,399 to 298 = 4.69; 1997 ratio of 1,449 to 298 = 4.86.

(4) Ratios times 1959 support levels and 1997 increase in basic support levels are as follows:

Kind and type	1959 support level	Basic support level [1]		Increase from 1995 to 1996	
	(¢/lb.)	1996 (¢/lb.)	1997 (¢/lb.)	100% (¢/lb.)	65% (¢/lb.)
VA 21	38.8	182.0	188.6	6.6	4.3
KY–TN 22–23	38.8	182.0	188.6	6.6	4.3
KY–TN 35–36	34.5	161.8	167.7	5.9	3.8
VA 37	34.5	161.8	167.7	5.9	3.8
Cigar-filler and binder 42–44, 54–55	28.6	134.1	139.0	4.9	3.2

[1] 1996 ratio is 4.69, 1997 ratio is 4.86.

With respect to 106(d) adjustments, for MY 1997, (that is for the 1997-crop) the flue-cured and burley support levels were increased by 65 percent of the formula increase to within about 13 percent of 1996's average market prices. For the kinds of tobacco subject of this notice, MY 1996 market prices were further above the support level, and overall loan receipts remained low.

In addition, the supply-use ratios for these five kinds suggest adequate supplies. However, all five kinds are eligible for the full increase. In addition, the loan associations for Virginia fire-

cured (type 21) and Virginia sun-cured (type 37) have accepted lower price support levels so their tobacco may remain competitive in world markets. Therefore, for fire-cured (type 21) tobacco and Virginia sun-cured (type 37) tobacco, the 1997-crop support levels were set so as to only add, over 1996-crop levels, 65 percent of the difference between the 1997-crop "basic support level" and the 1996-crop "basic support level." For the other tobaccos covered in this notice there was no such recommendation and the support levels were set accordingly. Accordingly, the price support levels for Kentucky-Tennessee fire-cured (types 22–23), dark air-cured (types 35–36) and cigar filler and binder (types 42–44; 53–55) tobaccos were set to use of the MY 1996 level of support increased by the difference between the MY 1997 "basic support level" and the MY 1996 "basic support level." Chewing tobacco, smoking tobacco, and snuff manufacturing formulas limit the substitutability of one of these kinds of tobacco for another. Cigarettes, the principal outlet for flue-cured and burley tobaccos, do not require any of these five kinds of tobacco in their blends.

Accordingly, the following price support determinations were announced on February 27, 1997 for the 1997 crops of the tobaccos which are the subject of this notice:

Kind and type	Support level (cents per pound)
Virginia fire-cured (type 21)	149.8
Kentucky-Tennessee fire-cured (types 22–23)	162.3
Dark air-cured (types 35–36)	139.8
Virginia sun-cured (type 37)	132.6
Cigar-filler and binder (types 42–44 and 53–55)	116.9

List of Subjects

7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 1464

Price supports, Tobacco.

Accordingly, 7 CFR parts 723 and 1464 are amended to read as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1377–1379, 1421, 1445–1, and 1445–2.

2. Section 723.113 is amended by adding paragraph (e) to read as follows:

§ 723.113 Fire-cured (type 21) tobacco.

* * * * *

(e) The 1997-crop national marketing quota is 2.395 million pounds.

3. Section 723.114 is amended by adding paragraph (e) to read as follows:

§ 723.114 Fire-cured (types 22–23) tobacco.

* * * * *

(e) The 1997-crop national marketing quota is 43.4 million pounds.

4. Section 723.115 is amended by adding paragraph (e) to read as follows:

§ 723.115 Dark air-cured (types 35–36) tobacco.

* * * * *

(e) The 1997-crop national marketing quota is 9.88 million pounds.

5. Section 723.116 is amended by adding paragraph (e) to read as follows:

§ 723.116 Sun-cured (type 37) tobacco.

* * * * *

(e) The 1997-crop national marketing quota is 156,400 pounds.

6. Section 723.117 is amended by adding paragraph (e) to read as follows:

§ 723.117 Cigar-filler and binder (types 42–44 and 53–55) tobacco.

* * * * *

(e) The 1997-crop national marketing quota is 8.4 million pounds.

PART 1464—TOBACCO

7. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, and 1445–1; 15 U.S.C. 714b and 714c.

8. Section 1464.13 is amended by adding paragraph (e) to read as follows:

§ 1464.13 Fire-cured (type 21) tobacco.

* * * * *

(e) The 1997-crop national price support level is 149.8 cents per pound.

9. Section 1464.14 is amended by adding paragraph (e) to read as follows:

§ 1464.14 Fire-cured (types 22–23) tobacco.

* * * * *

(e) The 1997-crop national price support level is 162.3 cents per pound.

10. Section 1464.15 is amended by adding paragraph (e) to read as follows:

§ 1464.15 Dark air-cured (types 22–23) tobacco.

* * * * *

(e) The 1997-crop national price support level is 139.8 cents per pound.

11. Section 1464.16 is amended by adding paragraph (e) to read as follows:

§ 1464.16 Virginia sun-cured (type 37) tobacco.

* * * * *

(e) The 1997-crop national price support level is 132.6 cents per pound.

12. Section 1464.17 is amended by adding paragraph (e) to read as follows:

§ 1464.17 Cigar-filler and binder (types 42–44 and 53–55) tobacco.

* * * * *

(e) The 1997-crop national price support level is 116.9 cents per pound.

Signed at Washington, DC, on August 10, 1997.

Bruce R. Weber,

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

[FR Doc. 97–21796 Filed 8–15–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 918

[Docket No. FV–97–918–1 FR]

Fresh Peaches Grown in Georgia; Termination of Marketing Order No. 918

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; Termination of Order.

SUMMARY: This rule terminates the Federal marketing order regulating the handling of fresh peaches grown in Georgia (order) and the rules and regulations issued thereunder. The Georgia peach industry has not operated under the order since its provisions were suspended March 1, 1993. The order does not reflect current industry structure and operating procedures and there is no industry support for reactivating the order. Therefore, there is no need to continue this order.

EFFECTIVE DATE: September 17, 1997.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or Kathleen Finn, Marketing Order Administration Branch, F&V, AMS, USDA, room 2530–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O.

Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is governed by provisions of § 608(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act and § 918.81 of the order.

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

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

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

This final rule terminates the order regulating the handling of peaches grown in Georgia. Sections 918.81 and 918.82 of the order contain the authority and procedures for termination.

The order was initially established in 1942 to help the industry solve specific marketing problems and maintain orderly marketing conditions. It was the responsibility of the Peach Industry Committee (committee), the agency established for local administration of the marketing order, to periodically investigate and assemble data on the growing, harvesting, shipping, and marketing conditions of Georgia peaches. The committee tried to achieve orderly marketing and improve acceptance of Georgia peaches through the establishment of minimum size, maturity and quality requirements.

The Georgia peach industry has not operated under the marketing order for over four years. The order and all of its accompanying rules and regulations were suspended March 1, 1993, for two years (58 FR 8209). At the request of the industry, the Department extended the suspension for two more years (60 FR 17633). Regulations have not been applied under the order since 1992, and no committee has been appointed since then. The only regulations the industry is using are for research, promotion, and advertising. This is handled locally by the Georgia Commodity Commission through a State program.

In 1942, when the marketing order was issued, there were over 300 growers of Georgia peaches. Currently, there are approximately 20 peach growers.

The Department contacted many current industry members with respect to the need for reinstating the marketing order. Virtually all the individuals corresponding with the Department stated they were not interested in reestablishing the order. There was a peach industry meeting held on February 6, 1997, in Byron, Georgia where the marketing order was a topic of discussion. There was no support from the attendees for reactivating or amending the order.

There have been changes in industry structure and operating procedures since the order was last amended. Making the marketing order reflect these changes could require further amendments. The steps necessary to amend and reactivate the existing order would be similar to what would be required to establish a new order. The need for a new or amended marketing order would have to be justified and supported by a large majority of Georgia peach growers. This would require a public hearing and a grower referendum. There is no determinable industry support for a marketing order. Thus, there is little justification to continue the current order.

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

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

There are approximately 8 handlers of Georgia peaches who would be subject to regulation under the marketing order and approximately 20 peach growers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of the Georgia peach growers and handlers may be classified as small entities.

This final rule terminates the order regulating the handling of peaches grown in Georgia. The order and its accompanying rules and regulations have been suspended since March 1, 1993. No regulations have been implemented since the 1990–91 season, and there is no indication that such regulations will again be needed.

The industry has been operating without a marketing order since its suspension. Reestablishing the order would mean additional cost to the industry stemming from assessments to maintain the order and any associated costs generated by regulation. By not reinstating the marketing order, the industry benefits from avoiding these costs. Because the industry has been operating without an order for four years, the termination of the order would have no noticeable effect on either small or large operations.

The Department attempted to solicit as much industry input on this decision as possible. The Department sent a letter to current industry members it was able to identify seeking comments on the need for reinstating the marketing order. There was a peach industry meeting held on February 6, 1997, in Byron, Georgia where the marketing order was a topic of discussion. In addition, the proposed rule provided the opportunity for all interested persons to comment on the termination of the marketing order.

A proposed rule was published in the June 4, 1997, issue of the **Federal Register** giving interested persons until July 7, 1997, to file written comments. No comments were received.

The Department believes that conducting a termination referendum would merely reaffirm the Georgia peach industry's continued lack of interest in reactivating the marketing order and that conducting such a referendum would be wasteful of Departmental and public resources.

Therefore, pursuant to § 608c(16)(A) of the Act and § 918.81 of the order, the Secretary has determined that Marketing Order No. 918, covering peaches grown in Georgia, and the rules and regulations issued thereunder, no longer tend to

effectuate the declared policy of the Act, and are hereby terminated.

Trustees have been appointed to continue in the capacity of concluding and liquidating the affairs of the former committee. The trustees will be responsible for completing the order's unfinished business, including ensuring termination of all outstanding agreements and contracts, and the payment of all obligations. The trustees will be responsible for safeguarding program assets, holding committee records, and arranging for a financial audit to be conducted. All such actions by the trustees are subject to the approval of the Secretary. Those designated as trustees are Robert L. Dickey III, William H. Davidson, and Al Pearson. The trustees shall continue in their capacity until discharged by the Secretary.

The remainder of the reserves, after immediate expenses are paid, will be held by the trustees to be used to cover unforeseen, outstanding expenses obligated by the trustees.

Section 608c(16)(A) of the Act requires the Secretary to notify Congress 60 days in advance of the termination of a Federal marketing order. Congress has been so notified.

List of Subjects in 7 CFR Part 918

Marketing agreements, Peaches, Reporting and recordkeeping requirements.

PART 918—[REMOVED]

For the reasons set forth in the preamble, and under authority of 7 U.S.C. 601–674, 7 CFR part 918 is removed.

Dated: August 12, 1997.

Lon Hatamiya,

Administrator.

[FR Doc. 97–21732 Filed 8–15–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97–084–1]

Change in Disease Status of the Dominican Republic Because of Hog Cholera

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the importation of swine and pork and pork products by removing the Dominican Republic from the list of countries considered to be free from hog cholera. We are taking this action based on reports we have received from the Dominican Republic's Ministry of Agriculture that an outbreak of hog cholera has occurred in the Dominican Republic. As a result of this action, there will be additional restrictions on the importation of pork and pork products into the United States from the Dominican Republic, and the importation of swine from the Dominican Republic will be prohibited.

DATES: Interim rule effective August 4, 1997. Consideration will be given only to comments received on or before October 17, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–084–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–084–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Senior Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3399.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.9 of the regulations restricts the importation into the United States of pork and pork products from countries where hog cholera is known to exist. Section 94.10 of the regulations, with certain exceptions, prohibits the importation of swine that originate in or are shipped from or transit any country in which hog cholera is known to exist. Sections 94.9(a) and 94.10(a) of the regulations provide that hog cholera exists in all countries of the world except for certain countries listed in those sections.

Prior to the effective date of this interim rule, the Dominican Republic was included in the lists in §§ 94.9(a) and 94.10(a) of countries in which hog cholera is not known to exist. On August 4, 1997, the Dominican Republic's Ministry of Agriculture reported that an outbreak of hog cholera had occurred in that country. After reviewing the reports submitted by the Dominican Republic's Ministry of Agriculture, the Animal and Plant Health Inspection Service (APHIS) has determined that it is necessary to remove the Dominican Republic from the list of countries considered to be free of hog cholera.

Therefore, we are amending §§ 94.9(a) and 94.10(a) by removing the Dominican Republic from the list of countries in which hog cholera is not known to exist. We are making this amendment effective retroactively to August 4, 1997, because that is the day that an outbreak of hog cholera was confirmed by the Dominican Republic's Ministry of Agriculture. As a result of this action, the importation of swine from the Dominican Republic is prohibited, and pork and pork products from the Dominican Republic will not be eligible for entry into the United States unless the pork or pork products are cooked or cured and dried in accordance with the regulations.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of hog cholera into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective on August 4, 1997. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action amends the regulations by removing the Dominican Republic from the list of countries that are considered to be free of hog cholera. We are taking this action based on reports we have received from the Dominican Republic's Ministry of Agriculture, which confirm that an outbreak of hog cholera has occurred in the Dominican Republic.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to August 4, 1997; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.9 [Amended]

2. In § 94.9, paragraph (a) is amended by removing the words "Dominican Republic,'.

§ 94.10 [Amended]

3. In § 94.10, paragraph (a) is amended by removing the words "Dominican Republic,".

Done in Washington, DC, this 12th day of August 1997.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–21797 Filed 8–15–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–178–AD; Amendment 39–10101; AD 97–16–09]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes, that requires modification of the hydraulic system, and a revision to the Airplane Flight Manual (AFM) to include revised procedures for lowering the landing gear. This amendment is prompted by a report of uncommanded application of the brakes when the direct current (DC) hydraulic pump was selected ON with the main hydraulic system operative; this situation was caused by build-up of back pressure in the brake supply and hydraulic return systems. The actions specified by this AD are intended to prevent uncommanded application of the brakes during landing, as a result of the build-up of back pressure.

DATES: Effective September 22, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 22, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2148; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on April 4, 1997 (62 FR 16113). That action proposed to require modification of the hydraulic system. The action also proposed to require revisions to the Emergency and Abnormal Procedures Sections of the FAA-approved AFM to include revised procedures for lowering the landing gear.

Explanation of Changes Made to the Proposal

The FAA has revised the final rule to reflect the corporate name change of Jetstream Aircraft Limited to British Aerospace Regional Aircraft.

Consideration of Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 10 British Aerospace BAe Model ATP airplanes of U.S. registry will be affected by this AD.

It will take approximately 25 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $15,000, or $1,500 per airplane.

It will take approximately 1 work hour per airplane to accomplish the required AFM revisions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the

AFM revisions required by this AD on U.S. operators is estimated to be $600, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–16–09 British Aerospace Regional Aircraft (Formerly, Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited): Amendment 39–10101. Docket 96–NM–178–AD.

Applicability: BAe Model ATP airplanes, having constructor's numbers 2002 through 2063 inclusive; on which Jetstream Modification 10303A (Jetstream Service Bulletin ATP 32–41) has been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded application of the brakes during landing, accomplish the following:

(a) Within 60 days of the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with Jetstream Service Bulletin ATP–29–12, dated September 9, 1995.

(1) Modify the hydraulic system; and

(2) Revise the Emergency and Abnormal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include the information specified in Temporary Revision No. T/52, Issue 1, dated August 16, 1995, which introduces revised procedures for lowering the landing gear, as specified in the temporary revision; and operate the airplane in accordance with those limitations and procedures.

Note 2: Paragraph 1.K. of Jetstream Service Bulletin ATP–29–12, dated September 9, 1995, references Temporary Revision No. T/52 as an additional source of service information for revising the AFM.

Note 3: This may be accomplished by inserting a copy of Temporary Revision No. T/52 in the AFM. When this temporary revision has been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Temporary Revision No. T/52.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Jetstream Service Bulletin ATP–29–12, dated September 9, 1995; and Temporary Revision No. T/52, Issue 1, dated August 16, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 22, 1997.

Issued in Renton, Washington, on July 29, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–21740 Filed 8–15–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–65–AD; Amendment 39–10105; AD 97–17–03]

RIN 2120–AA64

Airworthiness Directives; Ayres Corporation S2R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 97–13–11, which currently requires inspecting the ¼-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking on Ayres S2R series airplanes, and replacing any lower spar cap if fatigue cracking is found. That AD resulted from an accident on an Ayres S2R series airplane where the wing separated from the airplane in flight. AD 97–13–11 incorrectly references the Ayres Model S2R-R1340 airplanes as Model S2R–1340R. This AD requires the same actions as AD 97–13–11, but corrects the designation of the Model S2R-R1340 airplanes. The actions specified by this AD are intended to detect fatigue cracking of the lower spar caps, which, if not corrected, could result in the wing separating from the airplane with

consequent loss of control of the airplane.

DATES: Effective September 5, 1997.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of July 10, 1997 (62 FR 36978).

Comments for inclusion in the Rules Docket must be received on or before October 17, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 97-CE-65-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Ayres Corporation, P.O. Box 3090, One Rockwell Avenue, Albany, Georgia 31706-3090. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 97-CE-65-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748; telephone (404) 305-7357; facsimile (404) 305-7348.

SUPPLEMENTARY INFORMATION:

Discussion

AD 97-13-11, Amendment 39-10071 (62 FR 36978, July 10, 1997), currently requires the following on Ayres S2R series airplanes: inspecting the ¼-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking, and replacing any lower spar cap if fatigue cracking is found. Accomplishment of the inspection is in accordance with Ayres Service Bulletin No. SB-AG-39, dated September 17, 1996. This inspection utilizes magnetic particle procedures and must follow American Society for Testing Materials (ASTM) E1444-94A, using wet particles meeting the requirements of the Society for Automotive Engineers (SAE) AMS 3046. This inspection is to be accomplished by a Level 2 or Level 3 inspector certified using the guidelines established by the American Society for Nondestructive Testing or MIL-STD-410.

That AD resulted from an accident on an Ayres S2R series airplane where the wing separated from the airplane in flight. Investigation of all resources available to the FAA shows nine occurrences of fatigue cracking in the lower spar caps of Ayres S2R airplanes, specifically emanating from the ¼-inch and 5/16-inch bolt holes. Although the investigation of the above-referenced accident is not complete, the FAA believes that the cause can be attributed to fatigue cracks emanating from the ¼-inch and 5/16-inch bolt holes in the left lower spar cap.

Data accumulated by the FAA indicates that the fatigue cracks on these Ayres S2R series airplanes become detectable at different times based upon the type of engines and design of the airplane. With this in mind, the FAA has categorized these airplanes into three groups:

—Group 1 airplanes have steel spar caps with aluminum webs. These airplanes are capable of carrying heavier loads and data indicates that inspections in the affected areas of the lower spar caps should begin upon the accumulation of 2,700 hours time-in-service (TIS);

—Group 2 airplanes have steel spar caps with steel webs. Because of the steel webs as opposed to aluminum, data indicates that inspections in the affected areas of the lower spar caps should begin upon the accumulation of 4,300 hours TIS; and

—Group 3 airplanes, which are the ones manufactured first, have steel spars with aluminum webs and low horsepower radial engines, and thus do not have the ability to carry as much weight as airplanes in the other two groups. Data indicates that inspections in the affected areas of the lower spar caps should begin upon the accumulation of 9,000 hours TIS.

Manufacture of the affected airplanes began in 1965 with the airplanes incorporating the lower horsepower radial engines. Many of the airplane models referenced in this AD are still currently in production. These airplanes are used in agricultural operations and average 500 hours TIS annually. With this in mind, some of the earlier manufactured airplanes could have as many as 16,000 hours total TIS.

Actions Since Issuance of the Previous Rule

Since issuance of AD 97-13-11, the FAA realizes that it inadvertently referenced Ayres Model S2R-R1340 airplanes as Model S2R-1340R airplanes. Although the FAA believes that most affected operators will realize the intent of this airplane model designation, a few may either choose not to comply because legally they are not required to or they may not realize that the intent was to include the Model S2R-R1340 airplanes in the Applicability of AD 97-13-11.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken in order to detect fatigue cracking of the lower spar caps, which, if not corrected, could result in the wing separating from the airplane with consequent loss of control of the airplane.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Ayres S2R airplanes of the same type design, this AD supersedes AD 97-13-11 with a new AD. This AD retains the requirements from AD 97-13-11 of inspecting the ¼-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking, and replacing any lower spar cap where fatigue cracking is found; and changes the designation of the Ayres Model S2R-1340R airplanes to Ayres Model S2R-R1340 airplanes. Accomplishment of the inspection continues to be in accordance with Ayres Service Bulletin No. SB-AG-39, dated September 17, 1996. This inspection utilizes magnetic particle procedures and must follow American Society for Testing Materials (ASTM) E1444-94A, using wet particles meeting the requirements of the Society for Automotive Engineers (SAE) AMS 3046. This inspection is to be accomplished by a Level 2 or Level 3 inspector certified using the guidelines established by the American Society for Nondestructive Testing or MIL-STD-410.

Determination of the Effective Date of the AD

Since a situation exists (possible wing separation from the airplane) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or

arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–65–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 97–13–11, Amendment 39–10071 (62 FR 36978, July 10, 1997), and by adding a new airworthiness directive (AD) to read as follows:

97–17–03 Ayres Corporation: Amendment 39–10105; Docket No. 97–CE–65–AD. Supersedes AD 97–13–11; Amendment 39–10071.

Applicability: Airplanes with the following model and serial number designations with or without a –DC suffix, certificated in any category:

GROUP 1 AIRPLANES

Model	Serial Nos.
S–2R	5000R through 5099R.
S2R–R1340	R1340–011, R1340–012, R1340–019, R1340–020, R1340–024, R1340–025, and R1340–027.
S2R–R1820	R1820–001 through 1820–035.
S2R–T34	6000R through 6049R, T34–001 through T34–143, T34–145, T34–147 through T34–167, T34–171, T34–180, and T34–181.[1]
S2R–T15	T15–001 through T15–033.[2]
S2R–T11	T11–001 through T11–005.
S2R–G1	G1–101 through G1–108.

[1] The serial numbers of the Model S2R–T34 airplanes could incorporate T34–xxx, T36–xxx, T41–xxx, or T42–xxx. This AD applies to all of these serial number designations as they are all Model S2R–T34 airplanes.

[2] The serial numbers of the Model S2R–T15 airplanes could incorporate T15–xx and T27–xx. This AD applies to both of these serial number designations as they are both Model S2R–T15 airplanes.

GROUP 2 AIRPLANES

Model	Serial Nos.
S2R–R1340	R1340–028 through R1340–035.
S2R–R1820	R1820–036.
S2R–T65	T65–001 through T65–017.
S2RHG–T65	T65–002 through T65–017.
S2R–T34	T34–144, T34–146, T34–168, T34–169, T34–172 through T34–179, and T34–189 through T34–226.[1]
S2R–T45	T45–001 through T45–014.
S2R–G6	G6–101 through G6–146.
S2R–G10	G10–101 through G10–138.

GROUP 2 AIRPLANES—Continued

Model	Serial Nos.
S2R–G5	G5–101 through G5–105.

[1] The serial numbers of the Model S2R–T34 airplanes could incorporate T34–xxx, T36–xxx, T41–xxx, or T42–xxx. This AD applies to all of these serial number designations as they are all Model S2R–T34 airplanes.

GROUP 3 AIRPLANES [1]

Model	Serial Nos.
600 S2D	All serial numbers beginning with 600–1311D.
S–2R	1380R and 1416R through 4999R.
S2R–R1340	R1340–001 through R1340–010, R1340–013 through R1340–018, R1340–021 through R1340–023, and R1340–026.
S2R–R3S	R3S–001 through R3S–011.

[1] Any Group 3 airplane that has been modified with a hopper of a capacity over 400 gallons, a piston engine greater than 600 horsepower, or any gas turbine engine makes the airplane a Group 1 airplane for the purposes of this AD. The owner/operator must inspect the airplane at the Group 1 compliance time specified in the Compliance section of this AD.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Inspections required as indicated below and any necessary replacement required prior to further flight as indicated in the body of this AD, unless already accomplished in accordance with AD 97–13–11 (superseded by this AD):

—Group 1 Airplanes: Required upon the accumulation of 2,700 hours time-in-service (TIS) on each lower spar cap or prior to further flight after the effective date of this AD, whichever occurs later.

—Group 2 Airplanes: Required upon the accumulation of 4,300 hours TIS on each lower spar cap or prior to further flight after the effective date of this AD, whichever occurs later.

—Group 3 Airplanes: Required upon the accumulation of 9,000 hours TIS on each lower spar cap or prior to further flight after the effective date of this AD, whichever occurs later.

To detect fatigue cracking of the lower spar caps, which, if not corrected, could result in the wing separating from the airplane with consequent loss of control of the airplane, accomplish the following:

(a) Inspect, using magnetic particle procedures, the ¼-inch and 5/16-inch bolt hole areas on each lower spar cap for fatigue cracking. Accomplishment of the inspection is in accordance with Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996.

(1) The magnetic particle inspection must follow American Society for Testing Materials (ASTM) E1444–94A, using wet particles meeting the requirements of the Society for Automotive Engineers (SAE) AMS 3046.

(2) This inspection is to be accomplished by a Level 2 or Level 3 inspector certified using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410.

(b) If any cracking is found during the inspection required by this AD, prior to further flight, replace the affected lower spar cap in accordance with the affected maintenance manual. Upon replacement, total hours TIS starts over for that particular lower spar cap. Use the compliance time specified in the Compliance section of this AD to determine when the inspection is required.

(c) If any cracking is found during the inspection required by this AD, submit a report of inspection findings to the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; facsimile (404) 305–7348; at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. The report must include a description of any cracking found, the airplane serial number, and the total number of flight hours on the lower spar cap found cracked. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished in accordance with AD 97–13–11 (superseded by this AD): Submit the report within 10 days after the effective date of this AD, unless already accomplished.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location to accomplish the modification requirements of this AD provided the following is followed:

(1) The hopper is empty.

(2) Vne is reduced to 126 miles per hour (109 knots).

(3) Flight into known turbulence is prohibited.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 97–13–11 (superseded by this action) are considered approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) The inspection required by this AD shall be done in accordance with Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996. This incorporation by reference was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of July 10, 1997 (62 FR 36978). Copies may be obtained from the Ayres Corporation, P.O. Box 3090, One Rockwell Avenue, Albany, Georgia 31706-3090. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–10105) supersedes AD 97–13–11, Amendment 39–10071.

(h) This amendment (39–10105) becomes effective on September 5, 1997.

Issued in Kansas City, Missouri, on August 11, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–21788 Filed 8–15–97; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Commission's Reparations Jurisdiction Over Commodity Trading Advisors Exempt From Registration Under Section 4m(1) of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Advisory.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is clarifying its reparations jurisdiction over certain commercial agricultural cash market participations and nonprofit general farm organizations referred to in Section 4m(1) of the Commodity Exchange Act ("Act").[1] Provided that these persons furnish commodity trading advice that is solely incidental to the conduct of their business, these persons are exempt from registration as commodity trading advisors ("CTAs") pursuant to Section 4m(1) of the Act, but are subject to reparations proceedings under Section 14 of the Act.

EFFECTIVE DATE: August 18, 1997.

FOR FURTHER INFORMATION CONTACT: Natalie A. Markman, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. Telephone: (202) 418–5450.

SUPPLEMENTARY INFORMATION: Section 4m(1) of the Act provides, among other things, that dealers, processors, brokers or sellers in cash market transactions in the agricultural commodities enumerated in Section 2 of the Act or the products thereof as well as certain nonprofit voluntary membership farm organizations (collectively, "Cash Dealers") are exempt from registration as CTAs but are subject to reparations proceedings under Section 14 of the Act.[2] Section 14(a)(1) of the Act, which generally addresses the Commission's reparations jurisdiction, provides that reparations claims may be filed by persons complaining of any violation of the Act or Commission rules against "any person who is registered" under the Act.[3] No cross-reference or other acknowledgment of the Section 4m(1) reparations provision is made in Section 14. However, the Commission's reparations rules, which implement Section 14 of the Act, expressly include the Section 4m(1) Cash Dealers as a category of permissible respondents in reparations proceedings.[4]

The Part 12 rules, as promulgated in 1984 and continuing to the present, provide in Rule 12.13(a) that reparations complaints may be filed against any registrant, as defined in Rule 12.2.[5] Rule 12.2 defines *registrant* as any person who: (1) Was registered at the time of the alleged violation; (2) *is subject to reparations proceedings by virtue of Section 4m*; or (3) is otherwise subject to reparations proceedings.

In a 1985 **Federal Register** release addressing revisions of Part 4 of the Commission's rules, the Commission stated that it did "not intend hereafter to exercise jurisdiction in its reparations program over persons exempt from CTA registration under [S]ection 4m(1)."[6] The Commission wishes to eliminate any ambiguity that may have been created by the 1985 release by clarifying that, as provided in Section 4m(1), dealers, processors, brokers or sellers in cash market transactions in the agricultural commodities enumerated in Section 2 of the Act or the products thereof and certain nonprofit voluntary membership farm organizations who provide commodity trading advice in a manner incidental to their business are exempt from CTA registration but subject to reparations proceedings pursuant to Section 4m(1) and as provided in Part 12 of the Commission's rules.

Issued in Washington, D.C. on August 12, 1997 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–21829 Filed 8–15–97; 8:45 am]

BILLING CODE 6351–01–M

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[1] 7 U.S.C. § 1 *et seq.* (1994).

[2] The second sentence of Section 4m(1) provides that:

The [registration] provisions of this section shall not apply to any (CTA) who is a (1) dealer, processor, broker, or seller in cash market transactions of any commodity specifically set forth in (S)ection 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974 (or products thereof) or (2) nonprofit, voluntary membership, general farm organization, who provides advice on the sale or purchase of any commodity specifically set forth in [S]ection 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974; if the advice by the person described in clause (1) or (2) of this sentence as a [CTA] is solely incidental to the conduct of that person's business: *Provided, That such person shall be subject to proceedings under [S]ection 14 of this Act.*

7 U.S.C. § 6m(1) (1994) (emphasis added). Commission Rules 4.14(a) (1) and (2) also provide that Cash Dealers are exempt from CTA registration but make no mention of reparations jurisdiction. Commission rules referred to herein are found at 17 CFR Ch. I (1997).

This Advisory does not address the scope of the exemption from CTA registration under Section 4m(1) of the Act or under Rules 4.14(a) (1) and (2).

[3] Section 14(a)(1) provides, in relevant part, that:

Any person complaining of any violation of any provision of this Act or any rule, regulation, or order issued pursuant to this Act by *any person who is registered* under this Act may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding—(A) actual damages proximately caused by such violation. * * * and (B) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a contract market, punitive or exemplary damages equal to no more than two times the amount of such actual damages * * *.

7 U.S.C. § 18(a)(1) (1994) (emphasis added). As amended by the Futures Trading Act of 1978, Section 14(a) provided that a reparations complaint could be filed with the Commission by "(a)ny person complaining of any violation of any provision of this Act or any rule, regulation, or order thereunder by any person who is registered or *required to be registered* under (S)ection 4d, 4e, 4k, or 4m of this Act * * *." Pub. L. No. 95–405, § 21, 92 Stat. 865, 876–76 (1978) (emphasis added). The Futures Trading Act of 1982 ("1982 Act") subsequently amended Section 14(a) to eliminate reparations jurisdiction over persons "required to be registered" under the Act. Pub. L. No. 97–444, § 231, 96 Stat. 2294, 2319 (1983).

[4] In 1983, the Commission amended its reparations rules by promulgating interim reparations rules to implement the 1982 Act's amendment of Section 14(a), which eliminated reparations jurisdiction over persons "required to be registered" under the Act. 48 FR 21923 (May 16, 1983). In Rule 12.21 of the interim rules, the Commission retained reparations jurisdiction over registrants but eliminated those persons who were "required to be registered" under the Act as potential reparations respondents. The Commission also modified Rule 12.21 by adding, for the first time, persons "exempt from registration as [CTAs] by virtue of the second sentence of Section 4m" as a class of potential reparations respondents. *Id.* at 21924. The Commission explained that under Section 4m:

Certain dealers, processors, brokers, or sellers in cash market transactions in agricultural commodities and non-profit general farm organizations who provide advice on agricultural commodities are exempt from having to register as [CTAs). Nevertheless Section 4m provides that such persons are subject to proceedings in reparations. *Nothing in the 1982 amendments has affected this provision of the Act.* Thus, * * * the Commission will continue to hear reparations claims filed against persons who, at the time of the violation, were exempt from registration pursuant to Section 4m of the Act.

Id. (emphasis added).

[5] The Commission replaced interim Rule 12.21 with Rule 12.13(a) and moved its list of Part 12 definitions to Rule 12.2. 49 FR 6602, 6622–23, 6626 (February 22, 1984).

[6] 50 FR 15868, 15881 n. 77 (April 23, 1985); *see also* 49 FR 4778, 4783 (February 8, 1984) (proposing the Part 4 amendments).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–97–014]

RIN 2115–AE47

Drawbridge Operation Regulations; Manistee River, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the regulation governing the operations of the Maple Street bridge and U.S. Route 31 bridge, miles 1.1 and 1.4, respectively, over the Manistee River in Manistee, MI. This revision was made at the behest of recreational vessel owners on Manistee River to provide for better bridge operating hours during navigation season.

DATES: This regulation is effective September 17, 1997.

ADDRESSES: Documents concerning this regulation are available for inspection and copying at 1240 East Ninth Street, Room 2019, Cleveland, OH 44199–2060 between 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 902–6084.

FOR FURTHER INFORMATION CONTACT: Mr. Scot M. Striffler, Project Manager, Bridge Branch at (216) 902–6084.

SUPPLEMENTARY INFORMATION:

Regulatory History

The Coast Guard published a notice of proposed rulemaking (NPRM) and temporary deviation from regulations which appeared in the **Federal Register** on Thursday, May 22, 1997 (62 FR 27962 and 27990). The proposed schedule was submitted by the city of Manistee, MI at the request of recreational vessel users to provide later bridge operating hours. Under current regulations, between May 1 and October 31 each year, the bridge is required to open on signal for recreational vessels between 6 a.m. and 10 p.m. The revised regulation will require the bridge to open on signal between the hours of 7 a.m. and 11 p.m. No comments were received in response to either of the notices. A public hearing was not requested and, therefore, was not held.

The Coast Guard determined that the revised schedule fulfills the needs of recreational boating traffic on Manistee River without adversely impacting regular commercial users. Therefore, the final rule is unchanged from the NPRM.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. *Small entities* include independently owned and operated small businesses that are not dominant in their field and otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The revised operating hours were requested by the City of Manistee on behalf of recreational boaters and the businesses that serve them on Manistee River. This rule was designed to enhance the economic potential of businesses on Manistee River while still providing for the reasonable needs of commercial navigation.

By virtue of the preceding, the Coast Guard certifies under 5 U.S.C. 605(b) that this rulemaking will not have a significant impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.637 is amended by revising paragraph (a)(1) to read as follows:

§ 117.637 Manistee River.

(a) * * *

(1) From May 1 through October 31, between 7 a.m. to 11 p.m., the bridges shall open on signal. From 11 p.m. to 7 a.m., the bridges need not open unless notice is given at least two hours in advance of a vessel's time of intended passage through the draws.

* * * * *

Dated: August 8, 1997.

J.F. McGowan,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 97–21813 Filed 8–15–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 442, 488, 489, and 498

[HSQ–139–F]

RIN 0938–AC88

Medicare and Medicaid Programs: Effective Dates of Provider Agreements and Supplier Approvals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule establishes uniform criteria for determining the effective dates of Medicare and Medicaid provider agreements and of the approval of Medicare suppliers when the provider or supplier is subject to survey and certification as a basis for determining participation in those programs. It also establishes appeal

rights and procedures for entities that are dissatisfied with effective date determinations.

DATES: *Effective date:* This rule is effective September 17, 1997.

FOR FURTHER INFORMATION CONTACT: Diane Bavaria, (410) 786–6773 or Sandra Farragut, (410) 786–3503.

SUPPLEMENTARY INFORMATION:

A. Background

Under sections 1866 and 1902 of the Social Security Act (the Act), providers of services seeking to participate in Medicare or Medicaid must enter into an agreement with the Secretary or the State Medicaid agency, as appropriate. Under HCFA rules, suppliers of Medicare services must be approved for coverage of the services they furnish to Medicare beneficiaries.

Generally, in order to enter into a provider agreement or obtain approval as a supplier, an entity must first be surveyed by HCFA or the State survey agency to ascertain whether it complies with the conditions of participation, conditions for coverage, or long-term care requirements. However, under section 1865 of the Act, HCFA may "deem" that an entity meets the Federal requirements if that entity is accredited by a national accrediting organization whose program is approved by HCFA.

Medicare or Medicaid payment may not be made for services furnished before the effective date of the provider agreement or supplier approval.

B. Notice of Proposed Rulemaking

On October 8, 1992, we published a Notice of Proposed Rulemaking (at 57 FR 46362) to establish uniform criteria for determining the effective date of provider agreements and supplier approvals. We received 6 letters of comment from two States, one health care association, the Small Business Administration, one lawyer, and one citizen. Those comments and our responses to them are detailed below.

C. Discussion of Comments

1. Level of Compliance

Comment: One commenter noted that the proposed rule was not consistent with Federal statutes that require full compliance for skilled nursing facilities (SNFs) and nursing facilities (NFs) or automatic termination within 6 months after survey. The commenter disagreed with our references to level A and level B requirements, and the provision that would permit initial certification of SNFs and NFs that have lower level deficiencies.

Response: As noted by the commenter, under the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), we must, for SNFs and NFs, replace our hierarchical requirement scheme (condition level or level A, and standard level or level B) with a scheme built on the premise that all requirements must be met and enforced. However, because the final rule for implementing the OBRA '87 amendments had not been published, we had to continue using the hierarchical "level A and Level B" scheme in the proposed rule.

A final rule identified as HSQ–156–F, published on November 10, 1994 (at 59 FR 56116) implemented the OBRA '87 amendments. That rule—

- Establishes a revised enforcement system that detects and responds to noncompliance with any of the requirements, as opposed to the previous system which provided for adverse action only when the noncompliance was with level A requirements;
- Establishes the concept of "substantial compliance" as the criterion that SNFs and NFs must meet in order to participate in Medicare and Medicaid, and defines the term;
- Provides for termination of any SNF or NF that does not achieve substantial compliance within 6 months from the date of survey; and
- Removes references to "level A and level B" requirements.

Regarding the issue of allowing participation by an SNF or NF that has minor deficiencies, we believe that it is impractical and unrealistic to require perfect compliance. In fact, in 1992, only 7.3 percent of all SNFs and NFs surveyed were deficiency-free. Under the previous enforcement system defined by "level A" and "level B" requirements, most of the facilities that were experiencing only minor problems could continue to participate because the system allowed for some noncompliance at the lower or "B" level. That is no longer the case. By vastly increasing the number of statutory requirements that SNFs and NFs must meet, and by requiring us to do away with the hierarchy of requirements, Congress made it far more difficult for the facilities to qualify for program participation. We do not believe that Congress intended to write into law a set of requirements that would preclude almost all SNFs and NFs from participating in Medicare and Medicaid. Therefore, we have defined "substantial compliance" as a degree of compliance such that any existing deficiencies have not caused actual harm and do not create the potential for more than minimal harm to a resident. This definition is consistent with the statutory focus on resident outcomes as opposed to procedural requirements that do not always accurately measure whether quality care is being furnished. Although an SNF or NF that falls short of total compliance may escape imposition of a remedy, it still has a duty to provide, to each resident, care that enhances the chances of positive outcomes and avoids negative outcomes. If a single resident experiences any harm, the facility has not satisfied its statutory obligations. Given the statute's focus on each resident's right to receive quality care, and the facility's obligation to provide it, we could not adopt a less rigorous standard of compliance. (The preamble to HSQ–156–F contained a more detailed discussion of the background and rationale for the "substantial compliance" concept.)

However, precisely because the new standard is more stringent than its predecessor, it follows that once an SNF or NF achieves "substantial compliance", it has demonstrated its capacity for participation in the programs. Thus, if the survey finds that the facility is in "substantial compliance", the provider agreement is effective on the date the survey is completed. If we require the SNF or NF to submit a plan of correction for whatever requirements it does not fully meet, that does not delay the effective date of the agreement. If the facility needs a waiver, current practice remains unchanged, and the effective date is delayed until we receive an approvable waiver request.

2. Appeals and Payment

Comment: One commenter expressed the opinion that the proposed rule would not change the basic procedures for determining effective date, but merely add an appeal mechanism. The commenter understood the appeals provisions to mean that—

- Payment to a new provider would continue during the pendency of an appeal; and
- If the hearing decision changed the effective date, payments would be effective as of the new date.

Response: We agree that the procedures for determining effective date remain essentially unchanged except for the new "substantial compliance" concept for SNFs and NFs. For other providers, the rule continues to be that the effective date is the earlier of the date on which the provider meets all requirements or the date on which it meets all condition level requirements (or conditions for coverage in the case of suppliers) and has an acceptable plan of correction for standard level

deficiencies or an approvable waiver request, or both.

To preclude any confusion concerning the determination of effective date when it is related to a plan of correction or waiver request, we revised the rule to state that the effective date of the agreement or approval is the date that the State or HCFA receives (as opposed to the date the facility submits) the acceptable plan or approvable waiver request.

The commenter is correct in interpreting that payment would be made, during pendency of the appeal, for services furnished on or after the effective date of the agreement or approval; and would be adjusted to the new effective date determined by the hearing decision.

3. Effective Date When Facility Is Accredited Before It Seeks Participation

Comment: Two commenters were concerned about how the proposed rule would be applied when a facility had already been accredited by an accrediting organization. The proposed rule would not allow the provider to enter into a retroactive agreement so that it could receive payment for services furnished after accreditation but before it sought participation in Medicare or Medicaid. The commenters stated that this situation commonly arises when a provider that has been surveyed and found to be in compliance with Federal requirements—

- Is participating in its own State's Medicaid program and provides services to a Medicaid recipient from another State; or
- Is not participating in Medicaid but provides services to a Medicaid recipient before learning of the individual's Medicaid status.

Response: We consider the concerns to be justified. Accordingly, we have revised § 431.108 (content previously contained in § 442.13) and § 489.13 to provide that an agreement or approval may be made retroactive for a provider or supplier that—

- Has been deemed to meet all applicable Federal requirements on the basis of accreditation by an accrediting organization whose program had HCFA approval at the time the organization surveyed and accredited the provider or supplier; and
- Meets all applicable State licensure and Life Safety Code requirements.

Specifically, the final rule provides that the effective date of an agreement or approval can be made retroactive for up to one year to encompass dates on which the provider or supplier furnished covered services to a beneficiary or recipient. However, the retroactive effective date may not be before the earlier of—

- The date on which HCFA approves the accrediting organization's program; and
- The date of accreditation..

We already have several regulations that provide for payment in special situations:

§ 431.52—for Medicaid services furnished out of State.

Part 424 and §§ 440.170(e) and 482.2—for emergency care furnished by nonparticipating hospitals.

We believe that additional flexibility in determining effective dates of agreements and approvals will further ensure that all eligible providers and suppliers receive payment. The one-year period for retroactivity is consistent with Medicare and Medicaid regulations which generally require that claims be submitted for payment within one year from the date of service.

4. Applicability of the Rule

Comment: Two commenters questioned whether physicians in private practice and other non-institutional providers of Medicaid services would be subject to the regulation since, according to § 440.3, the effective date provisions apply to all types of Medicaid providers. One of the commenters disagreed with the provisions governing deemed status if they are to be applied to Medicaid private non-institutional providers.

Response: In response to these comments, § 431.108(a)(2) (for Medicaid) and § 489.13(a) (for Medicare) specify that the rules for determining effective date apply only to providers and suppliers that are subject to survey and certification by HCFA or the State survey agency, or have deemed status on the basis of accreditation by an accrediting organization whose program has HCFA approval. (Section 440.3 of the proposed rule cited § 442.13 for the effective date rules. In this final regulation, we have moved those rules to the new § 431.108 of subpart C because that is the subpart that pertains to Medicaid provider agreements.)

5. Regulatory Impact Statement

Comment: One commenter noted that the impact statement in the proposed rule did not explain why the Secretary certified that the rule would not have a significant impact on a substantial number of small entities. The commenter requested that the final rule include a comprehensive regulatory impact analysis.

Response: A regulatory impact *analysis* is required when a rule *would have* a significant impact. It has been determined that the effect of this rule on small entities is negligible because, in practice, we have for the most part determined effective dates of provider agreements and supplier approvals using the policies and procedures that were not until now incorporated in the regulations. Therefore, since the procedures for determining effective dates generally do not change, the impact on providers and suppliers is inconsequential and thus forms the basis for certifying that this rule will not have a significant economic impact. Since there is no significant impact, a regulatory impact analysis is not required.

Although this rule makes only minimal changes in the way effective dates are determined, it does add an appeals mechanism. We do not anticipate a significant increase in the number of requests for hearings for two reasons:

First, the current Federal regulations provide appeal rights for a prospective provider or supplier who is denied participation in the Medicare program. (State regulations may provide a similar appeals mechanism for Medicaid denials.) A determination to deny a prospective provider's or prospective supplier's request for participation in Medicare is usually based on the entity's lack of compliance with our requirements for participation. Effective date hearings would, for the most part, focus on the same noncompliance issues. Appeals from effective date determinations will probably arise when an entity disagrees with the date that HCFA or the State determines that noncompliance was corrected. We do not anticipate that entities will appeal both an initial denial and a subsequent effective date determination.

Second, the right to appeal an effective date determination, while not previously codified, had already been confirmed by court decisions. Since the effective date of participation is usually determined only once, at the time of the initial survey (the exception being ICFs/MR which have time-limited agreements), and since entities are already appealing these decisions, we do not anticipate that codification of the appeal rights will cause any great increase in the number of hearing requests.

Further, we have no reason to anticipate that publication of this rule will cause an increase in the number of small entities that request agreements or approvals for participation in Medicare, or Medicaid, or both. Neither do we have any basis for estimating how many prospective providers or suppliers will

make such requests after this rule is published.

6. Part Title

Comment: One commenter suggested that we change the title of part 442 from "Standards for Payment to Nursing Facilities and Intermediate Care Facilities for the Mentally Retarded" to "Standards for Payment to Nursing Facilities and Intermediate Care Facilities for Persons with Mental Retardation".

Response: We agree that it would be preferable to have a title that recognizes the person first and the disability second, as opposed to referring directly to the disability. However, section 1905(d) of the statute identifies these institutions as "intermediate care facilities for the mentally retarded". We believe that retention of that language is the best way to preclude any possible misunderstanding.

7. Miscellaneous Comments

Comment: We received favorable comments on two provisions of the proposed rule—

- Having the State survey agency recommend the effective date when it has conducted the survey.
- Precluding appeals based on the contention that a survey should have been conducted earlier than it was.

Response: We appreciate the commenter's support and believe that these two provisions will contribute to smooth implementation of the rules.

D. Provisions of the Final Rule

In summary, this final rule—

- Makes clear that the rules for determination of the effective date of a provider agreement or supplier approval apply to all providers and suppliers that are subject to survey and certification by HCFA, or the State survey agency, or have deemed status on the basis of accreditation;
- Provides that the State agency that conducts the survey makes recommendations concerning the effective date;
- Reflects statutory changes under which the basis for determining effective date for SNFs and NFs is different from the basis used in connection with other providers and with suppliers;
- Sets forth the circumstances under which effective dates may be made retroactive;
- Makes existing Medicare appeals procedures available, and requires Medicaid agencies to make their existing appeals procedures available, for effective date determinations.
- Specifies that, for laboratories, Medicaid agreements and Medicare approvals are effective only while the laboratory has in effect a valid CLIA certificate issued under part 493 of the HCFA rules, and only for the specialty and subspecialty tests it is authorized to perform; and
- Sets forth the effective date rules that apply to Medicare provider agreements with community mental health centers (CMHCs) and Federally qualified health centers (FQHCs). The effective date rule for Medicaid agreements with FQHCs will be issued as part of a separate regulation. (CMHCs do not participate in the Medicaid program.)

We are also taking advantage of this opportunity to clarify policy on termination of provider agreements, as set forth in § 489.53. Specifically, this final rule amends that section to revise the paragraph (b) heading and restore language that was inadvertently changed by HSQ–156–F, Survey, Certification, and Enforcement for Skilled Nursing Facilities and Nursing Facilities (59 FR 56116 of November 10, 1994).

The 1994 final rule, in revising § 489.53, inadvertently expanded an exception by making the 2-day notice applicable to "a provider or supplier", instead of only to a skilled nursing facility (SNF). This rule revises § 489.53(c)(2) to restore the previous language: "For an SNF with deficiencies that pose immediate jeopardy to the health or safety of its residents, HCFA gives notice at least 2 days before the effective date of termination of the provider agreement." (The correctly limited rule for nursing facilities is set forth in § 488.402(f)(3) of the HCFA rules.)

We would also correct a technical error—the retention of "; and" at the end of § 489.11(c)(2) when paragraph (c)(3) of that section was removed.

Collection of Information Requirements

This rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) and section 1102(b) of the Social Security Act, we prepare a regulatory impact analysis for each rule, unless we can certify that the rule will not have a significant economic impact on a substantial number of small entities, or a significant impact on the operation of a substantial number of small rural hospitals.

The RFA defines *small entity* as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as a county, city, or township) with a population of less than 50,000. We also consider all providers and suppliers of services to be small entities. For purposes of section 1102(b) of the Act, we define *small rural hospital* as a hospital that has fewer than 50 beds, and is not located in a metropolitan statistical area.

This rule makes minimal changes in the procedures for determining the effective date of a provider agreement or a supplier approval, and makes existing appeals procedures available to entities that are dissatisfied with any effective date determination. It has been determined that the effect of these changes on small entities is negligible because, in practice, we have for the most part determined effective dates of agreements and approvals using the policies and procedures that had not until now been incorporated in our regulations. The important aspect of this rule is that it is essentially a matter of codification, of inclusion of those practices in the CFR.

In addition, we do not anticipate that codification of the right to appeal effective date determinations will lead to a significant increase in the number of hearing requests for several reasons.

First, current Federal regulations provide appeal rights for a prospective provider or supplier who is denied participation in the Medicare program. (State regulations may provide a similar appeals mechanism for Medicaid denials). Denial of participation is usually based on the prospective provider's or prospective supplier's lack of compliance with our requirements. Effective date hearings would, for the most part, focus on the same noncompliance issues. Appeals from effective date determinations will probably arise when the entity disagrees with the date that HCFA or the State determines that the noncompliance was corrected. We do not believe that entities will appeal both an initial denial and a subsequent effective date determination.

Second, the right to appeal an effective date determination, while not previously codified, had been confirmed by court decisions. Since entities are currently appealing these decisions, and since the effective date of participation is usually determined only once, at the time of the initial survey (the exception being ICFs/MR which have time-limited agreements) we do not anticipate a large increase in the number of hearing requests.

It is clear that, since the procedures for determining and appealing effective date determinations generally will not

change as a result of publishing this rule, the criteria for requiring a regulatory impact analysis are not met. Accordingly, we have not prepared a regulatory impact analysis because we have determined and the Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operation of a substantial number of small rural hospitals.

We have no reason to anticipate that this rule will cause an increase in the number of small entities that request agreements or approvals for participation in Medicare or Medicaid or both. Neither do we have any basis for estimating how many will make such requests after the effective date of this rule.

We have reviewed this rule and determined that, under the provisions of Public Law 104–121, it is not a major rule.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 431

Grant programs—health, Health facilities, Reporting and recordkeeping requirements.

42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Survey and certification, Forms and guidelines.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Part 498

Administrative practice and procedure, Appeals, Medicare, Practitioners, providers, and suppliers.

42 CFR Chapter IV is amended as set forth below.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

A. Part 431 is amended as set forth below.

1. The authority citation for part 431 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

2. Subpart C is amended to add new § 431.108 to read as follows:

§ 431.108 Effective date of provider agreements.

(a) *Applicability*—(1) *General rule.* Except as provided in paragraph (a)(2) of this section, this section applies to Medicaid provider agreements with entities that, as a basis for participation in Medicaid—

(i) Are subject to survey and certification by HCFA or the State survey agency; or

(ii) Are deemed to meet Federal requirements on the basis of accreditation by an accrediting organization whose program has HCFA approval at the time of accreditation survey and accreditation decision.

(2) *Exception.* A Medicaid provider agreement with a laboratory is effective only while the laboratory has in effect a valid CLIA certificate issued under part 493 of this chapter, and only for the specialty and subspecialty tests it is authorized to perform.

(b) *All requirements are met on the date of survey.* The agreement is effective on the date the onsite survey (including the Life Safety Code survey if applicable) is completed, if on that date the provider meets—

(1) All applicable Federal requirements as set forth in this chapter; and

(2) Any other requirements imposed by the State for participation in the Medicaid program. (If the provider has a time-limited agreement, the new agreement is effective on the day following expiration of the current agreement.)

(c) *All requirements are not met on the date of survey.* If on the date the survey is completed the provider fails to meet any of the requirements specified in paragraph (b) of this section, the following rules apply:

(1) An NF provider agreement is effective on the date on which—

(i) The NF is found to be in substantial compliance as defined in § 488.301 of this chapter; and

(ii) HCFA or the State survey agency receives from the NF, if applicable, an approvable waiver request.

(2) For an agreement with any other provider, the effective date is the earlier of the following:

(i) The date on which the provider meets all requirements.

(ii) The date on which a provider is found to meet all conditions of participation but has lower level deficiencies, and HCFA or the State survey agency receives from the provider an acceptable plan of correction for the lower level deficiencies, or an approvable waiver request, or both. (The date of receipt is the effective date of the agreement, regardless of when HCFA approves the plan of correction or waiver request, or both.)

(d) *Accredited provider requests participation in the Medicaid program.*—(1) *General rule.* If a provider is currently accredited by a national accrediting organization whose program had HCFA approval at the time of accreditation survey and accreditation decision, and on the basis of accreditation, HCFA has deemed the provider to meet Federal requirements, the effective date depends on whether the provider is subject to requirements in addition to those included in the accrediting organization's approved program.

(i) *Provider subject to additional requirements.* For a provider that is subject to additional requirements, Federal or State, or both, the effective date is the date on which the provider meets all requirements, including the additional requirements.

(ii) *Provider not subject to additional requirements.* For a provider that is not subject to additional requirements, the effective date is the date of the provider's initial request for participation if on that date the provider met all Federal requirements.

(2) *Special rule: Retroactive effective date.* If the provider meets the requirements of paragraphs (d)(1) and (d)(1)(i) or (d)(1)(ii) of this section, the effective date may be retroactive for up to one year, to encompass dates on which the provider furnished, to a Medicaid recipient, covered services for which it has not been paid.

3. Section 431.151(a) is amended to republish the introductory text and add a paragraph (a)(3), to read as follows:

§ 431.151 Scope and applicability.

(a) *General rules.* This subpart sets forth the appeals procedures that a State must make available as follows:

* * * * *

(3) To an NF or ICF/MR that is dissatisfied with a determination as to the effective date of its provider agreement.

* * * * *

4. Section 431.153 is amended to republish the introductory text of paragraph (b) and add a paragraph (b)(5), to read as follows:

§ 431.153 Evidentiary hearing.

* * * * *

(b) *Limit on grounds for appeal.* The following are not subject to appeal:

* * * * *

(5) A State survey agency's decision as to when to conduct an initial survey of a prospective provider.

* * * * *

§ 431.610 [Amended]

5. In § 431.610, the following changes are made:

a. In paragraph (e)(1), "if" is removed and "whether" is inserted in its place.

b. In paragraph (e)(2), the period is removed and "; and" is added in its place.

c. A new paragraph (e)(3) is added, to read as set forth below:

§ 431.610 Relations with standard-setting and survey agencies.

* * * * *

(e) *Designation of survey agency.*

* * *

(3) The agency designated in paragraph (e)(1) of this section makes recommendations regarding the effective dates of provider agreements, as determined under § 431.108.

* * * * *

PART 442—STANDARDS FOR PAYMENT TO NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

B. Part 442 is amended as set forth below.

1. The heading for part 442 is revised to read as set forth above.

2. The authority citation for part 442 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

3. Section 442.13 is revised to read as follows:

§ 442.13 Effective date of provider agreement.

The effective date of a provider agreement with an NF or ICF/MR is determined in accordance with the rules set forth in § 431.108.

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

C. Part 488 is amended as set forth below.

1. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 488.11 is revised to read as follows:

§ 488.11 State survey agency functions.

State and local agencies that have agreements under section 1864(a) of the Act perform the following functions:

(a) Survey and make recommendations regarding the issues listed in § 488.10.

(b) Conduct validation surveys of accredited facilities as provided in § 488.7.

(c) Perform other surveys and carry out other appropriate activities and certify their findings to HCFA.

(d) Make recommendations regarding the effective dates of provider agreements and supplier approvals in accordance with § 489.13 of this chapter.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

D. Part 489 is amended as set forth below.

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 489.1, a new paragraph (d) is added, to read as follows:

§ 489.1 Statutory basis.

* * * * *

(d) Although section 1866 of the Act speaks only to providers and provider agreements, the effective date rules in this part are made applicable also to the approval of suppliers that meet the requirements specified in § 489.13.

3. § 489.13 is revised to read as follows:

§ 489.13 Effective date of agreement or approval.

(a) *Applicability*—(1) *General rule.* Except as provided in paragraph (a)(2) of this section, this section applies to Medicare provider agreements with, and supplier approval of, entities that, as a basis for participation in Medicare—

(i) Are subject to survey and certification by HCFA or the State survey agency; or

(ii) Are deemed to meet Federal requirements on the basis of accreditation by an accrediting organization whose program has HCFA approval at the time of accreditation survey and accreditation decision.

(2) *Exceptions.* (i) For an agreement with a community mental health center (CMHC) or a Federally qualified health center (FQHC), the effective date is the date on which HCFA accepts a signed agreement which assures that the CMHC or FQHC meets all Federal requirements.

(ii) A Medicare supplier approval of a laboratory is effective only while the laboratory has in effect a valid CLIA certificate issued under part 493 of this chapter, and only for the specialty and subspecialty tests it is authorized to perform.

(b) *All Federal requirements are met on the date of survey.* The agreement or approval is effective on the date the survey (including the Life Safety Code survey, if applicable) is completed, if on that date the provider or supplier meets all applicable Federal requirements as set forth in this chapter. (If the agreement or approval is time-limited, the new agreement or approval is effective on the day following expiration of the current agreement or approval.)

(c) *All Federal requirements are not met on the date of survey.* If on the date the survey is completed the provider or supplier fails to meet any of the requirements specified in paragraph (b) of this section, the following rules apply:

(1) For an agreement with an SNF, the effective date is the date on which—

(i) The SNF is in substantial compliance (as defined in § 488.301 of this chapter) with the requirements for participation; and

(ii) HCFA or the State survey agency receives from the SNF, if applicable, an approvable waiver request.

(2) For an agreement with, or an approval of, any other provider or supplier, (except those specified in paragraph (a)(2) of this section), the effective date is the earlier of the following:

(i) The date on which the provider or supplier meets all requirements.

(ii) The date on which a provider or supplier is found to meet all conditions of participation or coverage, but has lower level deficiencies, and HCFA or the State survey agency receives an acceptable plan of correction for the lower level deficiencies, or an approvable waiver request, or both. (The date of receipt is the effective date regardless of when HCFA approves the plan of correction or the waiver request, or both.)

(d) *Accredited provider or supplier requests participation in the Medicare program*—(1) *General rule.* If the provider or supplier is currently accredited by a national accrediting organization whose program had HCFA approval at the time of accreditation survey and accreditation decision, and on the basis of accreditation, HCFA has deemed the provider or supplier to meet Federal requirements, the effective date depends on whether the provider or supplier is subject to requirements in addition to those included in the accrediting organization's approved program.

(i) *Provider or supplier subject to additional requirements.* If the provider or supplier is subject to additional requirements, the effective date of the agreement or approval is the date on which the provider or supplier meets all requirements, including the additional requirements.

(ii) *Provider or supplier not subject to additional requirements.* For a provider or supplier that is not subject to additional requirements, the effective date is the date of the provider's or supplier's initial request for participation if on that date the provider or supplier met all Federal requirements.

(2) *Special rule: Retroactive effective date.* If a provider or supplier meets the requirements of paragraphs (d)(1) and (d)(1)(i) or (d)(1)(ii) of this section, the effective date may be retroactive for up to one year to encompass dates on which the provider or supplier furnished, to a Medicare beneficiary, covered services for which it has not been paid.

4. Section 489.53 is amended to revise the heading of paragraph (b) and paragraphs (c)(1) and (c)(2) to read as follows:

§ 489.53 Termination by HCFA.

* * * * *

(b) *Termination of agreements with certain hospitals.* * * *

(c) *Notice of termination*—(1) *Timing: Basic rule.* Except as provided in paragraph (c)(2) of this section, HCFA gives the provider notice of termination at least 15 days before the effective date of termination of the provider agreement.

(2) *Timing exceptions: Immediate jeopardy situations*—(i) *Hospital with emergency department.* If HCFA finds that a hospital with an emergency department is in violation of § 489.24, paragraphs (a) through (e), and HCFA determines that the violation poses immediate jeopardy to the health or safety of individuals who present themselves to the hospital for emergency services, HCFA—

(A) Gives the hospital a preliminary notice indicating that its provider agreement will be terminated in 23 days if it does not correct the identified deficiencies or refute the finding; and

(B) Gives a final notice of termination, and concurrent notice to the public, at least 2 , but not more than 4, days before the effective date of termination of the provider agreement.

(ii) *Skilled nursing facilities (SNFs).* For an SNF with deficiencies that pose immediate jeopardy to the health or safety of residents, HCFA gives notice at least 2 days before the effective date of termination of the provider agreement.

* * * * *

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF CERTAIN ICFs/MR AND CERTAIN NFs IN THE MEDICAID PROGRAM

E. Part 498 is amended as set forth below.

1. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102, and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 498.3 is amended to revise paragraph (a), republish the introductory text of paragraph (b) and add a paragraph (b)(14), revise the introductory text of paragraph (d) and add new paragraphs (d)(14) and (d)(15), to read as follows:

§ 498.3 Scope and applicability.

(a) *Scope.* This part sets forth procedures for reviewing initial determinations that HCFA makes with respect to the matters specified in paragraph (b) of this section, and that the OIG makes with respect to the matters specified in paragraph (c) of this section. It also specifies, in paragraph (d) of this section, administrative actions that are not subject to appeal under this part.

(b) *Initial determinations by HCFA.* HCFA makes initial determinations with respect to the following matters:

* * * * *

(14) The effective date of a Medicare provider agreement or supplier approval.

* * * * *

(d) *Administrative actions that are not initial determinations.* Administrative actions that are not initial determination (and therefore not subject to appeal under this part) include but are not limited to the following:

* * * * *

(14) The choice of alternative sanction or remedy to be imposed on a provider or supplier.

(15) A decision by the State survey agency as to when to conduct an initial survey of a prospective provider or supplier.

* * * * *

F. Technical correction.

§ 489.1 [Amended]

In § 489.11(c), the following changes are made:

a. At the end of paragraph (c)(1), the word "and" is added.

b. At the end of paragraph (c)(2), "; and" is removed and a period is inserted in its place.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance; and Program No. 93.778, Medical Assistance.)

Dated: September 20, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: December 27, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 97–21731 Filed 8–15–97; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 960730210–7193–02; I.D. 050294D]

RIN 0648–XX65

Endangered and Threatened Species: Listing of Several Evolutionary Significant Units (ESUs) of West Coast Steelhead

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

ACTION: Final rule.

SUMMARY: On August 9, 1996, NMFS completed a comprehensive status review of west coast steelhead (*Oncorhynchus mykiss*, or *O. mykiss*) populations in Washington, Oregon, Idaho, and California, and identified 15 Evolutionarily Significant Units (ESUs) within this range. NMFS is now issuing a final rule to list two ESUs as endangered and three ESUs as threatened under the Endangered Species Act (ESA). The endangered steelhead ESUs are located in California (Southern California) and Washington (Upper Columbia River). The threatened steelhead ESUs are located in California (Central California Coast and South-Central California Coast) and Idaho, Washington, and Oregon (Snake River Basin). For the endangered ESUs, section 9(a) prohibitions will be effective 60 days from the publication of this final rule. For the threatened ESUs, NMFS will issue shortly protective regulations under section 4(d) of the ESA, which will apply section 9(a) prohibitions with certain exceptions.

NMFS has examined the relationship between hatchery and natural populations of steelhead in these ESUs, and has assessed whether any hatchery

populations are essential for their recovery. Only the Wells Hatchery stock in the Upper Columbia River ESU is essential for recovery and included in this listing. Aside from the Wells Hatchery stock, only naturally spawned populations of steelhead (and their progeny) residing below long-term, naturally and man-made impassable barriers (i.e., dams) are listed in all five ESUs identified as threatened or endangered.

At this time, NMFS is listing only anadromous life forms of *O. mykiss.*

DATES: Effective October 17, 1997.

ADDRESSES: Protected Resources Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, 503–231–2005, Craig Wingert, 562–980–4021, or Joe Blum, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Species Background

Oncorhynchus mykiss exhibit one of the most complex suites of life history traits of any salmonid species. *Oncorhynchus mykiss* may exhibit anadromy (meaning they migrate as juveniles from fresh water to the ocean, and then return to spawn in fresh water) or freshwater residency (meaning they reside their entire life in fresh water). Resident forms are usually referred to as "rainbow" or "redband" trout, while anadromous life forms are termed "steelhead." Few detailed studies have been conducted regarding the relationship between resident and anadromous *O. mykiss* and as a result, the relationship between these two life forms is poorly understood. Recently the scientific name for the biological species that includes both steelhead and rainbow trout was changed from *Salmo gairdneri* to *O. mykiss.* This change reflects the premise that all trouts from western North America share a common lineage with Pacific salmon.

Steelhead typically migrate to marine waters after spending 2 years in fresh water. They then reside in marine waters for typically 2 or 3 years prior to returning to their natal stream to spawn as 4-or 5-year-olds. Unlike Pacific salmon, steelhead are iteroparous, meaning they are capable of spawning more than once before they die. However, it is rare for steelhead to spawn more than twice before dying; most that do so are females. Steelhead adults typically spawn between December and June (Bell, 1990; Busby et al., 1996). Depending on water temperature, steelhead eggs may incubate in "redds" (nesting gravels) for 1.5 to 4 months before hatching as "alevins" (a larval life stage dependent on food stored in a yolk sac). Following yolk sac absorption, young juveniles or "fry" emerge from the gravel and begin actively feeding. Juveniles rear in fresh water from 1 to 4 years, then migrate to the ocean as "smolts."

Biologically, steelhead can be divided into two reproductive ecotypes, based on their state of sexual maturity at the time of river entry and the duration of their spawning migration. These two ecotypes are termed "stream maturing" and "ocean maturing." Stream maturing steelhead enter fresh water in a sexually immature condition and require several months to mature and spawn. Ocean maturing steelhead enter fresh water with well-developed gonads and spawn shortly after river entry. These two reproductive ecotypes are more commonly referred to by their season of freshwater entry (e.g., summer and winter steelhead).

Two major genetic groups or "subspecies" of steelhead occur on the west coast of the United States: a coastal group and an inland group, separated in the Fraser and Columbia River Basins approximately by the Cascade crest (Huzyk & Tsuyuki, 1974; Allendorf, 1975; Utter & Allendorf, 1977; Okazaki, 1984; Parkinson, 1984; Schreck et al., 1986; Reisenbichler et al., 1992). Behnke (1992) proposed to classify the coastal subspecies as *O. m. irideus* and the inland subspecies as *O. m. gairdneri.* These genetic groupings apply to both anadromous and non-anadromous forms of *O. mykiss.* Both coastal and inland steelhead occur in Washington and Oregon. California is thought to have only coastal steelhead while Idaho has only inland steelhead.

Historically, steelhead were distributed throughout the North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula. Presently, the species distribution extends from the Kamchatka Peninsula, east and south along the Pacific coast of North America, to at least Malibu Creek in southern California. There are infrequent anecdotal reports of steelhead occurring as far south as the Santa Margarita River in San Diego County (McEwan & Jackson, 1996). Historically, steelhead likely inhabited most coastal streams in Washington, Oregon, and California as well as many inland streams in these states and Idaho. However, during this century, over 23 indigenous, naturally-reproducing stocks of steelhead are believed to have been extirpated, and many more are thought to be in decline in numerous coastal and inland streams in Washington, Oregon, Idaho, and California. Forty-three stocks have been identified by Nehlsen *et al.* (1991) as being at moderate or high risk of extinction.

Previous Federal ESA Actions Related to West Coast Steelhead

The history of petitions received regarding west coast steelhead is summarized in the proposed rule published on August 9, 1996 (61 FR 56138). The most comprehensive petition was submitted by Oregon Natural Resources Council and 15 co-petitioners on February 16, 1994. In response to this petition, NMFS assessed the best available scientific and commercial data, including technical information from Pacific Salmon Biological Technical Committees (PSBTCs) and interested parties in Washington, Oregon, Idaho, and California. The PSBTCs consisted primarily of scientists (from Federal, state, and local resource agencies, Indian tribes, industries, universities, professional societies, and public interest groups) possessing technical expertise relevant to steelhead and their habitats. A total of seven PSBTC meetings were held in the states of Washington, Oregon, Idaho, and California during the course of the west coast steelhead status review. NMFS also established a Biological Review Team (BRT), composed of staff from NMFS' Northwest and Southwest Fisheries Science Centers and Southwest Regional Office, as well as a representative of the National Biological Service, which conducted a coastwide status review for west coast steelhead (Busby et al., 1996).

Based on the results of the BRT report, and after considering other information and existing conservation measures, NMFS published a proposed listing determination (61 FR 56138, August 9, 1996) that identified 15 ESUs of steelhead in the states of Washington, Oregon, Idaho, and California. Ten of these ESUs were proposed for listing as threatened or endangered species, four were found not warranted for listing, and one was identified as a candidate for listing.

NMFS has now analyzed new information and public comments received in response to the August 9, 1996, proposed rule. NMFS' BRT has likewise analyzed this new information and has updated its conclusions accordingly (NMFS, 1997a). Copies of the BRT's updated conclusions, entitled "Status Review Update for West Coast Steelhead from Washington, Idaho, Oregon, and California," are available upon request (see **ADDRESSES**). This final rule identifies five ESUs of west

coast steelhead in the four states that currently warrant listing as threatened or endangered species under the ESA.

Summary of Comments Received in Response to the Proposed Rule

NMFS held 16 public hearings in California, Oregon, Idaho, and Washington to solicit comments on the proposed rule. One hundred and eighty-eight individuals presented testimony at the public hearings. During the 90-day public comment period, NMFS received 939 written comments on the proposed rule from Federal, state, and local government agencies, Indian tribes, non-governmental organizations, the scientific community, and other individuals. A number of comments addressed specific technical issues pertaining to a particular geographic region or *O. mykiss* population. These technical comments were considered by NMFS' BRT in its re-evaluation of ESU boundaries and status and are discussed in the updated Status Review document (NMFS, 1997a).

On July 1, 1994, NMFS, jointly with U.S. Fish and Wildlife Service (FWS), published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). In accordance with this policy, NMFS solicited 22 individuals to take part in a peer review of its west coast steelhead proposed rule. All individuals solicited are recognized experts in the field of steelhead biology and represent a broad range of interests, including Federal, state, and tribal resource managers, private industry consultants, and academia. Eight individuals took part in the peer review of this action; comments from peer reviewers were considered by NMFS' BRT and are summarized in the updated Status Review document (NMFS, 1997a).

A summary of comments received in response to the proposed rule is presented below.

Issue 1: Sufficiency and Accuracy of Scientific Information and Analysis

Comment: Numerous commenters disputed the sufficiency and accuracy of data which NMFS employed in its proposed rule to list ten steelhead ESUs as either threatened or endangered under the ESA. Several commenters urged NMFS to delay any ESA listing decisions for steelhead until additional scientific information is available concerning this species.

Response: Section 4(b)(1)(A) of the ESA requires that NMFS make its listing determinations solely on the basis of the best available scientific and commercial data after reviewing the status of the species. NMFS believes that information contained in the agency's status review (Busby *et al.*, 1996), together with more recent information obtained in response to the proposed rule (NMFS, 1997a), represent the best scientific information presently available for the steelhead ESUs addressed in this final rule. NMFS has conducted an exhaustive review of all available information relevant to the status of this species. NMFS has also solicited information and opinion from all interested parties, including peer reviewers as described above. If in the future new data become available to change these conclusions, NMFS will act accordingly.

Section 4(b)(6) of the ESA requires NMFS to publish a final determination whether a species warrants listing as threatened or endangered within 1 year from publishing a proposed determination. If such a final listing is not warranted, NMFS must withdraw the proposed regulation. In certain cases where NMFS concludes that substantial disagreement exists regarding the sufficiency or accuracy of available data relevant to its determinations, NMFS may extend this 1-year period by not more than 6 months for the purposes of soliciting additional data. (ESA § 4(b)(6)(B)(i)).

With respect to those steelhead ESUs addressed in this final rule, NMFS concludes no basis exists to delay final ESA listings. State resource agencies, peer reviewers, and other knowledgeable parties are in general agreement that steelhead stocks in these areas are at risk. As described in a separate **Federal Register** notice, however, NMFS has determined a 6-month extension is warranted for five remaining ESUs of west coast steelhead. These ESUs include the following: Lower Columbia River, Oregon Coast, Klamath Mountains Province, Northern California, and the Central Valley of California. For these particular ESUs, NMFS concludes that substantial disagreement exists regarding the sufficiency and accuracy of the data. Several efforts are underway that may resolve scientific disagreement regarding the sufficiency and accuracy of data relevant to these ESUs. NMFS has undertaken an intensive effort to analyze the data received during and after the comment period on the proposed ESUs from the States of Washington, Oregon, and California, as well as from peer reviewers. This work will include evaluating the Oregon Department of Fish and Wildlife (ODFW) models, analyzing population abundance trends where new data are available, and examining new genetic data relative to the relationship between winter and summer steelhead and between hatchery and wild fish. In light of these disagreements and the fact that more data are forthcoming, NMFS extends the final determination deadline for these ESUs for 6 months, until February 9, 1998.

Issue 2: Description and Status of Steelhead ESUs

Comment: A few commenters disputed NMFS' conclusions regarding the geographic boundaries for some of the ESUs and questioned NMFS' basis for determining these boundaries. Most of these comments pertained to the ESUs south of San Francisco Bay, suggesting particular river systems be excluded from listing due to historical or occasional absence of steelhead or rainbow trout.

Response: NMFS has published a policy describing how it will apply the ESA definition of "species" to anadromous salmonid species (56 FR 58612, November 20, 1991). More recently, NMFS and FWS published a joint policy, consistent with NMFS' policy, regarding the definition of "distinct population segments" (61 FR 4722, February 7, 1996). The earlier policy is more detailed and applies specifically to Pacific salmonids and, therefore, was used for this determination. This policy indicates that one or more naturally reproducing salmonid populations will be considered to be distinct and, hence, species under the ESA, if they represent an ESU of the biological species. To be considered an ESU, a population must satisfy two criteria: (1) It must be reproductively isolated from other population units of the same species; and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute but must have been strong enough to permit evolutionarily important differences to occur in different population units. The second criterion is met if the population contributes substantially to the ecological or genetic diversity of the species as a whole. Guidance on applying this policy is contained in a scientific paper entitled: "Pacific Salmon (*Oncorhynchus* spp.) and the Definition of 'Species' under the Endangered Species Act." It is also found in a NOAA Technical Memorandum: "Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon" (Waples, 1991). A more detailed discussion of individual ESU boundaries is provided below under "Summary of Conclusions Regarding Listed ESUs."

Comment: Several commenters questioned NMFS' methodology for determining whether a given steelhead ESU warranted listing. In most cases, such commenters also expressed opinions regarding whether listing was warranted for a particular steelhead ESU. A few commenters provided substantive new information relevant to making risk assessments.

Response: Section 3 of the ESA defines the term "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range." The term "threatened species" is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." NMFS has identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, including: (1) Absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU. A more detailed discussion of status of individual ESUs is provided below under "Summary of Conclusions Regarding Listed ESUs."

Issue 3: Factors Contributing to the Decline of West Coast Steelhead

Comment: Many commenters identified factors they believe have contributed to the decline of west coast steelhead. Factors identified include overharvest by recreational fisheries, predation by pinnipeds and piscivorous fish species, effects of artificial propagation, and the deterioration or loss of freshwater and marine habitats.

Response: NMFS agrees that many factors, past and present, have contributed to the decline of west coast steelhead. NMFS also recognizes that natural environmental fluctuations have likely played a role in the species' recent declines. However, NMFS believes other human-induced impacts (e.g., incidental catch in certain fisheries, hatchery practices, and habitat modification) have played an equally significant role in this species' decline. Moreover, these human-induced impacts have likely reduced the species' resiliency to natural factors for decline such as drought, poor ocean conditions, and predation (NMFS, 1996a).

Since the time of this proposed listing, NMFS has published a report describing the impacts of California Sea Lions and Pacific Harbor Seals upon salmonids and on the coastal ecosystems of Washington, Oregon, and California (NMFS, 1997b). This report concludes that in certain cases where pinniped populations co-exist with depressed salmonid populations, salmon populations may experience severe impacts due to predation. An example of such a situation is Ballard Locks, WA, where sea lions are known to consume significant numbers of adult winter steelhead. This study further concludes that data regarding pinniped predation is quite limited and that substantial additional research is needed to fully address this issue. For additional information on this issue see the "Summary of Factors Affecting Steelhead" below.

Comment: One peer reviewer and several commenters stated that NMFS' assessment underestimated the significant influence of natural environmental fluctuations on salmonid populations. Several commenters stated that ocean conditions are one of the primary factors for decline. These commenters suggested that any listing activity should be postponed until the complete oceanographic cycle can be observed.

Response: Environmental changes in both marine and freshwater habitats can have important impacts on steelhead abundance. For example, a pattern of relatively high abundance in the mid-1980s followed by (often sharp) declines over the next decade occurred in steelhead populations from most geographic regions of the Pacific Northwest. This result is most plausibly explained by broad-scale changes in ocean productivity. Similarly, 6 to 8 years of drought in the late 1980s and early 1990s adversely affected many freshwater habitats for steelhead throughout the region. These natural phenomena put increasing pressure on natural populations already stressed by anthropogenic factors such as habitat degradation, blockage of migratory routes, and harvest (NMFS, 1996a).

Improvement of cyclic or episodic environmental conditions (for example, increases in ocean productivity or shifts from drought to wetter conditions) can help alleviate extinction risk to steelhead populations. However, NMFS cannot reliably predict future environmental conditions, making it unreasonable to assume improvements in abundance as a result of improvements in such conditions. Furthermore, steelhead and other species of Pacific salmon have evolved over the centuries with such cyclical environmental stresses. This species has persisted through time in the face of these conditions largely due to the presence of freshwater and estuarine refugia. As these refugia are altered and degraded, Pacific salmon species are more vulnerable to episodic events such as shifts in ocean productivity and drought cycles (NMFS, 1996a).

Issue 4: Consideration of Existing Conservation Measures

Comment: Several commenters argued that NMFS had not considered existing conservation programs designed to enhance steelhead stocks within a particular ESU. Some commenters provided specific information on some of these programs to NMFS concerning the efficacy of existing conservation plans.

Response: NMFS has reviewed existing conservation plans and measures relevant to the five ESUs addressed in this final rule and concludes that existing conservation efforts in these areas are not sufficient to preclude listing of individual ESUs at this time. Several of the plans addressed in comments show promise of ameliorating the risks facing steelhead. However, in most cases, measures described in comments have not been implemented or are in their early stages of implementation and have not yet demonstrated success. Some of these measures are also geographically limited to individual river basins or political subdivisions, thereby improving conditions for only a small portion of the entire ESU.

While existing conservation efforts and plans are not sufficient to preclude the need for listings at this time, they are nevertheless valuable for improving watershed health and restoring fishery resources. In those cases where well developed, reliable conservation plans exist, NMFS may choose to incorporate them into the recovery planning process. In the case of threatened species, NMFS also has flexibility under section 4(d) to tailor section 9 take regulations based on the contents of available conservation measures. NMFS fully intends to recognize local conservation efforts to the fullest extent possible. Endangered Species Act listing should not be viewed as the failure of such plans; rather, it should be viewed as a challenge to better coordinate existing conservation efforts to address the underlying problems of watershed degradation and species health.

Issue 5: Steelhead Biology and Ecology

Comment: Several commenters and a peer reviewer asserted that resident rainbow trout should be included in listed steelhead ESUs. Several commenters also stated that NMFS and FWS should address how the presence of rainbow trout populations may ameliorate risks facing anadromous populations within listed ESUs.

Response: In its August 9, 1996, proposed rule, NMFS stated that based on available genetic information, it was the consensus of NMFS scientists, as well as regional fishery biologists, that resident fish should generally be considered part of the steelhead ESUs. However, NMFS concluded that available data were inconclusive regarding the relationship of resident rainbow trout and steelhead. NMFS requested additional data in the proposed rule to clarify this relationship and determine if resident rainbow trout should be included in listed steelhead ESUs.

In response to this request for additional information, many groups and individuals expressed opinions regarding this issue. In most cases these opinions were not supported by new information that resolves existing uncertainty. Two state fishery management agencies (California Department of Fish and Game and Washington Department of Fish and Wildlife) and one peer reviewer provided comments and information supporting the inclusion of resident rainbow trout in listed steelhead ESUs. In general, these parties also felt that rainbow trout may serve as an important reservoir of genetic material for at risk steelhead stocks.

While conclusive evidence does not yet exist regarding the relationship of resident and anadromous *O. mykiss*, NMFS believes available evidence suggests that resident rainbow trout should be included in listed steelhead ESUs in certain cases. Such cases include: (1) Where resident *O. mykiss* have the opportunity to interbreed with anadromous fish below natural or man-made barriers; or (2) where resident fish of native lineage once had the ability to interbreed with anadromous fish but no longer do because they are currently above human-made barriers, and they are considered essential for recovery of the ESU. Whether resident fish that exist above any particular man-made barrier meet these criteria, must be reviewed on a case-by-case basis by NMFS. NMFS recognizes that there may be many such cases in California alone. Resident fish above long-standing natural barriers, and those that are derived from the introduction of non-native rainbow trout, would not be considered part of any ESU.

Several lines of evidence exist to support this conclusion. Under certain conditions, anadromous and resident *O. mykiss* are apparently capable not only of interbreeding, but also of having offspring that express the alternate life history form, that is, anadromous fish can produce nonanadromous offspring, and vice versa (Shapovalov and Taft, 1954; Burgner et al., 1992). Mullan et al. (1992) found evidence that in very cold streams, juvenile steelhead had difficulty attaining "mean threshold size for smoltification" and concluded that "[m]ost fish here [Methow River, WA] that do not emigrate downstream early in life are thermally-fated to a resident life history regardless of whether they were the progeny of anadromous or resident parents." Additionally, Shapovalov and Taft (1954) reported evidence of *O. mykiss* maturing in fresh water and spawning prior to their first ocean migration; this life history variation has also been found in cutthroat trout (*O. clarki*) and Atlantic salmon (*Salmo salar*).

NMFS believes resident fish can help buffer extinction risks to an anadromous population by mitigating depensatory effects in spawning populations (e.g., inability of spawning adults to find mates due to low population sizes), by providing offspring that migrate to the ocean and enter the breeding population of steelhead, and by providing a "reserve" gene pool in freshwater that may persist through times of unfavorable conditions for anadromous fish. In spite of these potential benefits, presence of resident populations is not a substitute for conservation of anadromous populations. A particular concern is isolation of resident populations by human-caused barriers to migration. This interrupts normal population dynamics and population genetic processes and can lead to loss of a genetically based trait (anadromy). As discussed in NMFS' "species identification" paper (Waples 1991), the potential loss of anadromy in distinct population segments may in and of itself warrant listing the species as a whole.

On February 7, 1996, FWS and NMFS adopted a joint policy to clarify their interpretation of the phrase "distinct population segment (DPS) of any species of vertebrate fish or wildlife" for the purposes of listing, delisting, and reclassifying species under the ESA (61 FR 4722). DPSs are "species" pursuant to section 3(15) of the ESA. Previously, NMFS had developed a policy for stocks of Pacific salmon where an ESU of a biological species is considered "distinct" (and hence a species) if it is substantially reproductively isolated from other conspecific population units, and it represents an important component in the evolutionary legacy of the species (November 20, 1991, 56 FR 58612). NMFS believes available data suggest that resident rainbow trout are in many cases part of steelhead ESUs. However, the FWS, which has ESA authority for resident fish, maintains that behavioral forms can be regarded as separate DPSs (e.g., western snowy plover) and that absent evidence suggesting resident rainbow trout need ESA protection, the FWS concludes that only the anadromous forms of each ESU should be listed under the ESA (DOI, 1997; FWS, 1997).

In its review of west coast steelhead, the NMFS BRT stated that rainbow trout and steelhead in the same area may share a common gene pool, at least over evolutionary time periods (NMFS, 1997a). The importance of any recovery action is measured in terms of its ability to recover the listed species in the foreseeable future. The FWS believes that steelhead recovery will not rely on the intermittent exchange of genetic material between resident and anadromous forms (FWS, 1997). As a result, without a clear demonstration of any risks to resident rainbow trout or the need to protect rainbow trout to recover steelhead in the foreseeable future, the FWS concludes that only the anadromous forms of *O. mykiss* should be included in the listed steelhead ESUs at this time (FWS 1997). Moreover, including resident forms of *O. mykiss* in any future listing action under the ESA would necessitate that the two forms combined meet the definition of an endangered or threatened species (FWS, 1997).

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA and the listing regulations (50 CFR part 424) set forth procedures for listing species. The Secretary of Commerce (Secretary) must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

As noted earlier, NMFS received numerous comments regarding the relative importance of various factors contributing to the decline of west coast

steelhead. Several recent documents describe in more detail the impacts of various factors contributing to the decline of steelhead and other salmonids (e.g., NMFS, 1997c). Relative to west coast steelhead, NMFS has prepared a supporting document that addresses the factors leading to the decline of this species entitled "Factors for Decline: A supplement to the notice of determination for west coast steelhead" (NMFS, 1996a). This report, available upon request (see **ADDRESSES**), concludes that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of the species. The report identifies destruction and modification of habitat, overutilization for recreational purposes, and natural and human-made factors as being the primary reasons for the decline of west coast steelhead. The following discussion briefly summarizes findings regarding factors for decline across the range of west coast steelhead. While these factors have been treated here in general terms, it is important to underscore that impacts from certain factors are more acute for specific ESUs. For example, impacts from hydropower development are more pervasive for ESUs in the Upper Columbia River and Snake River ESUs than for some coastal ESUs.

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

Steelhead on the west coast of the United States have experienced declines in abundance in the past several decades as a result of natural and human factors. Forestry, agriculture, mining, and urbanization have degraded, simplified, and fragmented habitat. Water diversions for agriculture, flood control, domestic, and hydropower purposes (especially in the Columbia River and Sacramento-San Joaquin Basins) have greatly reduced or eliminated historically accessible habitat. Studies estimate that during the last 200 years, the lower 48 states have lost approximately 53 percent of all wetlands and the majority of the rest are severely degraded (Dahl, 1990; Tiner, 1991). Washington and Oregon's wetlands are estimated to have diminished by one-third, while California has experienced a 91-percent loss of its wetland habitat (Dahl, 1990; Jensen *et al.*, 1990; Barbour *et al.*, 1991; Reynolds *et al.*, 1993). Loss of habitat complexity has also contributed to the decline of steelhead. For example, in national forests in Washington, there has been a 58-percent reduction in large, deep pools due to sedimentation and loss of pool-forming structures such as boulders and large wood (FEMAT, 1993). Similarly, in Oregon, the abundance of large, deep pools on private coastal lands has decreased by as much as 80 percent (FEMAT, 1993). Sedimentation from land use activities is recognized as a primary cause of habitat degradation in the range of west coast steelhead.

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

Steelhead support an important recreational fishery throughout their range. During periods of decreased habitat availability (e.g., drought conditions or summer low flow when fish are concentrated), the impacts of recreational fishing on native anadromous stocks may be heightened. NMFS has reviewed and evaluated the impacts of recreational fishing on west coast steelhead populations (NMFS, 1996a). Steelhead are not generally targeted in commercial fisheries. High seas driftnet fisheries in the past may have contributed slightly to a decline of this species in local areas, but could not be solely responsible for the large declines in abundance observed along most of the Pacific coast over the past several decades.

A particular problem occurs in the main stem of the Columbia River where listed steelhead from the Upper Columbia and Snake River Basin ESUs migrate at the same time and are subject to the same fisheries as unlisted, hatchery-produced steelhead, chinook and coho salmon. Incidental harvest mortality in mixed-stock sport and commercial fisheries may exceed 30 percent of listed populations.

C. Disease or Predation

Infectious disease is one of many factors that can influence adult and juvenile steelhead survival. Steelhead are exposed to numerous bacterial, protozoan, viral, and parasitic organisms in spawning and rearing areas, hatcheries, migratory routes, and the marine environments. Specific diseases such as bacterial kidney disease (BKD), ceratomyxosis, columnaris, Furunculosis, infectious hematopoietic necrosis (IHNV), redmouth and black spot disease, Erythrocytic Inclusion Body Syndrome (EIBS), and whirling disease among others are present and are known to affect steelhead and salmon (Rucker et al., 1953; Wood, 1979; Leek, 1987; Foott et al., 1994; Gould and Wedemeyer, undated). Very little current or historical information exists to quantify changes in infection levels and mortality rates attributable to these diseases for steelhead. However, studies have shown that native fish tend to be less susceptible to pathogens than hatchery-reared fish (Buchanon *et al.*, 1983; Sanders *et al.*, 1992).

Introductions of non-native species and habitat modifications have resulted in increased predator populations in numerous river systems, thereby increasing the level of predation experienced by salmonids. Predation by pinnipeds is also of concern in areas experiencing dwindling steelhead run sizes. However, salmon and marine mammals have coexisted for thousands of years and most investigators consider predation an insignificant contributing factor to the large declines observed in west coast steelhead populations.

D. Inadequacy of Existing Regulatory Mechanisms

1. Federal and State Forest Practices

The Northwest Forest Plan (NFP) is a Federal management policy with important benefits for steelhead. While the NFP covers a very large area, the overall effectiveness of the NFP in conserving steelhead is limited by the extent of Federal lands and the fact that Federal land ownership is not uniformly distributed in watersheds within the affected ESUs. The extent and distribution of Federal lands limits the NFP's ability to achieve its aquatic habitat restoration objectives at watershed and river basin scales and highlights the importance of complementary salmon habitat conservation measures on non-Federal lands within the subject ESUs. For example, there are no Federal lands managed under the NFP within the Central California, South-Central California, or Southern California ESUs.

On February 25, 1995, the U.S. Forest Service and Bureau of Land Management adopted Implementation of Interim Strategies for Managing Anadromous Fish-producing Watersheds in eastern Oregon and Washington, Idaho, and portions of California (known as PACFISH). The strategy was developed in response to significant declines in naturally-reproducing salmonid stocks, including steelhead, and widespread degradation of anadromous fish habitat throughout public lands in Idaho, Washington, Oregon, and California outside the range of the northern spotted owl. Like the NFP, PACFISH is an attempt to provide a consistent approach for maintaining and restoring aquatic and riparian habitat conditions which, in turn, are expected to promote the sustained natural production of anadromous fish. However, as with the NFP, PACFISH is

limited by the extent of Federal lands and the fact that Federal land ownership is not uniformly distributed in watersheds within the affected ESUs. In the South-Central California and Southern California ESU, for example, Federal lands managed by the U.S. Forest Service represent less than 15–25 percent of each ESU. Moreover, much of these Federal lands are located in upper elevation areas above currently impassible barriers. Furthermore, PACFISH was designed to be a short-term land management/anadromous fish conservation strategy to halt habitat degradation and begin the restoration process until a long-term strategy could be adopted. Interagency PACFISH implementation reports from 1995 and 1996 indicate PACFISH has not been consistently implemented and has not achieved the level of conservation anticipated for the short-term. Additionally, because PACFISH was expected to be replaced within 18 months, it required only minimal levels of watershed analysis and restoration. The interim PACFISH strategy could be effective until summer 1998, when the Interior Columbia River basin Environmental Impact Statements replace it. In total, PACFISH would be in place for a period of approximately 42 months and its long-term limitations have already resulted in lost conservation opportunities for threatened and proposed anadromous fishes.

The California Department of Forestry and Fire Protection (CDF) enforces the State of California's forest practice rules (CFPRs) that are promulgated through the Board of Forestry (BOF). The CFPRs contain provisions that can be protective of steelhead if fully implemented. However, NMFS believes the CFPRs do not secure properly functioning riparian habitat. Specifically, the CFPRs do not adequately address large woody debris recruitment, streamside tree retention to maintain bank stability, and canopy retention standards that assure stream temperatures are properly functioning for all life stages of steelhead. The current process for approving Timber Harvest Plans (THPs) under the CFPRs does not include monitoring of timber harvest operations to determine whether a particular operation damaged habitat and, if so, how it might be mitigated in future THPs. The CFPR rule that permits salvage logging is also an area where better environmental review and monitoring could ensure better protection for steelhead. For these reasons, NMFS is working to improve the condition of riparian buffers in ongoing habitat conservation plan negotiations with private landowners.

The Washington Department of Natural Resources implements and enforces the State of Washington's forest practice rules (WFPRs) which are promulgated through the Forest Practices Board. These WFPRs contain provisions that can be protective of steelhead if fully implemented. This is possible given that the WFPR's are based on adaptive management of forest lands through watershed analysis, development of site-specific land management prescriptions, and monitoring. Watershed Analysis prescriptions can exceed WFPR minima for stream and riparian protection. However, NMFS believes the WFPRs, including watershed analysis, do not provide properly functioning riparian and in-stream habitats. Specifically, the base WFPRs do not adequately address large woody debris recruitment, tree retention to maintain stream bank integrity and channel networks within floodplains, and chronic and episodic inputs of coarse and fine sediment that maintain habitats that are properly functioning for all life stages of steelhead.

The majority of land area within the Snake River ESU (about 70 percent) is under Federal management; therefore, in most watersheds the State of Idaho's forest practice rules play a lesser role in forest management relative to Federal measures (i.e., PACFISH). Even so, NMFS believes that certain aspects of the State's forest practice rules do not avoid adverse effects to anadromous fish populations or their habitat. Specifically, current riparian buffer width requirements are inadequate, as well as rules which do not prohibit logging on unstable hillsides and landslide prone areas.

2. Dredge, Fill, and Inwater Construction Programs

The Army Corps of Engineers (COE) regulates removal/fill activities under section 404 of the Clean Water Act (CWA), which requires that the COE not permit a discharge that would "cause or contribute to significant degradation of the waters of the United States." One of the factors that must be considered in this determination is cumulative effects. However, the COE guidelines do not specify a methodology for assessing cumulative impacts or how much weight to assign them in decision-making. Furthermore, the COE does not have in place any process to address the additive effects of the continued development of waterfront, riverine, coastal, and wetland properties.

3. Water Quality Programs

The Federal CWA is intended to protect beneficial uses, including fishery resources. To date, implementation has not been effective in adequately protecting fishery resources, particularly with respect to non-point sources of pollution.

Section 303(d)(1) (C) and (D) of the CWA requires states to prepare Total Maximum Daily Loads (TMDLs) for all water bodies that do not meet State water quality standards. TMDLs are a method for quantitative assessment of environmental problems in a watershed and identifying pollution reductions needed to protect drinking water, aquatic life, recreation, and other use of rivers, lakes, and streams. TMDLs may address all pollution sources including point sources such as sewage or industrial plant discharges, and non-point discharges such as runoff from roads, farm fields, and forests.

The CWA gives state governments the primary responsibility for establishing TMDLs. However, EPA is required to do so if a state does not meet this responsibility. In California, as a result of recent litigation, the EPA has made a legal commitment guaranteeing that either EPA or the State of California will establish TMDLs, that identify pollution reduction targets, for 18 impaired river basins in northern California by the year 2007. The State of California has made a commitment to establish TMDLs for approximately half the 18 river basins by 2007. The EPA will develop TMDLs for the remaining basins and has also agreed to complete all TMDLs if the State fails to meet its commitment within the agreed upon time frame.

State agencies in Oregon are committed to completing TMDLs for coastal drainages within 4 years, and all impaired waters within 10 years. Similarly ambitious schedules are in place, or being developed for Washington and Idaho.

The ability of these TMDLs to protect steelhead should be significant in the long term; however, it will be difficult to develop them quickly in the short term and their efficacy in protecting steelhead habitat will be unknown for years to come.

4. Hatchery and Harvest Management

In the past, non-native steelhead stocks have been introduced as broodstock in hatcheries and widely transplanted in many coastal rivers and streams in California (Bryant, 1994; Busby et al., 1996; NMFS, 1997a). Because of problems associated with this practice, California Department of Fish and Game (CDFG) developed its

Salmon and Steelhead Stock Management Policy. This policy recognizes that such stock mixing is detrimental and seeks to maintain the genetic integrity of all identifiable stocks of salmon and steelhead in California, as well as minimize interactions between hatchery and natural populations. To protect the genetic integrity of salmon and steelhead stocks, this policy directs CDFG to evaluate each salmon and steelhead stream and classify it according to its probable genetic source and degree of integrity. This has not yet been accomplished by the State.

California's Steelhead Management Plan [or plan] was adopted and published in February 1996. The plan recognizes that restoration of California's steelhead populations requires a broad approach that emphasizes ecosystem restoration. The plan focuses on restoration of native and naturally produced steelhead stocks because of their importance in maintaining genetic and biological diversity and for their aesthetic values. The Steelhead Plan presents a historical account of the decline of California's steelhead populations, and identifies needed restoration measures both on a broad, programmatic scale and on a stream-specific scale. The Steelhead Plan identifies recent changes in the State's steelhead fishery management and regulations (e.g., steelhead trout catch report—restoration card [AB 2187], seasonal closures and zero bag limits for nearly all coastal streams from Santa Barbara County southward) and also identifies recommendations for further management changes to protect and conserve steelhead populations. These recommended changes include marking of all hatchery-produced steelhead in the State, implementation of an 8-inch minimum size limit for all anadromous waters in the State, and a reduction in the State-wide bag limit to one steelhead per day. CDFG has just recently begun implementation of some of the measures identified in this plan.

Hatchery programs and harvest management have strongly influenced steelhead populations in the Upper Columbia and Snake River Basin ESUs. Hatchery programs intended to compensate for habitat losses have masked declines in natural stocks and have created unrealistic expectations for fisheries. Collection of natural steelhead for broodstock and transfers of stocks within and between ESUs has detrimentally impacted some populations.

The three state agencies (Oregon Department of Fish and Wildlife, Washington Department of Fish and Game, and Idaho Department of Fish and Game) have adopted and are implementing natural salmonid policies designed to limit hatchery influences on natural, indigenous steelhead. Sport fisheries are based on marked, hatchery-produced steelhead, and sport fishing regulations are designed to protect wild fish. While some limits have been placed on hatchery production of anadromous salmonids, more careful management of current programs and scrutiny of proposed programs is necessary in order to minimize impacts on listed species.

E. Other Natural or Human-Made Factors Affecting Its Continued Existence

Natural climatic conditions have exacerbated the problems associated with degraded and altered riverine and estuarine habitats. Persistent drought conditions have reduced already limited spawning, rearing and migration habitat. Climatic conditions appear to have resulted in decreased ocean productivity which, during more productive periods, may help offset degraded freshwater habitat conditions (NMFS, 1996a).

In an attempt to mitigate the loss of habitat, extensive hatchery programs have been implemented throughout the range of steelhead on the West Coast. While some of these programs have succeeded in providing fishing opportunities, the impacts of these programs on native, naturally-reproducing stocks are not well understood. Competition, genetic introgression, and disease transmission resulting from hatchery introductions may significantly reduce the production and survival of native, naturally-reproducing steelhead. Collection of native steelhead for hatchery broodstock purposes often harms small or dwindling natural populations. Artificial propagation can play an important role in steelhead recovery through carefully controlled supplementation programs.

Summary of ESU Determinations

Below follows a summary of NMFS' ESU determinations for these species. A more detailed discussion of ESU determinations is presented in the "Status Review Update for West Coast Steelhead from Washington, Idaho, Oregon, and California" (NMFS, 1997a). Copies of this document are available upon request (see **ADDRESSES**).

(1) Central California Coast ESU

This coastal steelhead ESU occupies river basins from the Russian River, Sonoma County, CA, (inclusive) to Aptos Creek, Santa Cruz County, CA, (inclusive), and the drainages of San Francisco and San Pablo Bays eastward to the Napa River (inclusive), Napa County, CA. The Sacramento-San Joaquin River Basin of the Central Valley of California is excluded. Environmental features show a transition in this region from the northern redwood forest ecosystem to the more xeric southern chaparral and coastal scrub ecosystems. This area is characterized by very erosive soils in the coast range mountains; redwood forest is the dominant coastal vegetation for these drainages. Precipitation is lower here than in areas to the north, and elevated stream temperatures (greater than 20° C) are common in the summer. Coastal upwelling in this region is strong and consistent, resulting in a relatively productive nearshore marine environment.

NMFS has determined that no changes in the proposed boundaries of the Central California Coast ESU are warranted; however, the original written description of this ESU inadvertently left a gap between Soquel Creek and the Pajaro River. This ESU includes steelhead occupying the Russian River and all basins south to Aptos Creek but not including the Pajaro River Basin.

One peer reviewer questioned the basis for the location of the boundary between this ESU and the South-Central California Coast, effectively splitting the basins that flow into Monterey Bay. The ESU break between Aptos Creek and the Pajaro River is largely based on ecological differences of the river basins. The Pajaro River and river basins south of there drain an arid interior and end in broad coastal plains, whereas north of the Pajaro River, the river basins largely drain coastal mountains at the southern end of the natural range of the redwood forest. This boundary is also consistent with the southern limit of coho salmon, further suggesting a natural ecological break.

NMFS finds no biological basis to exclude steelhead from the basins of either San Francisco or San Pablo Bays from this ESU, as some commenters have suggested. The characteristics of hydrology, geology, and upper basin vegetation in the basins draining into San Francisco Bay and San Pablo Bay are more similar to those attributes of the coastal portion of this ESU than to the Central Valley ESU, although resource management activities and urbanization have altered much of the habitat. Life history characteristics of steelhead, such as period of emigration and spawning, are also consistent within this ESU.

Hatchery Populations Pertaining to This ESU

Hatchery populations considered part of this ESU include Big Creek Hatchery stock and San Lorenzo River Hatchery stock which is reared at the Big Creek hatchery. The basis for this conclusion is the minimal influence of releases of fish from outside of the ESU and the genetic similarity between these and other regional stocks. Furthermore, adult collection and spawning procedures practiced by the hatcheries (which include using naturally produced fish) have helped reduce selection for domestication and small population effects during the course of hatchery operations.

Hatchery populations not included in the listed ESU at this time include the Dry Creek stock at the Warm Springs hatchery. Information concerning this stock is sparse and therefore this stock's relationship to the entire ESU is uncertain. NMFS will continue to evaluate any new information concerning this stock in the future to determine if its inclusion is warranted.

(2) South-Central California Coast ESU

This coastal steelhead ESU occupies rivers from the Pajaro River, located in Santa Cruz County, CA, (inclusive) to (but not including) the Santa Maria River, San Luis Obispo County, CA. Most rivers in this ESU drain the Santa Lucia Mountain Range, the southernmost unit of the California Coast Ranges. The climate is drier and warmer than in the north, which is reflected in the vegetational change from coniferous forest to chaparral and coastal scrub. Another biological transition at the north of this area is the southern limit of the distribution of coho salmon (*O. kisutch*). The mouths of many of the rivers and streams in this area are seasonally closed by sand berms that form during periods of low flow in the summer. The southern boundary of this ESU is near Point Conception, a well-known transition area for the distribution and abundance of marine flora and fauna.

NMFS has determined that no changes in the proposed boundaries of the South-Central California Coast ESU are warranted. See discussion of the Central California Coast ESU, above, regarding the break between Aptos Creek and the Pajaro River.

Hatchery Populations Pertaining to This ESU

Hatchery populations considered part of this ESU include Whale Rock Reservoir stock. Although this stock was established from a steelhead population that was trapped behind the Whale Rock Dam in the 1950s, it apparently retains an anadromous component. Juvenile steelhead are able to emigrate from Whale Rock Reservoir during high spill years, and anecdotal information indicates that some of these juveniles return as adults to the base of the dam 2 years later.

(3) Southern California ESU

This coastal steelhead ESU occupies rivers from the Santa Maria River, San Luis Obispo County, CA (inclusive) to the southern extent of the species' range. Available data indicate that Malibu Creek, Los Angeles County is the southernmost stream generally recognized as supporting a persistent, naturally spawning population of anadromous *O. mykiss* (Behnke, 1992; Burgner et al., 1992).

Migration and life history patterns of southern California steelhead depend more strongly on rainfall and streamflow than is the case for steelhead populations farther north (Moore, 1980; Titus et al., in press). River entry ranges from early November through June, with peaks in January and February. Spawning primarily begins in January and continues through early June, with peak spawning in February and March. Average rainfall is substantially lower and more variable in this ESU than regions to the north, resulting in increased duration of sand berms across the mouths of streams and rivers and, in some cases, complete dewatering of the marginal habitats. Environmental conditions in marginal habitats may be extreme (e.g., elevated water temperatures, droughts, floods, and fires) and presumably impose selective pressures on steelhead populations. Steelhead use of southern California streams and rivers with elevated temperatures suggests that populations within this ESU are able to withstand higher temperatures than those to the north. The relatively warm and productive waters of the Ventura River resulted in more rapid growth of juvenile steelhead than occurred in northerly populations (Moore, 1980; McEwan & Jackson, 1996). However, relatively little life history information exists for steelhead from this ESU.

In the proposed rule NMFS stated that this ESU presently extends to the southern extent of the species range which is currently thought to be Malibu Creek, Los Angeles County. Many comments were received regarding this issue; most supported placing the southern boundary of this ESU further south. NMFS has reviewed numerous references to steelhead occurring historically and recently in streams as far south as the U.S.-Mexico border. While available data indicate that steelhead may occasionally occur as far south as the Santa Margarita River, the relationship of these individuals to those populations occurring further north is poorly understood.

Based on available data, NMFS concludes that insufficient information exists to justify revision of the proposed southern boundary of this ESU.

Hatchery Populations Pertaining to This ESU

No hatchery production of steelhead currently occurs in this ESU.

(4) Upper Columbia River Basin ESU

This inland steelhead ESU occupies the Columbia River Basin upstream from the Yakima River, Washington, to the United States-Canada border. The geographic area occupied by this ESU forms part of the larger Columbia Basin Ecoregion (Omernik, 1987). The Wenatchee and Entiat Rivers are in the Northern Cascades Physiographic Province, and the Okanogan and Methow Rivers are in the Okanogan Highlands Physiographic Province. The geology of these provinces is somewhat similar and very complex, developed from marine invasions, volcanic deposits, and glaciation (Franklin & Dyrness, 1973). The river valleys in this region are deeply dissected and maintain low gradients except in extreme headwaters. The climate in this area includes extremes in temperatures and precipitation, with most precipitation falling in the mountains as snow. Streamflow in this area is provided by melting snowpack, groundwater, and runoff from alpine glaciers. Mullan *et al.* (1992) described this area as a harsh environment for fish and stated that "it should not be confused with more studied, benign, coastal streams of the Pacific Northwest."

Life history characteristics for Upper Columbia River Basin steelhead are similar to those of other inland steelhead ESUs; however, some of the oldest smolt ages for steelhead, up to 7 years, are reported from this ESU. This may be associated with the cold stream temperatures (Mullan *et al.*, 1992). Based on limited data available from adult fish, smolt age in this ESU is dominated by 2-year-olds. Steelhead from the Wenatchee and Entiat Rivers return to fresh water after 1 year in salt water, whereas Methow River steelhead are primarily two-ocean resident (Howell *et al.*, 1985).

In 1939, the construction of Grand Coulee Dam on the Columbia River blocked over 1,800 kilometers of river

from access by anadromous fish (Mullan *et al.*, 1992). In an effort to preserve fish runs affected by Grand Coulee Dam, all anadromous fish migrating upstream were trapped at Rock Island Dam from 1939 through 1943 and either released to spawn in tributaries between Rock Island and Grand Coulee Dams or spawned in hatcheries and the offspring released in that area (Peven, 1990; Mullan *et al.*, 1992; Chapman *et al.*, 1994). Through this process, stocks of all anadromous salmonids, including steelhead, which were historically native to several separate subbasins above Rock Island Dam, were redistributed among tributaries in the Rock Island-Grand Coulee reach without regard to their origin. Exactly how this has affected stock composition of steelhead is unknown.

NMFS has determined that no changes in the boundaries of the Upper Columbia River ESU are warranted. No new information was received from peer reviewers or other commenters regarding the boundaries of this ESU.

Hatchery Populations Pertaining to This ESU

Hatchery populations considered part of this ESU include the Wells Hatchery stock of steelhead (Summer run). Although this stock represents a mixture of native populations, it probably retains the genetic resources of steelhead populations above Grand Coulee Dam that are now extinct from those native habitats. Operations at the Wells Hatchery have utilized large numbers of spawning adults (>500) and have incorporated some naturally spawning adults (10 percent of the total) into the broodstock each year, procedures which should help minimize the negative genetic effects of artificial propagation. Because of the incorporation of naturally-spawning adults into the hatchery broodstock and the large number of hatchery-propagated fish that spawn naturally, there is a close genetic resemblance between naturally spawning populations in the ESU and the Wells Hatchery stock that could be used for recovery purposes.

Hatchery populations not considered part of this ESU include the Skamania Hatchery stock (Summer run) because of its non-native heritage.

(5) Snake River Basin ESU

This inland steelhead ESU occupies the Snake River Basin of southeast Washington, northeast Oregon and Idaho. The Snake River flows through terrain that is warmer and drier on an annual basis than the upper Columbia Basin or other drainages to the north. Geologically, the land forms are older and much more eroded than most other steelhead habitat. The eastern portion of the basin flows out of the granitic geological unit known as the Idaho Batholith. The western Snake River Basin drains sedimentary and volcanic soils of the Blue Mountains complex. Collectively, the environmental factors of the Snake River Basin result in a river that is warmer and more turbid, with higher pH and alkalinity, than is found elsewhere in the range of inland steelhead.

Snake River Basin steelhead are summer steelhead, as are most inland steelhead, and have been classified into two groups, A-run and B-run, based on migration timing, ocean-age, and adult size. Snake River Basin steelhead enter fresh water from June to October and spawn in the following spring from March to May. A-run steelhead are thought to be predominately one-ocean, while B-run steelhead are thought to be two-ocean (IDFG, 1994). Snake River Basin steelhead usually smolt at age-2 or -3 years (Whitt, 1954; BPA, 1992; Hassemer, 1992).

NMFS concludes that no changes in the proposed boundaries of the Snake River Basin ESU are warranted. While several commenters stated that A- and B-run steelhead are distinctive and therefore warrant consideration as separate ESUs, no new scientific evidence was provided to support this. As one peer reviewer noted, the distinction between A- and B-run fish currently is made using either timing-based or length-based divisions of steelhead passing Bonneville Dam, on the mainstem Columbia River. Above Bonneville dam, run-timing separation is not observed, and the groups are separated based on ocean age and body size (IDFG, 1994). It is unclear if the life history and body size differences observed upstream are correlated with groups forming the bimodal migration observed at Bonneville dam. Furthermore, the relationship between patterns observed at the dams and the distribution of adults in spawning areas through the Snake River basin is not well understood. Based on the inability to clearly distinguish between A- and B-run steelhead once above Bonneville, NMFS concludes their division into separate ESUs is not warranted.

Hatchery Populations Pertaining to This ESU

Hatchery populations considered part of this ESU include Dworshak National Fish Hatchery (NFH) stock (Summer run); Imnaha River stock (Summer run); and Oxbow Hatchery stock (Summer run). Although the historical spawning and rearing habitat for the Dworshack Hatchery stock is not available to anadromous migrants (due to the construction of Dworshak Dam), this stock represents the only source of a genetically distinct component of the ESU. Furthermore, due to the absence of any introgression from other populations, the purity of this stock likely has been maintained. While some concern exists for potential domestication or genetic founder effects, hatchery records indicate that a minimum of a thousand adults have been used annually to perpetuate the stock, which would reduce the possibility of genetic drift leading to reduced genetic variation within the stock.

NMFS concludes that the Imnaha River Hatchery stock is part of the Snake River ESU. This stock was recently founded from an undiluted stock (with no previous history of non-native hatchery releases) for the purpose of preserving the native genetic resources of this area. Therefore, this stock represents an important component of the evolutionary legacy of this ESU.

Finally, NMFS concludes that the Oxbow Hatchery stock is part of the Snake River ESU. Although this stock has been under artificial propagation for several generations and has been propagated almost entirely from hatchery-derived adults, NMFS believes this stock represents the only source of a unique genetic resource and as such is important to preserve as part of the ESU.

Hatchery populations not considered part of the Snake River ESU include the Lyons Ferry stock (Summer run), Pahsimeroi Hatchery stock (Summer run), East Fork Salmon River Trap (Summer run), and Wallowa Hatchery stock (Summer run). The Lyons Ferry Hatchery stock is excluded primarily based on the use of steelhead from stocks that originated outside of this ESU. The Pahsimeroi Hatchery stock consists of a mixture of populations, all of which originate within the ESU; however, NMFS believes that because these populations came from ecologically-distinct regions throughout the Snake River Basin, the assemblage of these populations does not closely resemble any naturally spawning counterpart. In recent years, hatchery practices have focused on propagating this stock solely from hatchery derived adults. The East Fork Salmon River Trap consists of a mixture of Pahsimeroi and Dworshak Hatchery stocks which are not included in the ESU.

NMFS concludes that the Wallowa Hatchery stock is not included in this ESU. This stock was founded by collections of adults from lower Snake

River mainstem dams, and there was no clear consensus on which populations within the Snake River Basin were represented in the mixture. Also, populations not native to the Snake River (e.g., Skamania stock) have been incorporated into Wallowa Hatchery broodstock. Many of the reasons for not including this stock are similar to those given for the Pahsimeroi Hatchery stock.

Existing Conservation Efforts

Under section 4(b)(1)(A) of the ESA, the Secretary of Commerce is required to make listing determinations solely on the basis of the best scientific and commercial data available and after taking into account efforts being made to protect a species. During the status review for west coast steelhead, NMFS reviewed an array of protective efforts for steelhead and other salmonids, ranging in scope from regional strategies to local watershed initiatives. NMFS has summarized some of the major efforts in a document entitled "Steelhead Conservation Efforts: A Supplement to the Notice of Determination for West Coast Steelhead under the Endangered Species Act" (NMFS, 1996b). In addition, NMFS has compiled inventories of locally based, watershed conservation planning and restoration efforts for steelhead in the Central California, South-Central, and Southern California ESUs (NMFS, 1997d). These documents are available upon request (see **ADDRESSES**).

Despite numerous efforts to halt and reverse declining trends in west coast steelhead, it is clear that the status of many native, naturally-reproducing populations has continued to deteriorate. NMFS therefore believes it highly likely that past efforts and programs to address the conservation needs of these stocks are inadequate, including efforts to reduce mortalities and improve the survival of these stocks through all stages of their life cycle. Important factors include the loss of habitat, continued decline in the productivity of freshwater habitat for a wide variety of reasons, significant potential negative impacts from interactions with hatchery stocks, overfishing, and natural environmental variability.

NMFS recognizes that many of the ongoing Federal, state, and local protective efforts are likely to promote the conservation of steelhead and other salmonids. However, NMFS has also determined that, collectively, these efforts are not sufficient to achieve long-term conservation and recovery of steelhead at the scale of individual ESUs. There have been significant improvements in migration conditions in the Columbia River Basin as a result of NMFS' 1995 Biological Opinion on the operation of the Federal hydropower system. However, mainstem passage conditions are only one of many threats facing the species. NMFS believes most existing efforts lack some of the critical elements needed to provide a high degree of certainty that the efforts will be successful.

The best available scientific information on the biological status of the species supports a final listing of five steelhead ESUs under the ESA at this time. NMFS concludes that existing protective efforts are inadequate to alter the proposed determination of threatened or endangered for these five steelhead ESUs.

Status of Steelhead ESUs

Section 3 of the ESA defines the term "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range." The term "threatened species" is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Thompson (1991) suggested that conventional rules of thumb, analytical approaches, and simulations may all be useful in making this determination. In previous status reviews (e.g., Weitkamp *et al.*, 1995), NMFS has identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, including: (1) Absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU.

During the coastwide status review for steelhead, NMFS evaluated both quantitative and qualitative information to determine whether any proposed ESU is threatened or endangered according to the ESA. The types of information used in these assessments are described below, followed by a summary of results for each ESU.

Quantitative Assessments

A significant component of NMFS' status determination was analyses of abundance trend data. Principal data sources for these analyses were historical and recent run size estimates derived from dam and weir counts, stream surveys, and angler catch estimates. Of the 160 steelhead stocks on the west coast of the United States for which sufficient data existed, 118 (74 percent) exhibited declining trends in abundance, while the remaining 42 (26 percent) exhibited increasing trends in abundance. Sixty-five of the stock abundance trends analyzed were statistically significant. Of these, 57 (88 percent) indicated declining trends in abundance and the remaining 8 (12 percent) indicated increasing trends in abundance. NMFS' analysis assumes that catch trends reflect trends in overall population abundance. NMFS recognizes there are many problems with this assumption and, therefore, the index may not represent trends in the total population in a river basin. However, angler catch is the only information available for many steelhead populations, and changes in catch still provide a useful indication of trends in total population abundance. Furthermore, where alternate abundance data existed, NMFS used them in its risk analyses.

Analyses of steelhead abundance indicate that across the species' range, the majority of naturally reproducing steelhead stocks have exhibited long-term declines in abundance. The severity of declines in abundance tends to vary by geographic region. Based on historical and recent abundance estimates, stocks in the southern extent of the coastal steelhead range (i.e., California's Central Valley, South-Central and Southern California ESUs) appear to have declined significantly, with widespread stock extirpations. In several areas, a lack of accurate run size and trend data make estimating abundance difficult.

Qualitative Assessments

Although numerous studies have attempted to classify the status of steelhead populations on the west coast of the United States, problems exist in applying results of these studies to NMFS' ESA evaluations. A significant problem is that the definition of "stock" or "population" varies considerably in scale among studies, and sometimes among regions within a study. In several studies, identified units range in size from large river basins, to minor coastal streams and tributaries. Only two studies (Nehlsen *et al.*, 1991; Higgins *et al.*, 1992) used categories that relate to the ESA "threatened" or "endangered" status. Even these studies applied their own interpretations of these terms to individual stocks, not to broader

geographic units such as those discussed here. Another significant problem in applying previously published studies to this evaluation is the manner in which stocks or populations were selected to be included in the review. Several studies did not evaluate stocks that were not perceived to be at risk, making it difficult to determine the proportion of stocks they considered to be at risk in any given area.

Nehlsen *et al.* (1991) considered salmon and steelhead stocks throughout Washington, Idaho, Oregon, and California and enumerated all stocks they found to be extinct or at risk of extinction. They considered 23 steelhead stocks to be extinct, one possibly extinct, 27 at high risk of extinction, 18 at moderate risk of extinction, and 30 of special concern. Steelhead stocks that do not appear in their summary were either not at risk of extinction or there was insufficient information to classify them. Washington Department of Fisheries et al. (1993) categorized all salmon and steelhead stocks in Washington on the basis of stock origin ("native," "non-native," "mixed," or "unknown"), production type ("wild," "composite," or "unknown") and status ("healthy," "depressed," "critical," or "unknown"). Of the 141 steelhead stocks identified in Washington, 36 were classified as healthy, 44 as critical, 10 as depressed, and 60 as unknown.

The following summaries draw on these quantitative and qualitative assessments to describe NMFS' conclusions regarding the status of each steelhead ESU. Furthermore, in these summaries, NMFS identifies those hatchery populations that are essential for the recovery of the ESU. An "essential" hatchery population is one that is currently vital to the success of recovery efforts for the ESU within which it occurs. In evaluating the importance of hatchery stocks for recovery, NMFS considers the relationship between the natural and hatchery populations and the degree of risk faced by the natural populations. A more detailed discussion of the status of these steelhead ESUs is presented in the "Status Review Update for West Coast Steelhead from Washington, Idaho, Oregon, and California" (NMFS, 1997a). Copies of this document are available upon request (see **ADDRESSES**).

(1) Central California Coast ESU

Only two estimates of historical (pre-1960s) abundance specific to this ESU are available: an average of about 500 adults in Waddell Creek in the 1930s and early 1940s (Shapovalov & Taft, 1954), and an estimate of 20,000 steelhead in the San Lorenzo River before 1965 (Johnson, 1964). In the mid-1960s, CDFG (1965) estimated 94,000 steelhead spawning in many rivers of this ESU, including 50,000 and 19,000 fish in the Russian and San Lorenzo Rivers, respectively. NMFS has comparable recent estimates for only the Russian (approximately 7,000 fish) and San Lorenzo (approximately 500 fish) Rivers. These estimates indicate that recent total abundance of steelhead in these two rivers is less than 15 percent of their abundance 30 years ago. Additional recent estimates for several other streams (Lagunitas Creek, Waddell Creek, Scott Creek, San Vincente Creek, Soquel Creek, and Aptos Creek) indicate individual run sizes are 500 fish or less. No recent estimates of total run size exist for this ESU. McEwan and Jackson (1996) noted that steelhead in most tributary streams in San Francisco and San Pablo Bays have been extirpated.

Additional information received in response to the proposed rule suggests that steelhead in this ESU may be exhibiting slight increases in abundance in recent years (NMFS, 1997a). Updated abundance data for the Russian and San Lorenzo Rivers indicate increasing run sizes over the past 2–3 years, but it is not possible to distinguish the relative proportions of hatchery and natural steelhead in those estimates. Additional data from a few smaller streams in the region also show general increases in juvenile abundance in recent years.

Presence/absence data available since the proposed rule show that in a subset of streams sampled in the central California coast region, most contain steelhead. This is in contrast to the pattern exhibited by coho, which are absent from many of those same streams. Those streams in which steelhead were not present are concentrated in the highly urbanized San Francisco Bay region. While there are several concerns with these data (e.g., uncertainty regarding origin of juveniles), NMFS believes it is generally a positive indicator that there is a relatively broad distribution of steelhead in smaller streams throughout the region.

In evaluating trends in productivity throughout the ESU, NMFS considered difficulties arising from the inability to separate out the effects of hatchery productivity from overall run size increases in recent years. The Russian and San Lorenzo Rivers have the highest steelhead productivity in the ESU, but it is likely that many of the fish are of hatchery origin (estimates in both streams range from 40–60 percent over the last 5 years).

After considering available information, NMFS concludes that steelhead in the Central California Coast ESU warrant listing as a threatened species—a change from its proposed status as endangered. Factors contributing to the present conclusion include new evidence for greater absolute numbers of steelhead in the larger rivers of the central California coast region and the possible increases in juvenile abundance over the last few years. In addition, the broad geographic distribution of steelhead throughout the region, as indicated by the presence/absence data, also convinced NMFS this ESU does not warrant an endangered listing at this time.

Hatchery Populations Essential for the Recovery of the ESU

NMFS concludes that the Big Creek and San Lorenzo River Hatchery stocks are not essential for recovery of this ESU. Current information indicates sufficient naturally spawning populations exist for recovery efforts. The significant degree of hatchery contribution to steelhead runs in the San Lorenzo River may require the use of this stock in recovery efforts in the future.

(2) South-Central California Coast ESU

Historical estimates of steelhead abundance are available for a few rivers in this region. In the mid-1960s, CDFG (1965) estimated a total of 27,750 steelhead spawning in this ESU. Recent estimates for those rivers where comparative abundance information is available show a substantial decline during the past 30 years. In contrast to the CDFG (1965) estimates, McEwan and Jackson (1996) reported runs ranging from 1,000 to 2,000 in the Pajaro River in the early 1960s, and Snider (1983) estimated escapement of about 3,200 steelhead for the Carmel River for the 1964–1975 period. No recent estimates for total run size exist for this ESU; however, recent run-size estimates are available for five rivers (Pajaro River, Salinas River, Carmel River, Little Sur River, and Big Sur River). The total of these estimates is less than 500 fish, compared with a total of 4,750 for the same rivers in 1965, which suggests a substantial decline for the entire ESU from 1965 levels.

Updated data on abundance and trends for steelhead in this ESU indicate slight increases in recent years. New data from the Carmel River show increases in adult and juvenile steelhead abundance over the past 2 to 5 years.

After weighing this new information, NMFS concludes that steelhead in the

South-Central California Coast ESU warrant listing as a threatened species—a change from its proposed status as endangered. Reasons for this slightly more optimistic assessment include new abundance data indicating recent increases in adult and juvenile abundance in the Carmel River and several small coastal tributaries in the southern part of the region. In addition, risks to genetic integrity to steelhead in this ESU are relatively low because of low levels of hatchery stocking. (There are a few scattered reports of rainbow trout introductions from rivers outside the central California coast region.)

Hatchery Populations Essential for the Recovery of the ESU

NMFS concludes that the Whale Rock Reservoir Hatchery stock is not essential for recovery of this ESU. Current information indicates sufficient naturally spawning populations exist for recovery efforts. If in the future the status of steelhead in this ESU worsens, this stock may become essential for recovery efforts.

(3) Southern California ESU

Historically, steelhead occurred naturally south into Baja California. Estimates of historical (pre-1960s) abundance for several rivers in this ESU are available: Santa Ynez River, before 1950, 20,000 to 30,000 (Shapovalov & Taft, 1954; CDFG, 1982; Reavis, 1991; Titus *et al.*, in press); Ventura River, pre-1960, 4,000 to 6,000 (Clanton & Jarvis, 1946; CDFG, 1982; AFS, 1991; Hunt *et al.*, 1992; Henke, 1994; Titus *et al.*, in press); Santa Clara River, pre-1960, 7,000 to 9,000 (Moore, 1980; Comstock, 1992; Henke, 1994); Malibu Creek, pre-1960, 1,000 (Nehlsen *et al.*, 1991; Reavis, 1991). In the mid-1960s, CDFG (1965) estimated steelhead spawning populations for smaller tributaries in San Luis Obispo County as 20,000 fish; however, no estimates for streams further south were provided.

The present estimated total run size for 6 streams (Santa Ynez River, Gaviota Creek, Ventura River, Matilija Creek, Santa Clara River, Malibu Creek) in this ESU are summarized in Titus *et al.*, and each is less than 200 adults. Titus *et al.* concluded that populations have been extirpated from all streams south of Ventura County, with the exception of Malibu Creek in Los Angeles County. While there are no comprehensive stream surveys conducted for steelhead trout occurring in streams south of Malibu Creek, there continue to be anecdotal observations of steelhead in rivers as far south as the Santa Margarita River, San Diego County, in years of substantial rainfall (Barnhart, 1986, Higgins, 1991, McEwan & Jackson, 1996). Titus *et al.* (in press) cited extensive loss of steelhead habitat due to water development, including impassable dams and dewatering.

No time series of data are available within this ESU to estimate population trends. Titus *et al.* summarized information for steelhead populations based on historical and recent survey information. Of the populations south of San Francisco Bay (including part of the Central California Coast ESU) for which past and recent information was available, 20 percent had no discernable change, 45 percent had declined, and 35 percent were extinct. Percentages for the counties comprising this ESU show a very high percentage of declining and extinct populations.

The sustainability of steelhead populations in the Southern California ESU continues to be a major concern, evidenced by consistently low abundance estimates in all river basins. There are fairly good qualitative accounts of historical abundances of steelhead in this ESU, and recent adult counts are severely depressed relative to the past. The few new data that have become available since the proposed rule do not suggest any consistent pattern of change in steelhead abundance in this region.

NMFS concludes that the Southern California ESU is, as proposed, endangered. The primary reasons for concern about steelhead in this ESU are the widespread, dramatic declines in abundance relative to historical levels. Low abundance leads to increased risks due to demographic and genetic variability in small populations. In addition, NMFS believes the restricted spatial distribution of remaining populations places the ESU as a whole at risk because of reduced opportunities for recolonization of streams suffering local population extinctions. The main sources of the extensive population declines in steelhead in this ESU are similar to those described in the South-Central California Coast ESU. In addition, because of fire suppression practiced throughout the area, NMFS believes the effects of increased fire intensity and duration is likely to be a significant risk to the steelhead in this ESU.

Hatchery Populations Essential for the Recovery of the ESU

No hatchery production of steelhead currently occurs in this ESU.

(4) Upper Columbia River Basin ESU

Estimates of historical (pre-1960s) abundance specific to this ESU are available from fish counts at dams. Counts at Rock Island Dam from 1933 to 1959 averaged 2,600 to 3,700, suggesting a pre-fishery run size in excess of 5,000 adults for tributaries above Rock Island Dam (Chapman *et al.*, 1994). Runs may already have been depressed by lower Columbia River fisheries at this time. Recent five-year (1989–93) average natural escapements are available for two stock units: Wenatchee River, 800 steelhead, and Methow and Okanogan Rivers, 450 steelhead. Recent average total escapements for these stocks were 2,500 and 2,400, respectively. Average total run size at Priest Rapids Dam for the same period was approximately 9,600 adult steelhead.

Trends in total (natural and hatchery) adult escapement are available for the Wenatchee River (2.6 percent annual increase, 1962–1993) and the Methow and Okanogan Rivers combined (12 percent annual decline, 1982–93). These two stocks represent most of the escapement to natural spawning habitat within the range of the ESU; the Entiat River also has a small spawning run (WDF *et al.*, 1993).

Steelhead in the Upper Columbia River ESU continue to exhibit low abundances, both in absolute numbers and in relation to numbers of hatchery fish throughout the region. Data from this ESU include separate total and natural run sizes, allowing the separation of hatchery and natural fish abundance estimates for at least some areas in some years. Review of the most recent data indicates that natural steelhead abundance has declined or remained low and relatively constant in the major river basins in this ESU (Wenatchee, Methow, Okanogan) since the early 1990s. Estimates of natural production of steelhead in the ESU are well below replacement (approximately 0.3:1 adult replacement ratios estimated in the Wenatchee and Entiat Rivers.) These data indicate that natural steelhead populations in the Upper Columbia River Basin are not self-sustaining at the present time. The BRT also discussed anecdotal evidence that resident rainbow trout, which are in numerous streams throughout the region, contribute to anadromous run abundance. This phenomenon would reduce estimates of the natural steelhead replacement ratio.

The proportion of hatchery fish is high in these rivers (65–80 percent). In addition, substantial genetic mixing of populations within this ESU has occurred, both historically (as a result of the Grand Coulee Fish Maintenance Project) and more recently as a result of the Wells Hatchery program. Extensive mixing of hatchery stocks throughout this ESU, along with the reduced

opportunity for maintenance of locally adapted genetic lineages among different drainages, represents a considerable threat to steelhead in this region.

Based on the considerations above, NMFS concludes the Upper Columbia ESU is endangered, as proposed. In their comments on the proposed rule, Washington Department of Fish and Wildlife states its general concurrence with this conclusion (WDFW, 1997). The primary cause for concern for steelhead in this ESU are the extremely low estimates of adult replacement ratios. The dramatic declines in natural run sizes and the inability of naturally spawning steelhead adults to replace themselves suggest that if present trends continue, this ESU will not be viable. Habitat degradation, juvenile and adult mortality in the hydrosystem, and unfavorable environmental conditions in both marine and freshwater habitats have contributed to the declines and represent risk factors for the future. Harvest in lower river fisheries and genetic homogenization from composite broodstock collections are other factors that may contribute significantly to risk to the Upper Columbia ESU.

Hatchery Populations Essential for the Recovery of the ESU

NMFS concludes the Wells Hatchery stock including progeny is essential for recovery efforts in this ESU, and therefore should be listed. This conclusion is primarily based on very low estimates of the recruits per spawner ratio, which indicate that productivity of naturally spawning steelhead in this ESU is far below the replacement rate.

(5) Snake River Basin ESU

Prior to Ice Harbor Dam completion in 1962, there were no counts of Snake River Basin naturally spawned steelhead. However, Lewiston Dam counts during the period from 1949 to 1971 averaged about 40,000 steelhead per year in the Clearwater River, while the Ice Harbor Dam count in 1962 was 108,000, and averaged approximately 70,000 until 1970.

All steelhead in the Snake River Basin are summer steelhead, which for management purposes are divided into "A-run" and "B-run" steelhead. Each has several life history differences including spawning size, run timing, and habitat type. Although there is little information for most stocks within this ESU, there are recent run-size and/or escapement estimates for several stocks. Total recent-year average (1990–1994) escapement above Lower Granite Dam was approximately 71,000, with a natural component of 9,400 (7,000 A-run and 2,400 B-run). Run size estimates are available for only a few tributaries within the ESU, all with small populations.

Snake River Basin steelhead recently have suffered severe declines in abundance relative to historical levels. Low run sizes over the last ten years are most pronounced for naturally produced steelhead. In addition, average parr densities recently have dropped for both A-and B-run steelhead, resulting in many river basins in this region being characterized as critically underseeded relative to the carrying capacity of streams. Declines in abundance have been particularly serious for B-run steelhead, increasing the risk that some of the life history diversity may be lost from steelhead in this ESU. Recently obtained information indicates a record low smolt survival and ocean production for Snake River steelhead in 1992–94.

The proportion of hatchery steelhead in the Snake River Basin is very high for the ESU as a whole (over 80 percent hatchery fish passing Lower Granite Dam), yet hatchery fish are rare to nonexistent in several drainages in the region. In places where hatchery release sites are interspersed with naturally-spawning reaches, the potential for straying and introgression is high, resulting in a risk to the genetic integrity of some steelhead populations in this ESU. Hatchery/natural interactions that do occur for Snake River steelhead are of particular concern because many of the hatcheries use composite stocks that have been domesticated over a long period of time.

Based on this information, NMFS concludes that the Snake River ESU is threatened, as proposed. The primary indicator of risk to the ESU is declining abundance throughout the region. Demographic and genetic risks from small population sizes are likely to be important, because few natural steelhead are spread over a wide geographic area. In their comments on the proposed rule, the State of Idaho concurred with NMFS' assessment that steelhead stocks in this ESU are imperiled (State of Idaho, 1997). Steelhead in this ESU face risks similar to those in the Upper Columbia River ESU: Widespread habitat blockage from hydrosystem management and potentially deleterious genetic effects from straying and introgression from hatchery fish. The reduction in habitat capacity resulting from large dams such as the Hells Canyon dam complex and Dworshak Dam is somewhat mitigated by several river basins with fairly good production of natural steelhead runs.

Hatchery Populations Essential for the Recovery of the ESU

NMFS concludes that the hatchery stocks considered part of this ESU (Dworshak NFH stock, Imnaha Hatchery stock, and Oxbow Hatchery stock) are not currently essential for the recovery of the ESU. The Dworshak NFH stock and Oxbow Hatchery stock both represent the remnants of population(s) of steelhead that have been excluded from their historical spawning and rearing habitat by impassable dams. These stocks represent the only legacy for the reintroduction of native populations into these areas. If such reintroduction programs are undertaken, these stocks will likely be essential to the recovery of steelhead in these areas. Currently, naturally spawning steelhead populations in the Imnaha River are relatively healthy; however, if naturally spawning populations decline considerably in the future, this stock may become essential for recovery.

Listing Determination

Section 3 of the ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

Based on results from its coastwide assessment, NMFS has determined that on the west coast of the United States, there are fifteen ESUs of steelhead that constitute "species" under the ESA. NMFS has determined that two ESUs of steelhead are currently endangered (Southern California and Upper Columbia River ESUs) and three ESUs are currently threatened (Central California Coast, South-Central California Coast, and Snake River Basin ESUs). The geographic boundaries (i.e., the watersheds within which the members of the ESU spend their freshwater residence) for these ESUs are described under "Summary of ESUs Determinations."

NMFS has examined the relationship between hatchery and natural populations of steelhead in these ESUs and has assessed whether any hatchery populations are essential for their recovery. While NMFS has concluded that several hatchery stocks are part of the ESU in which they occur, only the

Wells Hatchery stock in the Upper Columbia River ESU is deemed essential for recovery at this time and therefore, included in this listing. Aside from the Wells Hatchery stock, only naturally spawned populations of steelhead (and their progeny) which are part of the biological ESU residing below long-term, naturally and man-made impassable barriers (i.e., dams) are listed in all five ESUs identified as threatened or endangered.

In some cases unlisted hatchery fish that are part of the ESU may not return to the hatchery but instead spawn naturally. In that event, the progeny of that naturally spawning hatchery fish is considered listed. This final rule includes in the listing determination those naturally spawned fish that have at least one parent that was derived from current ESU hatchery broodstock. In some cases these fish may be hybrids; that is, they may have one parent that is part of the biological ESU and one that is not. By listing these fish and extending to them the protections of the ESA, NMFS does not mean to imply that these hybrids are suitable for use in conservation. That decision would need to be made on a case-by-case basis.

NMFS' "Interim Policy on Artificial Propagation of Pacific Salmon Under the Endangered Species Act" (April 5, 1993, 58 FR 17573) provides guidance on the treatment of hatchery stocks in the event of a listing. Under this policy, "progeny of fish from the listed species that are propagated artificially are considered part of the listed species and are protected under the ESA." In accordance with this interim NMFS policy, all progeny of listed steelhead are themselves considered part of the listed species. Such progeny include those resulting from the mating of listed steelhead with non-listed hatchery stocks.

At this time, NMFS is listing only anadromous life forms of *O. mykiss*.

NMFS concludes the Wells Hatchery stock including progeny is essential for recovery efforts in this ESU, and therefore should be listed. This conclusion is primarily based on very low estimates of the recruits per spawner ratio, which indicate that productivity of naturally spawning steelhead in this ESU is far below the replacement rate. It is possible that in some years returns to this hatchery may exceed the number of returns necessary to produce the number of offspring NMFS considers advisable for release into this ESU. This surplus may therefore be, by definition, not essential for recovery efforts. In that case, hatchery operators may be faced with a choice between destroying the excess returns or using them for some other purpose. In making its decision today to include the Wells Hatchery stock as part of the listed population, NMFS does not intend to foreclose the possibility of using such excess returns to provide limited harvest opportunities consistent with the conservation of this ESU.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. Section 9 prohibitions apply automatically to endangered species; as described below, this is not the case for threatened species.

Section 4(d) of the ESA directs the Secretary to implement regulations "to provide for the conservation of [threatened] species," which may include extending any or all of the prohibitions of section 9 to threatened species. Section 9(a)(1)(g) also prohibits violations of protective regulations for threatened species implemented under section 4(d). NMFS will issue shortly protective regulations pursuant to section 4(d) for the Central California Coast, South-Central California Coast, and Snake River ESUs.

Section 7(a)(4) of the ESA requires that Federal agencies consult with NMFS on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions likely to result in the destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with NMFS.

Examples of Federal actions likely to affect steelhead in the listed ESUs include authorized land management activities of the U.S. Forest Service and U.S. Bureau of Land Management, as well as operation of hydroelectric and storage projects of the Bureau of Reclamation and U.S. Army Corps of Engineers (COE). Such activities include timber sales and harvest, hydroelectric power generation, and flood control. Federal actions, including the COE section 404 permitting activities under the CWA, COE permitting activities under the River and Harbors Act, National Pollution Discharge Elimination System permits issued by the Environmental Protection Agency, highway projects authorized by the Federal Highway Administration, Federal Energy Regulatory Commission licenses for non-Federal development and operation of hydropower, and Federal salmon hatcheries, may also require consultation. These actions will likely be subject to ESA section 7 consultation requirements that may result in conditions designed to achieve the intended purpose of the project and avoid or reduce impacts to steelhead and its habitat within the range of the listed ESU. It is important to note that the current listing applies only to the anadromous form of *O. mykiss;* therefore, section 7 consultations will not address resident forms of *O. mykiss* at this time.

There are likely to be Federal actions ongoing in the range of the listed ESUs at the time these listings become effective. Therefore, NMFS will review all ongoing actions that may affect the listed species with Federal agencies and will complete formal or informal consultations, where requested or necessary, for such actions pursuant to ESA section 7(a)(2).

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's "taking" prohibitions (see regulations at 50 CFR 222.22 through 222.24). Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species.

NMFS has issued section 10(a)(1)(A) research or enhancement of survival permits for other listed species (e.g., Snake River chinook salmon and Sacramento River winter-run chinook salmon) for a number of activities, including trapping and tagging, electroshocking to determine population presence and abundance, removal of fish from irrigation ditches, and collection of adult fish for artificial propagation programs. NMFS is aware of several sampling efforts for steelhead in the listed ESUs, including efforts by Federal and state fishery management agencies. These and other research efforts could provide critical information regarding steelhead distribution and population abundance.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, state or university research on species other than steelhead, not

receiving Federal authorization or funding, the implementation of state fishing regulations, and timber harvest activities on non-Federal lands.

Take Guidance

NMFS and the FWS published in the **Federal Register** on July 1, 1994 (59 FR 34272), a policy that NMFS shall identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of a listing on proposed and on-going activities within the species' range. NMFS believes that, based on the best available information, the following actions will not result in a violation of section 9: (1) Possession of steelhead from the listed ESUs acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA; and (2) Federally funded or approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which a section 7 consultation has been completed, and when such an activity is conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanied by a biological opinion pursuant to section 7 of the ESA.

Activities that NMFS believes could potentially harm, injure or kill steelhead in the endangered listed ESUs and result in a violation of section 9 include, but are not limited to: (1) Land-use activities that adversely affect steelhead habitat in this ESU (e.g., logging, grazing, farming, road construction in riparian areas, and areas susceptible to mass wasting and surface erosion); (2) Destruction or alteration of steelhead habitat in the listed ESUs, such as removal of large woody debris and "sinker logs" or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow; (3) discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting listed steelhead; (4) violation of discharge permits; (5) pesticide applications; (6) interstate and foreign commerce of steelhead from the listed ESUs and import/export of steelhead from listed ESUs without an ESA permit, unless the fish were harvested pursuant to legal exception; (7) collecting or handling of steelhead from listed ESUs. Permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species; and (8) introduction of non-native species likely to prey on steelhead in these ESUs or displace them from their habitat. These lists are not exhaustive. They are intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a take of west coast steelhead under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of this rule, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Effective Date of Final Listing

Given the cultural, scientific, and recreational importance of this species, and the broad geographic range of these listings, NMFS recognizes that numerous parties may be affected by this listing. Therefore, to permit an orderly implementation of the consultation requirements and take prohibitions associated with this action, this final listing will take effect October 17, 1997.

Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the ESA include recognition, recovery actions, Federal agency consultation requirements, and prohibitions on taking. Recognition through listing promotes public awareness and conservation actions by Federal, state, and local agencies, private organizations, and individuals.

Several conservation efforts are underway that may help reverse the decline of west coast steelhead and other salmonids. These include the Northwest Forest Plan (on Federal lands within the range of the northern spotted owl), PACFISH (on all additional Federal lands with anadromous salmonid populations), Oregon's Coastal Salmon Restoration Initiative, Washington's Wild Stock Restoration Initiative, overlapping protections from California's listing of coho salmon stocks in California under both the Federal and State ESAs, implementation of California's Steelhead Management Plan, and NMFS' Proposed Recovery Plan for Snake River Salmon. NMFS is very encouraged by a number of these efforts and believes they have or may constitute significant strides in the efforts in the region to develop a scientifically well grounded conservation plan for these stocks. Other efforts, such as the Middle Columbia River Habitat Conservation Plan, are at various stages of development, but show promise of ameliorating risks facing listed steelhead ESUs. NMFS intends to support and work closely with these efforts—staff and resources permitting—in the belief that they can play an important role in the recovery planning process.

Based on information presented in this final rule, general conservation measures that could be implemented to help conserve the species are listed below. This list does not constitute NMFS' interpretation of a recovery plan under section 4(f) of the ESA.

1. Measures could be taken to promote land management practices that protect and restore steelhead habitat. Land management practices affecting steelhead habitat include timber harvest, road building, agriculture, livestock grazing, and urban development.

2. Evaluation of existing harvest regulations could identify any changes necessary to protect steelhead populations.

3. Artificial propagation programs could be required to incorporate practices that minimize impacts upon natural populations of steelhead.

4. Efforts could be made to ensure that existing and proposed dam facilities are designed and operated in a manner that will less adversely affect steelhead populations.

5. Water diversions could have adequate headgate and staff gauge structures installed to control and monitor water usage accurately. Water rights could be enforced to prevent irrigators from exceeding the amount of water to which they are legally entitled.

6. Irrigation diversions affecting downstream migrating steelhead trout could be screened. A thorough review of the impact of irrigation diversions on steelhead could be conducted.

NMFS recognizes that, to be successful, protective regulations and recovery programs for steelhead will need to be developed in the context of conserving aquatic ecosystem health. NMFS intends that Federal lands and Federal activities play a primary role in preserving listed populations and the ecosystems upon which they depend. However, throughout the range of all five ESUs listed, steelhead habitat occurs and can be affected by activities on state, tribal, or private land. Agricultural, timber, and urban management activities on nonFederal land could and should be conducted in a manner that minimizes adverse effects to steelhead habitat.

NMFS encourages nonfederal landowners to assess the impacts of their actions on potentially threatened or endangered salmonids. In particular, NMFS encourages the establishment of watershed partnerships to promote conservation in accordance with ecosystem principles. These partnerships will be successful only if state, tribal, and local governments, landowner representatives, and Federal and nonFederal biologists all participate and share the goal of restoring steelhead to the watersheds.

Critical Habitat

Section 4(b)(6)(C) of the ESA requires that, to the extent prudent, critical habitat be designated concurrently with the listing of a species unless such critical habitat is not determinable at that time. While NMFS has completed its initial analysis of the biological status of steelhead populations from Washington, Oregon, Idaho, and California, it has not completed the analyses necessary for designating critical habitat. Therefore, critical habitat is not now determinable for these five listed steelhead ESUs. NMFS intends to develop and publish a critical habitat determination for west coast steelhead within one year from the publication of this notice.

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir. 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of the National Environmental Policy Act (NEPA) under NOAA Administrative Order 216–6.

As noted in Conference Report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the analytical requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, are not required. Similarly, this final rule is exempt from review under E.O. 12866.

At this time NMFS is not promulgating protective regulations pursuant to ESA section 4(d). In the future, prior to finalizing its 4(d) regulations for the threatened ESUs, NMFS will comply with all relevant NEPA and RFA requirements.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES**).

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: August 11, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR parts 222 and 227 are amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation of part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart D, § 222.32 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 222.23, paragraph (a) is amended by revising the second sentence to read as follows:

§ 222.23 Permits for scientific purposes or to enhance the propagation or survival of the affected endangered species.

(a) * * * The species listed as endangered under either the Endangered Species Conservation Act of 1969 or the Endangered Species Act of 1973 and currently under the jurisdiction of the Secretary of Commerce are: Shortnose sturgeon (*Acipenser brevirostrum*); Totoaba (*Cynoscian macdonaldi*), Snake River sockeye salmon (*Oncorhynchusnerka*), Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*); Southern California steelhead (*Oncorhynchus mykiss*), which includes all naturally spawned populations of steelhead (and their progeny) in streams from the Santa Maria River, San Luis Obispo County, California (inclusive) to Malibu Creek, Los Angeles County, California (inclusive); Upper Columbia River steelhead (*Oncorhynchus mykiss*), which includes the Wells Hatchery stock and all naturally spawned populations of steelhead (and their progeny) in streams in the Columbia River Basin upstream from the Yakima River, Washington, to the United States-Canada Border; Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*); Western North Pacific (*Korean*) gray whale (*Eschrichtius robustus*), Blue whale (*Balaenoptera musculus*), Humpback whale (*Megaptera novaeangliae*), Bowhead whale (*Balaenamysticetus*), Right whales (*Eubalaena spp.*), Fin or finback whale (*Balaenoptera physalus*), Sei whale (*Balaenoptera borealis*), Sperm whale (*Physeter catodon*); Cochito (*Phocoena Sinus*), Chinese river dolphin (*Lipotes vexillifer*); Indus River dolphin (*Platanista minor*); Caribean monk seal (*Monachus tropicalis*) Hawaiian monk seal (*Monachus schauinslandi*); Mediterranean monk seal (*Monachus monachus*); Saimaa seal (*Phoca hispida saimensis*); Steller sea lion (*Eumetopias jubatus*), western population, which consists of Steller sea lions from breeding colonies located west of 144° W. long.; Leatherback sea turtle (*Dermochelys coriacea*), Pacific hawksbill sea turtle (*Eretmochelys imbricata bissa*), Atlantic hawksbill sea turtle (*Eretmochelys imbricata imbricata*), Atlantic ridley sea turtle (*Lepidochelys kempii*). * * *

* * * * *

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 227.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 227.4, paragraphs (j), (k), and (l) are added to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(j) Central California Coast steelhead (*Oncorhynchus mykiss*). Includes all naturally spawned populations of steelhead (and their progeny) in streams from the Russian River to Aptos Creek, Santa Cruz County, California (inclusive), and the drainages of San Francisco and San Pablo Bays eastward to the Napa River (inclusive), Napa County, California. Excludes the Sacramento-San Joaquin River Basin of the Central Valley of California;

(k) South-Central California Coast steelhead (*Oncorhynchus mykiss*). Includes all naturally spawned populations of steelhead (and their progeny) in streams from the Pajaro River (inclusive), located in Santa Cruz County, California, to (but not including) the Santa Maria River;

(l) Snake River Basin steelhead (*Oncorhynchus mykiss*). Includes all naturally spawned populations of steelhead (and their progeny) in streams

in the Snake River Basin of southeast Washington, northeast Oregon, and Idaho.

[FR Doc. 97–21661 Filed 8–13–97; 9:14 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970613138–7138–01; I.D. 081397A]

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery; Closure in Registration Area Q

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

ACTION: Closure.

SUMMARY: NMFS is closing the scallop fishery in Registration Area Q (Bering Sea). This action is necessary to prevent exceeding the *Chionoecetes opilio* (*C. opilio*) Tanner crab bycatch limit (CBL) in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 13, 1997, until 2400 hrs, A.l.t., June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The scallop fishery in the exclusive economic zone off Alaska is managed by NMFS according to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing for scallops is governed by regulations appearing at subpart F of 50 CFR part 600 and 50 CFR part 679. In accordance with § 679.62(b) the 1997 *C. opilio* CBL for Registration Area Q was established by the Final 1997–98 Harvest Specifications of Scallops (62 FR 34182, June 25, 1997) as 172,000 *C. opilio* crab.

The Administrator, Alaska Region, NMFS, has determined, in accordance with § 679.62(c), that the *C. opilio* CBL for Registration Area Q has been reached. Therefore, NMFS is prohibiting the taking and retention of scallops in Registration Area Q.

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1997 CBL for Registration Area Q. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to public interest. The fleet has already taken the CBL for Registration Area Q. Further delay would only result in overharvest and disrupt the FMP's objective of allowing incidental catch to be retained throughout the year. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.62 and is exempt from review under E.O. 12866.

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

Dated: August 13, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–21826 Filed 8-13-97; 2:40 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 159
Monday, August 18, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1446

RIN 0560–AFO1

Proposed Method for Setting the Sales Price Level for 1998-Crop Commodity Credit Corporation (CCC) Contract Additional Peanuts for Export Edible Use

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Advanced notice of proposed rulemaking with request for comments.

SUMMARY: The purpose of this notice is to solicit comments concerning the method for determining the minimum export edible sales price for sales by the CCC of price support loan inventory of additional peanuts and the actual CCC sales price for export edible use. Increasing competition in the world edible peanut market and lack of consensus within the peanut industry about the minimum export edible sales price level require an evaluation of future levels and procedures for establishing export edible sales prices.

DATES: Comments concerning the method of establishing the level of the minimum export edible sales price for additional peanuts must be received by September 30, 1997, in order to be assured consideration.

ADDRESSES: Comments must be submitted to the Director, Tobacco and Peanuts Division, USDA, Farm Service Agency (FSA), STOP 0514, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0514. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m.; Monday through Friday, except holidays, in room 5750-South Building, 1400 Independence Avenue, S.W., Washington, DC 20250–0514.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Robison, FSA, USDA, STOP 0514, 1400 Independence Avenue, S.W., Washington, DC 20250–0514, telephone 202–720–9255.

SUPPLEMENTARY INFORMATION: The establishment of a minimum price at which 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 1997 crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets was established at $400 per short ton (st) on April 30, 1997. This price was designed to encourage exports while providing price stability for additional peanuts sold under contract. It was also designed to assure handlers that CCC would not undercut their export contracting efforts with offerings of additional peanuts for export edible sales below the minimum sales price.

During the 1997-crop comment period seven comments were received concerning the minimum export edible sales price. Four suggested keeping the price at $400 per st, and three suggested lowering it to between $300 and $375 per st. Producer groups preferred keeping the minimum price at $400 per ton while shellers preferred lowering it.

Since the 1997-crop comment period closed, several parties have requested that USDA study the method of setting the export edible sales price and its level. Competition in the world edible peanut market has increased markedly in recent years. Production in Argentina rose about 65 percent between 1992 and 1996 and South African production is expanding. With increased imports and annual reductions in domestic use of peanuts, until the recent anticipated small increase, the competitiveness of U.S. peanuts in world markets becomes more important.

Because of these requests and the increasing competitiveness in world edible peanut markets, industry and other comments are being solicited before setting the 1998 marketing year (MY) minimum sales price for additional peanuts sold for export use.

Several options exist for establishing the additional peanut export edible sales price in 1998 and future years. These include: (1) Maintaining the $400 per st level that has been in effect since 1986; (2) lowering the level of the minimum export edible sales price; (3) basing the minimum export edible sales price solely on some fixed percentage of the average price for "Segregation 1" additional peanuts delivered under contract for such MY; (4) establishing a minimum level and setting the export edible price at the lower of an absolute number or some percentage of the average price for "Segregation 1" additional peanuts delivered under contract for such MY; (5) basing the export edible minimum price on a calculated "world" price of edible peanuts; (6) basing the export edible price on the lower of an absolute number and a calculated "world" price of edible peanuts; or (7) some combination of the above.

Setting the minimum export edible sales price as an absolute number is the simplest and most straightforward. However, this method may not adequately consider the effect of supply and demand variations in the world marketplace.

Basing the minimum export edible sales price on the basis of the average contract price for Segregation 1 peanuts delivered under contract would capture some of the effects of change in the world edible market. However, this technique could create greater uncertainty and could complicate recordkeeping. This method of establishing the minimum export edible sales price was used briefly in 1986 and could be reestablished with or without modification for 1998 and subsequent years. In 1986, in a February 14 press release and a March 5 press release clarification, the original determination for the 1986 crop was that the 1986–1990 crops of additional peanuts would be sold by CCC for export edible use at no less than the lower of (1) $400 per ton, or (2) 102 percent of the average contract price by type for Segregation 1 additional peanuts delivered under contract, plus cost, including inspection, warehousing, and shrinkage for such MYs as determined by CCC. However, after this policy was announced early contracting of 1986

peanuts slowed. For that reason, on April 22, 1986, the policy was changed to a minimum price of $400 per ton and this level has remained in effect for 12 consecutive years.

A world price method of establishing the minimum export edible sales price could be ideal for capturing the effects of change in supply and demand in the world market. However, a lack of data for calculating world prices could limit USDA's ability to accurately capture the world price.

Comments on absolute levels for the minimum export sales price and the method of calculating the price are being sought. Comments should address whether USDA should continue to announce an absolute number, or should a formula be used, or should an absolute number be used in combination with a formula. If a formula is recommended, comments should address what components should be included and how should the components be weighed.

Following the receipt of comments, a proposed rule for the 1998 crop and for subsequent crops, if deemed appropriate, will be issued which will allow for additional comment.

Comments are sought in particular on the following questions:

(1) Should 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 future crops be changed?

(2) Should the $400 per st level that has been in effect since 1986 be changed?

(3) Should USDA switch to a formula to determine the minimum price for additional loan peanuts sold for export edible use?

(4) Should the formula be based on a set percentage of the weighted average contract price for additional peanuts for the current year?

(5) Should the formula be based on a set percentage of the world price of peanuts converted to a "Farmer Stock Basis"?

(6) Should a formula and absolute number both be used for setting the export edible sales price?

(7) Should the formula be based on a combination of contract prices and the world price for peanuts, and if so, what weight should contract additional prices and world peanut prices be given in the formula?

Signed at Washington, DC, on August 7, 1997.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–21795 Filed 8–15–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–34–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospace Technologies of Australia Pty Ltd. (Formerly Government Aircraft Factory) Models N22B, N22S, and N24A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Aerospace Technologies of Australia Pty Ltd. (ASTA) Models N22B, N22S, and N24A airplanes. The proposed action would require repetitively inspecting the aft wing break connectors for arcing damage, deposits between contacts, and looseness of contacts; and removing deposits between contacts, tightening any loose contacts, and replacing any aft wing break connectors with arcing damage. The proposed AD results from several reports of uncommanded flap extensions and displays of incorrect stall warning indications on the affected airplanes. The actions specified by the proposed AD are intended to prevent contamination in the aft wing break connectors, which could result in uncommanded flap extensions and incorrect stall warning indications with consequent loss of airplane control.

DATES: Comments must be received on or before October 17, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–34–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Aerospace Technologies of Australia Pty Ltd., ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Atmur, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5224; facsimile (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–34–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–34–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, recently notified the FAA that an unsafe condition may exist on certain ASTA Models N22B, N22S, and N24A airplanes. The CASA reports several uncommanded flap extensions and displays of incorrect stall warning indications on the referenced airplanes. Contamination in the aft wing break connectors can cause such occurrences. These conditions, if not detected and corrected, could lead to loss of airplane control.

Applicable Service Information

ASTA has issued Nomad Service Bulletin (SB) ANMD–57–13, dated October 30, 1995. This SB includes procedures for inspecting the aft wing break connectors for arcing damage, deposits between contacts, and looseness of contacts; and removing deposits between contacts, tightening any loose contacts, and replacing any aft wing break connectors with arcing damage.

The CASA of Australia classified this service bulletin as mandatory and issued FCAA AD/GAF–N22/74, dated March 1996, in order to assure the continued airworthiness of these airplanes in Australia.

The FAA's Determination

This airplane model is manufactured in Australia and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CASA of Australia has kept the FAA informed of the situation described above. The FAA has examined the findings of the CASA of Australia; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other ASTA Models N22B, N22S, and N24A airplanes of the same type design that are registered in the United States, the FAA is proposing AD action. The proposed AD would require repetitively inspecting the aft wing break connectors for arcing damage, deposits between contacts, and looseness of contacts; and removing deposits between contacts, tightening any loose contacts, and replacing any aft wing break connectors with arcing damage.

Accomplishment of the proposed actions would be in accordance with Nomad SB ANMD–57–13, dated October 30, 1995.

Cost Impact

The FAA estimates that 15 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $900 or $60 per airplane. This figure does not take into account the cost of repetitive inspections or the cost to replace any damaged aft wing break connectors. The FAA has no way of determining the number of repetitive inspections each operator would incur over the life of each affected airplane or the number of aft wing break connectors that may be found damaged during the inspections proposed by this action.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Aerospace Technologies of Australia PTY LTD: Docket No. 97–CE–34–AD.

Applicability: Models N22B, N22S, and N24A airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent contamination in the aft wing break connectors, which could result in uncommanded flap extensions and incorrect stall warning indications with consequent loss of airplane control, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD and thereafter at intervals not to exceed 300 hours TIS, inspect the aft wing break connectors for arcing damage, deposits between contacts, and looseness of contacts. Accomplish these inspections in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Nomad Service Bulletin (SB) ANMD–57–13, dated October 30, 1995.

(b) If any deposits between contacts, loose contacts, or aft wing break connector arcing damage is found, prior to further flight, accomplish the following, as applicable, in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Nomad SB ANMD–57–13, dated October 30, 1995:

(1) Remove any deposits between contacts;

(2) Tighten any loose contacts; and

(3) Replace any aft wing break connectors with arcing damage.

(c) The repetitive inspections specified in this AD are required even if deposit is removed between the aft wing break connector contacts; any aft wing break connector contacts are tightened; or any aft wing break connectors are replaced.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Los Angeles ACO, 3960 Paramount Boulevard., Lakewood, California 90712. The request

shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to Aerospace Technologies of Australia Pty Ltd., ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 11, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–21787 Filed 8–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

RIN 1515–AB61

Country of Origin Marking Requirements for Frozen Imported Produce

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking; additional comment period.

SUMMARY: This document provides interested members of the public an additional 60 days to submit written comments on a proposal to amend the Customs Regulations regarding the country of origin marking of imported frozen produce. The proposed amendment would revise the regulations to mandate front panel marking of imported frozen produce.

DATES: Comments must be received on or before October 17, 1997.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Ave., N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David Cohen, Special Classification and Marking Branch, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

On July 23, 1996, Customs published a Notice of Proposed Rulemaking (61 FR 38119) soliciting comments on a proposal to require that the country of origin of frozen imported produce be marked on the front panel of their retail packages to comply with the statutory requirement that the country of origin marking be in a "conspicuous place." On September 23, 1996, the comment period closed.

Subsequent to the close of the comment period, Customs received a large number of additional comments and other correspondence concerning this matter. In order to afford Customs an appropriate opportunity to consider the points raised in those comments and other correspondence received outside the prescribed comment period, and in order to provide an additional opportunity for the general public to submit comments on this matter which continues to engender significant interest, Customs has decided to reopen this matter for public comment for 60 more days. In order to ensure consideration of the most complete record possible, Customs will, after the close of the new public comment period, give consideration to all comments and other correspondence already received during or after the original comment period as well as all comments received during the new public comment period herein. Accordingly, there is no need to re-submit copies of any comments previously submitted to Customs with respect to this proposed rulemaking.

Dated: August 12, 1997.

George J. Weise,

Commissioner of Customs.

[FR Doc. 97–21742 Filed 8–15–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 187

46 CFR Part 67

[CGD 96–060]

Vessel Documentation: Combined Builder's Certificate and Manufacturer's Certificate of Origin, Submission of Hull Identification Number (HIN) for Documentation of Recreational Vessels, and Issuance of Temporary Certificates of Documentation

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The National Vessel Documentation Center will hold a public meeting as a follow-up to its November 14, 1996, notice of requests for comments on vessel documentation matters. The meeting will be held to discuss combining the Builder's Certificate and the Manufacturer's Certificate of Origin, requiring a Hull Identification Number for the documentation of recreational vessels, and issuing a Temporary Certificate of Documentation.

DATES: The meeting will be on September 17, 1997, from 10 a.m. to 4 p.m.

ADDRESSES: The meeting will be in room 6200–6204, Department of Transportation, Nassif Building, 400 7th Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis M. Nelson, Chief, Recreational Vessel Documentation Branch, National Vessel Documentation Center, 2039 Stonewall Jackson Dr., Falling Waters, WV 25419; telephone 304–271–2400 (800–799–8362); fax 304–271–2405.

SUPPLEMENTARY INFORMATION: On November 14, 1996, the Coast Guard published a "notice of request for comments" (61 FR 58359) on the following subjects. The notice provides additional background information. After reviewing the comments, we now need your help in answering the following questions:

1. *Hull Identification Number (HIN).* The Coast Guard is considering requiring that recreational vessels be marked with an HIN before being documented and that the HIN appear on the application for documentation. This would align documentation process with the Vessel Identification System. Also, it would deter fraud, aid in law enforcement, and improve the identification of vessels. Should a photo or a rubbing of the HIN accompany the Application for Documentation?

2. *Manufacturer's Certificate of Origin and Builder's Certification.* Currently, the States use the Manufacturer's Certificate of Origin (MCO) for registering and titling vessels and the Coast Guard uses the Builder's Certification (Form CG–1261) for documenting vessels. The Coast Guard is considering combining these two forms to reduce the possibility for fraud, allow boat manufacturers to use only one form for either system, and aid law enforcement by means of a uniform system for identifying vessels. Are there any reasons why this proposal should not be adopted?

3. *Temporary Certificate of Documentation.* For various reasons, a permanent Certificate of Documentation cannot be issued immediately upon application for documentation or re-documentation. This prevents vessel owners from operating their vessels during processing of applications. The delays in processing are due to the need to first get a Satisfaction of Mortgage or a Mortgagee Consent, to the seasonal fluctuations in the volume of applications received, and to the limited amount of equipment and staff available to process applications. To enable owners to operate their vessels during the application process, a temporary certificate of documentation could be issued.This would not only reduce down-time for vessels but also assist law enforcement and relieve States from having to issue temporary motorboat registrations. What information should the certificate contain? For how long should it be valid? Who should be authorized to issue it? How can its use be controlled? How much should the issuing person charge?

Procedural

The meeting will be in the form of an informal workshop open to the public. It is intended to bring together persons knowledgeable about the three issues addressed in this notice to assist the Coast Guard in answering the questions raised.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Dennis M. Nelson as soon as possible.

Dated: August 13, 1997.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–21811 Filed 8–15–97; 8:45am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 058–4039; FRL–5876–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Proposed Disapproval of the NO_X RACT Determination for Pennsylvania Power Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania's Department of Environmental Protection (PADEP). This revision withdraws EPA's previously proposed approval of the nitrogen oxide (NO_X) reasonably available control technology (RACT) determination submitted by PADEP for Pennsylvania Power Company—New Castle plant (PPNC), located in Lawrence County, Pennsylvania and, instead, proposes to disapprove the SIP revision pertaining to this facility. The intended effect of this action is to propose disapproval of the NO_X RACT determination submitted by PADEP for PPNC.

DATES: Comments must be received on or before September 17, 1997.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H.Stahl, (215) 566–2180, at the EPA Region III office above or via e-mail at stahl.cynthia@epamail.epa.gov. While information may be requested via e-mail, all comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 1995, PADEP submitted a revision to the Pennsylvania SIP requesting EPA approve RACT determinations it had made for several facilities, including PPNC. Only the RACT determination submitted for PPNC is the subject of this rulemaking action. The revision consists of an operating permit, OP 37–023, for PPNC. The other plan approvals and operating permits submitted on April 19, 1995 are the subject of other rulemaking actions.

On April 9, 1996, EPA published a direct final rule in the **Federal Register** (61 FR 15709). This document stated that EPA was approving, without prior proposal, 21 source-specific RACT determinations made and submitted by PADEP for facilities located in Pennsylvania. Included among these 21 source-specific RACT determinations was one for PPNC. The document also stated that unless adverse comments were received within 30 days of publication, EPA's RACT determinations for these 21 facilities would become final. The accompanying proposed rulemaking, which appears with every direct final rule, was also published on April 9, 1996 (61 FR 15744).

On May 8, 1996, New York Department of Environmental Conservation submitted a letter stating that it intended to adversely comment on EPA's action to approve PADEP's RACT determination for PPNC. Therefore, on June 11, 1996, EPA published a document withdrawing the final rule approving PADEP's RACT determination for PPNC, among other facilities (61 FR 29483). At the request of the commenters, EPA also extended the comment period twice; the last time until August 2, 1996 (61 FR 29483 and 61 FR 37030).

On June 28, 1996, NYDEC submitted comments to EPA pertaining to PADEP's RACT determination for PPNC. On July 15, 1996 and August 1, 1996, PPNC submitted comments to EPA addressing issues raised by NYDEC. On August 2, 1996, Pennsylvania DEP submitted comments to EPA stating that EPA should proceed with final approval of the PPNC RACT determination. The comments received by EPA are summarized below and, in more detail, in the technical support document (TSD) prepared by EPA in support of this proposed action to disapprove PADEP's SIP revision for PPNC submitted on April 19, 1995. Copies of the TSD are available, upon request, from the EPA Region III office listed in the ADDRESSES section of this document.

This action proposing to disapprove PADEP's April 19, 1995 SIP revision request for PPNC being taken under section 110 of the Clean Air Act.

Comments Received on EPA's April 9, 1996 Proposal to Approve PADEP's RACT Determination for PPNC

NYDEC Comments:

NYDEC states in its June 28, 1996 comment letter that it disagrees with EPA's proposal to approve PADEP's RACT determination for PPNC. NYDEC states that it believes that the control efficiencies for add-on emission controls are understated in the PADEP technical support document, the costs for add-on controls are overstated, the 15-year cost-recovery period used in the PPNC RACT analysis is too short, and that NO_X add-on control technology is technically and

economically feasible for the boilers at PPNC. In addition, NYDEC states that another indication that the economic analysis is flawed is the inconsistency in final NO_X emission limits depending on how the emission limits are calculated. NYDEC further states that PADEP's acceptance of PPNC's use of a lower NO_X emission rate (and non-enforceable emission rate) to perform the cost analysis to show that any emission controls are infeasible, but a higher NO_X emission rate (i.e. the proposed RACT emission limits) to determine total NO_X emissions allowed, is inconsistent with its (NYDEC's) State Implementation Plan (SIP) experience in establishing enforceable emission limits and determining the cost-effectiveness of controls for RACT. NYDEC's comments included a table of calculations showing the total NO_X emissions using the proposed RACT (SIP) emission limits and the calculated emission limits using the emission caps proposed as part of the PPNC RACT determination. NYDEC states that PPNC appears to have used lower emission limits to evaluate the economic feasibility of control options but did not agree to make those lower emission limits enforceable as part of the RACT determination.NYDEC states that the PADEP October 14, 1996 memorandum seriously underestimates the effectiveness of low NO_X burner (LNB) controls. PADEP estimates that emission reductions of approximately 30% are expected for the operation of LNB while NYDEC believes that emission reductions on the order of 40–50% are more realistic. NYDEC states that the Title IV Phase I limits (under the acid rain program) estimate that reductions of 40–50% are achievable and at costs well below those estimated in the PPNC RACT proposal submitted to PADEP.

Pennsylvania Power—New Castle Comments:

On July 15, 1996 and August 1, 1996, the firm of Fried, Frank, Harris, Shriver & Jacobsen submitted comments to EPA on behalf of their client, Pennsylvania Power Company. In summary, the commenter states that the Company pursued a Company-wide NO_X emission reduction strategy to achieve 55% NO_X reduction consistent with the goals of the Ozone Transport Commission's (OTC) NO_X Memorandum of Understanding (NO_X MOU). The commenter also states that the NO_X emission caps agreed to by PPNC for Units 3 –5 represent a 55% NO_X emission reduction from potential emission levels. The commenter further states that the New Castle plant—s emissions are small relative to the rest of the Pennsylvania Power System and that PPNC's Units 3—5 represent 12% of the total Pennsylvania Power System NO_X emissions. The commenter, on behalf of the Company, states that its Mansfield plant has installed low-NO_X burners and, that these, in combination with lowered emissions from the shut down of PPNC's units 1 and 2, result in Pennsylvania Power achieving a 51% potential emission reduction. PPNC states that determination made by PADEP that any control technology is technically or economically infeasible, was based on existing Pennsylvania regulations. The commenter asserts that the determination was made by relying upon procedures approved by EPA for making NO_X RACT determinations and by relying on emission caps for units 3, 4, and 5 to restrict capacity and emissions. These emission caps were factored into the RACT determination, resulting in unreasonable costs for add-on controls. These procedures were referenced as: 25 Pa Code § 129.91 and "PADER, Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions (March 10, 1994)." The commenter states that the RACT determination for PPNC submitted by PADEP was supported by accompanying documentation, which included a description of the control technology options, costs, and control effectiveness. The commenter cites the PA NO_X RACT guidance document and EPA's March 16, 1994 memorandum as part of its evidence that the technically feasible control options were properly deemed economically infeasible. The commenter included as part of its comments, additional vendor information, supplied to support the RACT determination, that add-on controls are economically infeasible for the PPNC units. The commenter states that the vendor has extensive experience in the design and installation of low NO_X burners including those at Ohio Edison/Penn Power's Edgewater, Sammis, and Mansfield plants. The commenter concludes that the selection of no controls as RACT for the PPNC boilers is a legitimate RACT determination using the PADEP and EPA policies and guidance. The Company believes that substituting NYDEC's analysis for the one done by PADEP, or substituting data submitted by NYDEC for that originally considered by PADEP, would be a violation of the principles of administrative law.

Pennsylvania DEP Comments:

On August 2, 1996, Pennsylvania DEP submitted a short statement that it sees no justifiable reason to change its RACT determination and urged EPA to approve the PPNC RACT determination as it was submitted. In addition to PADEP's August 2, 1996 letter, EPA received, via fax on July 29, 1996, a document showing how PADEP calculated the NO_X RACT emission limitation for PPNC unit 3 using continuous emission monitoring (CEM) data. The actual methodology is contained in the March 1996 Pennsylvania NO_X RACT Guidance Document, which has not been submitted or approved as part of the Pennsylvania SIP. The faxed material shows the data used by PADEP to calculate the PPNC NO_X emission limits. Briefly, the PADEP formula used to calculate a NO_X emission limit specifies the use of the mean 30-day NO_X CEM average plus 2.78 standard deviations. Using this formula, PADEP calculated the NO_X emission limit for unit 3 (using first- and second-quarter 1995 CEM data) to be 0.531 + 2.78(0.0929) = 0.79 lbs/mmBTU. The NO_X emission limits for units 4 and 5 were calculated similarly.

Relevant Information

A survey of other boilers similar to PPNC's (dry-bottom, wall-fired, coal burning) show that in the ozone transport region (OTR), which includes the states in the northeast U.S., uncontrolled emission levels average 0.54 lbs NO_X/mmBTU. Controlled emission levels for this same group of boilers can meet, on average, 0.47 lbs NO_X/mmBTU. The add-on controls generally used for these boilers are low NO_X burners. Across the country, which would include areas that are designated attainment for ozone and are, therefore, not required to implement NO_X RACT, uncontrolled emission levels for boilers similar to PPNC average 0.72 lbs NO_X/mmBTU. Controlled emissions for this nationwide group of boilers average 0.47 lbs NO_X/mmBTU. In EPA Region III (consisting of the states Pennsylvania, Maryland, Delaware, Virginia, West Virginia and the District of Columbia), there are 31 boiler units that are of similar type to PPNC's boilers. Forty-five percent of these 31 boilers have low NO_X burners installed. There are 20 boiler units that are similar to PPNC's boilers in Pennsylvania; 55% of these boilers have low NO_X burners or LNB with overfired air installed as emission controls.

A review of the CEM data for PPNC shows that NO_X emissions at this facility, which does not have any NO_X add-on controls, have been between 14 and 58% *lower* than the RACT emission limits proposed by the Company and determined by PADEP to be RACT. No CEM data is available for units 1 and 2 since the CEM requirement did not start

until after those units were shut down. The CEM data for units 3 through 5 are available from the last quarter of 1993 through the last quarter of 1996. The CEM data is required to be reported by the Company to both PADEP and EPA.

Under the Clean Air Act's Title IV (Acid Rain) requirements, EPA conducted final rulemaking for the Phase I, Group I boilers (including dry-bottom, wall-fired units such as PPNC's) (60 FR 18751, April 13, 1995). This final rule was the result of a court ordered remand of the March 22, 1994 Phase I, Group I boilers final rulemaking (FR CITE). Both the March 22, 1994 and the April 13, 1995 rulemakings state that LNB technology is a technically feasible and cost effective option for utility boilers such as PPNC's. The April 1995 rule states that LNB costs are on the order of $226/ton NO_X removed and proposes an emission limit of 0.5 lbs NO_X/mmBTU. The information gathered under the acid rain provisions of the Act are relevant and pertinent to the PPNC RACT determination. Other literature pertaining to utility boilers and feasibility of controls also indicate that the installation of NO_X controls is cost effective. This information is discussed in more detail in the TSD prepared for this proposal which is included in the rulemaking docket and available to the public.

Prior to PPNC's July 1994 NO_X RACT proposal to PADEP, and during the time that PPNC and PADEP were working to develop a RACT proposal for submittal to EPA, EPA proposed NO_X emission limitations under the Title IV acid rain program. EPA's acid rain proposal occurred in November 1992 and was finalized in March 1994. The March 1994 rule was later vacated and EPA reissued the final rule in December 1996. Under the acid rain program, on May 10, 1994, PPNC applied to accept federally enforceable permit conditions to limit the NO_X emissions at units 1 and 2 to no more than 0.5 lbs/mmBTU on an annual average. Units 1 and 2 were volunteered by the Company as Phase I substitution units, meaning that in exchange for the 0.5 lbs/mmBTU emission limits on those boilers, the Pennsylvania Power parent company would be allowed to have boilers elsewhere in the Company, subject to the acid rain Phase I requirements, continue to emit at higher than otherwise allowable levels. EPA approved the Company's request through a permit issued on November 28, 1994, prior to the PPNC NO_X RACT submittal date of April 19, 1995.

The currently operating units 3–5 are Phase II acid rain units and will be subject to compliance with a 0.5 lbs NO_X/mmBTU, annual average, emission limit by the year 2000. On December 26, 1996, the Company requested early compliance with the Phase II requirements. In so doing, PPNC units 3 through 5 will be required to meet the Phase II requirements by January 1, 1997. The early election option allows sources to meet the Phase II requirements prior to the compliance date and relieves those sources from meeting the more stringent emission limit of 0.46 lbs/mmBTU until 2009. PPNC would have otherwise been required to meet this more stringent emission limitation by 2000.

EPA's Analysis

EPA has reviewed and considered all the information submitted by the commenters and has reconsidered its original decision based on those comments. The RACT determination, including the emission limits, as submitted by PADEP on April 19, 1995 and proposed for approval by EPA on April 9, 1996 (61 FR 15709) cannot be supported in light of all available information, including the additional information and comments submitted by PADEP and PPNC during the public comment period and other relevant publicly available information. Therefore, EPA is hereby withdrawing its April 9, 1996 proposed approval of PADEP RACT determination for PPNC and is proposing, instead, to disapprove PADEP's RACT determination for PPNC submitted to EPA on April 19, 1995.

EPA initially proposed to approve the emission limits determined by PADEP to be RACT because the PPNC RACT submittal, on its face, including the analysis done by PADEP (without reference to relevant information in existence but not contained in the submittal) appeared to meet the criteria for RACT determinations. EPA understood from PADEP that its analysis, as described in its technical support document for the PPNC RACT determination, was performed in accordance with proper procedures.

However, due to the submittal of adverse comments, EPA has reviewed the issues raised regarding the PPNC RACT proposal and determined that the information provided does not support PADEP's RACT determination for PPNC.

All five boilers, including units 1 and 2 that are now shut down, are dry-bottom, single-wall-fired, coal-burning boilers. Units 1 and 2 were the smallest boilers at this facility and were rated at 495 mmBTU/hr and 640 mmBTU/hr, respectively. Units 3 through 5 are rated at 1029, 1029, and 1325 mmBTU/hr, respectively. The cost infeasibility arguments for the installation of any controls at PPNC are not supported by the body of literature and information available, particularly in light of the fact that many other dry-bottom, wall-fired, coal burning boilers have been able to install emission controls and meet lower emission limits. Fundamentally, neither PPNC nor PADEP has adequately demonstrated that the installation of emission controls is not technically or economically feasible. Details of the information pertaining to PPNC are discussed in the accompanying TSD available from the EPA Region III listed in the ADDRESSES section of this document.

Furthermore, although units 1 and 2 were shut down in 1993, the Company agreed to accept an effective, federally enforceable NO_X emission limit of 0.5 lbs/mmBTU under the acid rain program. Therefore, EPA has determined that the proposed RACT limits of 0.93 lbs NO_X/mmBTU and 0.90 lbs NO_X/mmBTU for units 1 and 2, respectively, are too high.

Additionally, PADEP has subsequently submitted a separate request to EPA to approve the early implementation of the acid rain Phase II emission limits of 0.5 lbs NO_X/mmBTU for units 3, 4 and 5. Therefore, the proposed NO_X RACT limits of 0.79 lbs/mmBTU, 0.72 lbs/mmBTU and 1.01 lbs/mmBTU are also too high. Without additional analysis and information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT. Therefore, any statements in this document regarding the acid rain requirements should not be construed as pre-determining what RACT might be for the PPNC boilers.

The CEM data for units 3 through 5 indicate that even without emission controls, the NO_X emission rates for these units are well below the proposed NO_X RACT emission limits of 0.79 lbs/mmBTU, 0.72 lbs/mmBTU and 1.01 lbs/mmBTU for units 3, 4 and 5, respectively. Please refer to the TSD for a summary of the CEM data. Therefore, EPA believes that the proposed NO_X RACT emission limits are too high and do not represent the "lowest emission rate [PPNC] is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility."[1]

The public notice and comment procedures required by the Federal rulemaking process for actions taken to approve or disapprove SIP revisions,

[1] 25 Pennsylvania Code, Chapter 121, definition of RACT; December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to all Regional Administrators.

including PADEP's source-specific SIP revisions to determine RACT on a case-by -case basis for companies such as PPNC, allows interested parties to comment on whether the information, rationale, procedure and conclusions are appropriate for the subject source(s). The process is designed to allow interested parties to question the proposal by challenging EPA's rationale for its rulemaking action, including pointing out gaps in information or information that may have been overlooked in the original proposal. By its re-analysis, performed subsequent to and in consideration of the issues raised by NYDEC's comments, EPA has determined that PPNC did not follow the Pennsylvania RACT regulation or EPA's requirements when it submitted its RACT proposal to PADEP. Furthermore, EPA has determined that PADEP, in reviewing and analyzing PPNC's RACT proposal, did not determine and impose RACT in accordance with its regulation's definition and the Federal definition of RACT. EPA's reconsideration of the PPNC RACT as a result of such public comment is the kind of action supported by the law.

Both Pennsylvania and the Company indicated that they relied on the Pennsylvania's March 10, 1994 RACT guidance document in developing the PPNC RACT proposal. This RACT guidance document was not submitted by PADEP with the April 19, 1995 PPNC RACT package nor at any other time as part of the SIP revision. The Company included this document in its July 15, 1996 response to EPA's proposed rulemaking notice. In a June 26, 1997 letter to PA DEP, EPA stated that it had no record of this document being subjected to public notice and comment. Furthermore, EPA stated that the March 10, 1994 DEP RACT guidance document contained procedures and methods that EPA finds inconsistent with the definition of RACT. Consequently, following the procedures in the March 10, 1994 DEP RACT guidance document does not guarantee that the RACT proposal is approvable by EPA. EPA has determined that the PPNC RACT proposal is not supported by the information in the record. EPA's review of this material indicates the proposed RACT emission limits for PPNC submitted on April 19, 1995 are unsubstantiated and cannot be approved. EPA is soliciting public comments on the issues discussed in this document and on other relevant matters. These comments will be fully considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document.

Proposed Action

EPA is withdrawing the proposed approval published on April 9, 1996 in the **Federal Register** and is, instead, proposing to disapprove the RACT determination submitted by PADEP on April 19, 1995 for the Pennsylvania Power—New Castle plant, located in Lawrence County.

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

Administrative Requirements

Executive Order 12866

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

Regulatory Flexibility Act

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

This proposed action impacts one source, Pennsylvania Power's New Castle plant. Therefore, EPA certifies that this disapproval action does not have a significant impact on small entities.Furthermore, as explained in this document, the request does not meet the requirements of the Clean Air Act and EPA cannot approve the request. Therefore, EPA has no option but to propose to disapprove the submittal.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the disapproval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

The Administrator's decision to approve or disapprove the SIP revision submitted by PADEP for Pennsylvania Power's New Castle plant will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 8, 1997.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 97–21805 Filed 8–15–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405, 410, and 414

[BPD–884–CN]

RIN 0938–AH94

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule, Other Part B Payment Policies, and Establishment of the Clinical Psychologist Fee Schedule for Calendar Year 1998; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects technical errors that appeared in the proposed rule published in the **Federal Register** on June 18, 1997 entitled "Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule, Other Part B Payment Policies, and Establishment of the Clinical Psychologist Fee Schedule for Calendar Year 1998."

FOR FURTHER INFORMATION CONTACT: Stanley Weintraub, (410) 786–4498.

SUPPLEMENTARY INFORMATION:

Background.

In the **Federal Register** Document dated June 18, 1997, there were a number of technical errors. In Addendum B of the proposed rule, on pages 33195 through 33196, the proposed statistical linking methodology is discussed. In preparing the table entitled "Linking Adjustment Factors by CPEP," the actual linking factors were not accurately stated. The actual factors are shown in the revised table in this document under the heading "Correction of Errors."

In addition, in Addendum C, on page 33288, we inadvertently printed incorrect information for CPT code 92543 (caloric vestibular testing).

The discussion on page 33183 of the proposed rule indicated that we are proposing to reduce the relative value units (RVUs) for CPT code 92543 to 25 percent of what the RVUs would otherwise have been. As explained in that material, we are making this proposal because we plan to permit physicians and suppliers to bill four units of service instead of the one until now permitted. The intent is to reduce billing confusion regarding these codes in a budget-neutral way.

In Addendum C of the proposed rule, the reduction to 25 percent of the RVUs otherwise applicable was reflected for the practice expense RVUs, but we incorrectly published unreduced RVUs for work and malpractice. The corrected RVUs appear in this document under the heading "Correction of Errors."

Correction of Errors

In FR Doc. 97–15817 of June 18, 1997 (62 FR 33158), insert the following revised table on page 33196:

ADDENDUM B.—LINKING ADJUSTMENT FACTORS BY CPEP

CPEP	Clinical labor linking adjustment	Administrative labor linking adjustment
CPEP #1	.84	.50
CPEP #2	.40	.36
CPEP #3	.42	.31
CPEP #4	1.03	.56
CPEP #5	.96	.52
CPEP #6	.80	.46
CPEP #7	1.00	1.00
CPEP #8	.44	.22
CPEP #9	.54	.35
CPEP #10	.91	.78
CPEP #11	.93	.39
CPEP #12	.55	.24
CPEP #13	.77	.44
CPEP #14	1.00	1.00
CPEP #15	1.07	.20

Make the following corrections in Addendum C for CPT code 92543 on page 33288:

ADDENDUM C.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION

CPT[1] / HCPCS[2]	MOD	Status	Description	Physician work RVUs[3 4]	Direct in office practice expense RVUs	Direct out of office practice expense RVUs	Total in office practice expense RVUs	Total out of office practice expense RVUs	Malpractice RVUs	Total in office	Total out of office
92543		A	Caloric vestibular test	0.10	0.14	0.14	0.20	0.20	0.02	0.32	0.32
92543	26	A	Caloric vestibular test	0.10	0.02	0.02	0.05	0.05	0.01	0.16	0.16
92543	TC	A	Caloric vestibular test	0.00	0.12	0.12	0.15	0.15	0.01	0.16	0.16

[1] CPT codes and descriptions only are copyright 1996 American Medical Association. All rights reserved. Applicable FARS/DFARS apply.
[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not for Medicare Payment.
[4] * Work RVUs increased in global surgical package.

Section 1848 of the Social Security Act (42 U.S.C. 1395w–4)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 6, 1997.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 97–21730 Filed 8–15–97; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 97–151; FCC 97–234]

Pole Attachments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rulemaking seeking comment on its continued implementation of the pole attachment provisions of the Telecommunications Act of 1996. We seek comment on a methodology to ensure just, reasonable, and nondiscriminatory maximum pole attachment and conduit rates for telecommunications carriers, and on how to ensure that rates charged for use of rights of way are just, reasonable and nondiscriminatory. The Commission explores this issue to fulfill its obligation under the Telecommunications Act of 1996 to adopt rules concerning pole attachments. The item will help the Commission create a record on this issue, which will assist the Commission in designing new or amending current regulations concerning pole attachments.

DATES: Comments are due on or before September 26, 1997 and reply comments on or before October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Larry Walke, Cable Services Bureau, (202) 418–7200. For additional information concerning the information collections contained herein, contact Judy Boley at 202–418–0217, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking in CS Docket No. 97–151, FCC 97–234, adopted July 1, 1997 and released August 12, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, DC 20554, and may be

purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington, DC 20554.

I. Introduction

1. In this Notice of Proposed Rulemaking ("NPRM"), the Commission continues its implementation of section 703 of the Telecommunications Act of 1996 ("1996 Act"), Pub. L. 104–104, 110 Stat. 61, 149–151 (February 8, 1996), by proposing amendments to the Commission's rules relating to pole attachments. The 1996 Act expanded the scope of section 224 of the Communications Act of 1934 ("Communications Act") to telecommunications carriers and created a distinction between pole attachments used by cable systems solely to provide cable service and pole attachments used by cable systems or by telecommunications carriers to provide any telecommunications service. In this NPRM we seek comment on the implementation of a methodology to ensure just, reasonable, and nondiscriminatory maximum pole attachment and conduit rates for telecommunications carriers. We also seek comment on how to ensure that rates charged for use of rights of way are just, reasonable and nondiscriminatory.

2. The Commission must prescribe the new methodology for telecommunications carriers within two years of enactment of the 1996 Act, with these rules becoming effective five years from enactment. Section 224(d)(3) of the Communications Act applies the Commission's existing pole attachment methodology to both cable television systems and telecommunications carriers until the effective date of the new formula. We note that section 257 of the Communications Act provides that the Commission promote policies that eliminate "* * * market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services. * * *"

II. Background

A. Prior to the 1996 Act

3. It is common practice for telecommunications carriers to lease space from utilities on poles or in ducts, conduits, or rights-of-way, in order to provide telecommunications services. The federal government did not regulate these arrangements until 1978, when Congress enacted section 224 of the Communications Act in response to concerns raised by cable television operators. Section 224 was enacted to stop utilities from "unfair pole attachment practices * * * and to minimize the effect of unjust or unreasonable pole attachment practices on the wider development of cable television service to the public."

4. Section 224(b)(1) grants the Commission authority to regulate the rates, terms, and conditions governing pole attachments to ensure that they are just and reasonable. Generally, the Commission does not have authority where a state regulates pole attachment rates, terms, and conditions. Section 224(d)(1) defines a just and reasonable rate as ranging from the statutory minimum (incremental costs) to the statutory maximum (fully allocated costs). Incremental costs include pre-construction survey, engineering, make-ready and change-out costs incurred in preparing for cable attachments. Congress expected pole attachment rates based on incremental costs to be low because utilities generally recover the make-ready or change-out charges directly from cable systems. Fully allocated costs refer to the portion of operating expenses and capital costs that a utility incurs in owning and maintaining poles that is equal to the portion of usable pole space that is occupied by an attacher.

5. In 1978, the Commission implemented the original section 224 by issuing rules governing pole attachment issues and establishing a basic formula for pole attachment rates. Subsequent Commission orders have reconsidered, amended and clarified the Commission's methodology for determining rates, the amount of usable and unusable space on a pole and the amount of space occupied by cable systems. In addition, the Commission has adjusted complaint procedures, including the information accompanying complaints.

B. The 1996 Act

6. The 1996 Act amended section 224 in important respects. Most prominently, it created a right of access for telecommunications carriers. New sections 224 (d)(3), (e), (f), (g), (h) and (i) proscribed expanded access and established a new methodology for determining just and reasonable rates for telecommunications carriers. The 1996 Act also amended the definitions of "utility" and "pole attachment" in sections 224 (a)(1) and (a)(4); recognized a State's authority to regulate pole attachments involving telecommunications carriers in sections 224 (c)(1) and (c)(2)(B); and added section 224(a)(5) to exempt incumbent local exchange carriers ("LECs") from the definition of telecommunications carriers.

7. Under section 224(d)(3) the Commission's existing rules are applicable to both cable television systems and to telecommunications carriers until such time as the new rules become effective. On March 14, 1997, the Commission released a *Notice of Proposed Rulemaking, Amendment of Rules and Policies Governing Pole Attachments,* CS Docket No. 97–98 ("Pole Attachment NPRM"), 62 FR 18074 (April 14, 1997), relating to the existing formula for pole attachments. Parties need not file duplicate comments to address issues raised in that proceeding. We have determined that, to the extent such comments are relevant in the instant proceeding, they will be incorporated by reference within this proceeding. That proceeding specifically seeks comment on the Commission's use of the current presumptions, on carrying charge and rate of return elements of the formula, on the use of gross versus net data, and on a new conduit methodology. Commenters to the Pole Attachment NPRM are encouraged to distinguish their comments in that proceeding if they vary from those filed in response to this NPRM, as well as providing comment on the new and different issues raised in this NPRM as a result of 1996 Act. We invite further comment in this proceeding to establish a full record for attachments made by cable systems offering telecommunications services. In *Implementation of Section 703 of the Telecommunications Act of 1996,* CS Docket No. 96–166 ("Self-Effectuating Order"), 61 FR 43023 (August 20, 1996), the Commission amended its rules to reflect the self-effectuating additions and revisions to section 224. In *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* ("Local Competition Provisions Order"), 61 FR 45476 (August 29, 1996), the Commission implemented the access provisions of the 1996 Act, sections 224 (c)(1), (f) and (h).

8. Most significantly for purposes of this NPRM, the 1996 Act added the following provisions of section 224(e):

> (e)(1) The Commission shall, no later than 2 years after the date of enactment of the Telecommunications Act of 1996, prescribe regulations in accordance with this subsection to govern charges for pole attachments used by telecommunication carriers to provide telecommunications services, when the parties fail to resolve a dispute over such charges. Such regulations shall ensure that a utility charges just, reasonable, and nondiscriminatory rates for such pole attachments.
>
> (e)(2) A utility shall apportion the cost of providing space on a pole, duct, conduit, or right-of-way other than usable space among

entities so that such apportionment equals two-thirds of the costs of providing space other than the usable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities.

(e)(3) A utility shall apportion the cost of providing usable space among all entities according to the percentage of usable space required for each entity.

(e)(4) The regulations required under paragraph (1) shall become effective five years after enactment of the Telecommunications Act of 1996. Any increase in the rates for pole attachments that result from the adoption of the regulations required by this subsection shall be phased in equal annual increments over a period of five years beginning on the effective date of such regulations.

9. This NPRM considers the portion of the costs of a bare pole to be included in the pole attachment rate. Currently, a portion of the total annual cost of a pole is included in the pole attachment rate based on the portion of the usable space occupied by the attaching entity. This formula will continue to be applicable to cable systems providing only cable service. However, for cable systems and telecommunications carriers providing telecommunications services, the portion of the total annual cost included in the pole attachment rate will be determined under a more delineated method. This method differentially allocates the costs of the portion of the total pole cost associated with the usable portion of the pole and the portion of the total pole cost associated with the unusable portion of the pole. Generally, this is expected to result, at least initially, in the inclusion of greater portions of the carrying charge components in the rate. As the number of attaching entities increases, however, smaller portions of the carrying charge will be included in each entity's rate. As the carrying charge rate is spread amongst the attaching entities, the overall rate may become lower over time because the total cost will be spread over all attaching entities.

10. Section 224(e) requires two discrete steps. First, two-thirds of the costs relating to the other than usable space on the pole, duct, conduit or right-of-way will be apportioned equally among all attaching telecommunications carriers. Second, telecommunications carriers will also be apportioned the cost of usable space, according to the amount of usable space the entity requires.

III. Preference for Negotiated Agreements

11. In proposing a methodology to implement section 224(e), we note that the Commission's role is limited to circumstances "when the parties fail to resolve a dispute over such charges." Thus, negotiations between a utility and an attacher should continue to be the primary means by which pole attachment issues are resolved. We believe that an attacher must attempt to negotiate and resolve its dispute with a utility before filing a complaint with the Commission. However, we also note that in the 1996 Act, Congress recognized the importance of access in enhancing competition in telecommunications markets and that parties in a pole attachment negotiation do not have equal bargaining positions. Congress also recognized that the potential for significant barriers to competition emanating from the lack of access or unreasonable rates is significant. Accordingly, we propose to use our current rule, which requires a complainant to include a brief summary of all steps taken to resolve its dispute before filing a complaint. 47 CFR 1.1404(i). "The complaint shall include a brief summary of all steps taken to resolve the problem prior to filing. If no such steps were taken, the complaint shall state the reason(s) why it believed such steps are fruitless." We seek comment on our tentative conclusions and on the proposed use of our current rule.

IV. Attachment Space Use

12. Attachment space use must conform to the standards of section 224(f)(2) with respect to safety, reliability and generally applicable engineering standards. When an attaching entity conforms to these standards, the issue remaining is whether a utility may impose additional limits on the use of the space. We note, for example, in the context of a pole attachment by a cable television system which also provides nonvideo communication, the Commission has determined that a utility may not charge different pole attachment rates depending on the type of service provided by the cable operator. *See Heritage Cablevision Assocs. of Dallas, L.P.* v. *Texas Utils. Elec. Co.*, 6 FCC Rcd. 7099 (1991), *aff'd sub nom. Texas Utils. Elec. Co.* v. *FCC*, 997 F.2d 925 (D.C. Cir. 1993). The Commission found that "Section 224 protects TCI's pole attachments within its franchise service area which support equipment employed to provide nonvideo services in addition to video and other traditional cable television services" and that the "imposition of a separate charge for TCI's cable system pole attachments for nontraditional services violates section 224's prohibition against unjust and unreasonable pole attachment rates, terms and conditions." *Id.* at 7107. We seek comment on whether our holding in *Heritage* should be extended to other circumstances where utilities attempt to condition or limit the use of attachment space.

13. Given the pro-competitive intent of the 1996 Act, we tentatively conclude that telecommunications carriers should be permitted to overlash their existing lines with additional fiber when building out their system. If a telecommunications carrier is allowed to overlash its own lines, should it be permitted to allow third parties to use the overlashed facility? Moreover, we seek comment whether a cable system or telecommunications carrier may allow a third party to use dark fiber in its original lines. Where an attaching entity has overlashed with fiber, should it be permitted to allow third parties to use dark fiber within its overlashed line? We inquire whether a third party should be permitted to overlash to an existing cable system or telecommunications carriers' attachment. We also seek information whether there are inherent differences between the lines of cable systems and those of telecommunications carriers that warrant a difference in treatment between overlashing by cable systems and telecommunications carriers. Similarly, we request that commenters discuss whether, and to what extent, overlashing facilitates the provision of services other than cable service by cable operators, such as Internet access and local telephone service. We seek information on how these situations should be treated for the purpose of counting entities in the process of establishing a just and reasonable rate. We seek comment on the contractual obligations that utilities should be permitted to require of attaching entities who lease excess dark fiber or allow overlashing. We inquire how best to promote the rapid deployment of competitive telecommunications services in light of these issues.

V. Charges for Attaching

A. Presumptions

14. In a previous order, the Commission found that "the most commonly used poles are 35 and 40 feet high, with usable spaces of 11 to 16 feet, respectively." The Commission recognized the NESC guideline that 18 feet of the pole space must be reserved for ground clearance and that six feet of pole space is for setting the depth of the pole. To avoid a pole by pole rate calculation, the Commission adopted rebuttable presumptions of an average pole height of 37.5 feet, an average

amount of usable space of 13.5 feet, and an average amount of 24 feet of unusable space on a pole.

15. A group of electrical utilities recently filed a Whitepaper ("Whitepaper") in anticipation of this NPRM. The Whitepaper suggests that an increase in the current presumptive pole height is appropriate. The Whitepaper asserts that over time, and with increased demand, the average pole height has increased to an average of 40 feet. At the same time, the Whitepaper contends that the usable space presumption should also be changed from 13.5 feet to 11 feet. We seek comment in this proceeding to establish a full record for attachments made by telecommunications carriers under the 1996 Act. We also seek comment on an issue raised by Duquesne Light Company ("Duquesne") in its reconsideration petition of the Commission's decision in the Local Competition Provisions proceeding. Specifically, Duquesne advocates that the number of physical attachments of an attaching entity is not necessarily reflective of the burden, and therefore the costs, relating to the attachment. Duquesne states that varying attachments place different burdens on the pole and proposes that any presumption include factors addressing weight and wind loads.

16. The presumptions were established because developing a data base for each utility is impractical. We seek comment on the need for presumptions and whether attachments by telecommunications carriers are sufficiently different or unique to cause us to reevaluate our presumptions. Specifically, we seek comment on the amount of usable space occupied by telecommunications carriers and on whether the presumptive one foot used for cable is applicable to telecommunications carriers generally.

17. We also propose that the Commission's approach to the safety space required to be maintained between power lines and communications lines should also apply to telecommunications carriers. The Commission has always recognized the NESC requirement that a 40 inch safety space must exist between electric lines and communication lines. The NESC requires a 40 inch safety space to minimize the possibility of physical contact by employees working on cable television or telecommunications attachments with the potentially lethal electric power lines. We tentatively conclude that the safety space emanates from a utility's requirement to comply with the NESC and should properly be assigned to the utility as part of its usable space.

B. Allocating the Cost of Other Than Usable Space

18. Section 224(e)(2) states that "[a] utility shall apportion the cost of providing space on a pole, duct, conduit, or right-of-way other than the usable space among entities so that such apportionment equals two-thirds of the costs of providing space other than usable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities." This requirement translates to the following basic formula:

$$2/3 \times \frac{\text{Unusable Space}}{\text{Pole Height}} \times \frac{\text{Net Cost of a Bare Pole}}{\text{Number of Attachers}} \times \text{Carrying Charges}$$

19. Under section 224(e)(2), the number of entities with pole attachments on each pole affects directly the rate charged. Defining what an attacher is and establishing how to calculate the number of attachers is critical to formulating a proper cost allocation method pursuant to section 224(e)(2). The more attaching entities there are, the more widely the costs relating to the unusable space are spread. We propose, consistent with the statutory language, requiring equal apportionment of two-thirds of the costs of providing unusable space among all attaching entities, that any telecommunications carrier, or cable operator or LEC attaching to a pole be counted as a separate entity for the purposes of the apportionment of two-thirds of the costs of the unusable space. We also propose that such costs will be apportioned equally to all such attaching entities. We seek comment on these tentative conclusions. We also note that section 224(g) requires that a utility providing telecommunications services impute to its costs of providing service an amount equal to the rate for which such company would be liable under this section. We tentatively conclude that where a utility is providing telecommunications services, such entity would also be counted as an attaching entity for the purposes of allocating the costs of unusable space under section 224(e). We seek comment on this tentative conclusion.

20. We also tentatively conclude that an incumbent LEC with attachments on a pole should be counted for the purposes of apportionment of the costs of unusable space. We note that the definition of telecommunications carrier excludes incumbent LECs and a pole attachment is defined as any attachment by a cable television system or a provider of telecommunications service, and seek comment on how these definitions impact our tentative conclusion. We also seek comment on the general premise that counts any telecommunications carrier as a separate attaching entity for each foot, or partial increment of a foot, it occupies on the pole and on such a methodology's consistency with the statutory requirement in section 224(e)(2) for equal apportionment among all attaching entities. We also seek information on alternative methodologies to apportion costs, such as on a proportion of space occupied basis.

21. Similarly, we propose that attachments made by a government agency be included. A utility may be required under its franchise or statutory authorization to provide certain attachments for public use. These include traffic signals, festoon lighting, or specific pedestrian lighting. Often, the agency does not directly pay for the attachment. Since the government agency is using space on the pole, we propose that its attachments be counted for purposes of allocating the cost of the unusable space. This cost would be borne by the pole owner, since it relates to a responsibility under its franchise or statutory authorization. We seek comment on this tentative conclusion.

22. We seek comment on how entities that have either overlashed to an existing attachment or are using dark fiber within the initial attachment of another entity should be counted for the purpose of allocation of costs of unusable space. Should they be considered as separate attachers for purposes of counting the number of entities on a pole?

23. We believe a pole-by-pole inventory of the number of entities on each pole would be too costly. We propose that each utility develop, through the information it possesses, a presumptive average number of attachers on one of its poles. We also

propose that telecommunications carriers be provided the methodology and information by which a utility's presumption was determined. We seek comment on this proposal and whether any parameters should be established for a utility to develop its presumptive average. We also seek comment on whether a utility should develop averages for areas that share similar characteristics relating to pole attachments and whether different presumptions should exist for urban, suburban, and rural areas. We seek comment on the criteria to develop and evaluate any presumption. As an alternative to a pole by pole inventory by the facility owner, we seek comment on whether the Commission should determine the average number of attachments. We inquire whether the Commission should initiate a survey to gain the necessary data to develop a rebuttable presumption regarding the number of attachments. We seek comment on the difficulties of administrating a survey, any additional data required, and parameters of accuracy and reliability required for fair rate determination.

24. Where a presumptive number of attachers is developed by the Commission and used to determine attachment rates, we believe that a utility, telecommunications carrier or cable operator may challenge the presumption. The challenging party must initially establish that the presumption is not proper under the circumstances by identifying and calculating the number of attachments on the poles and submitting what it believes to be an appropriate average. Where the number of poles is large, and complete inspection impractical, a statistically sound survey should be submitted. Where a presumption is challenged, the challenged party will be afforded an opportunity to justify the presumption. Where a presumption is overcome either by submission of actual data or by survey, the resulting figures would be used as the factor (number of attachers) within the formula to calculate the rate. We seek comment on these issues.

C. Allocating the Cost of Usable Space

25. The Commission has adopted the following generally applicable formula for calculating the maximum rate:

$$\text{Maximum Rate} = \frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}} \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

26. The first component of the formula, space occupied by attachment divided by the total usable space on a pole, is used to calculate the percentage of usable space that the attachment occupies on an average pole. The Commission's rules define usable space as the space on a utility pole above the minimum grade level that can be used for the attachment of wires, cables and associated equipment. As discussed, for cable television system attachments, the Commission's *Petition to Adopt Rules Concerning Usable Space on Utility Poles* assigned one foot of usable space per pole to cable systems.

27. The second component of the overall formula is the net cost of a bare pole. The component is derived from the gross investment in poles less accumulated depreciation and accumulated deferred income taxes. An adjustment is made to a utility's net pole investment to eliminate the investment in crossarms and other non-pole related items. To accomplish this, the Commission decided to reduce net pole investment by 15% for electric utilities and 5% for telephone companies. The two factors reflect the differences between telephone companies' and electric utilities' investment in crossarms and other non-pole investment that is recorded in the pole accounts. Electric utilities typically have more investment in crossarms than telephone companies. The 0.85 factor for electric utilities recognizes this difference. To arrive at the net cost of a bare pole, a factor, 0.85 for electric utilities or 0.95 for telephone companies, is multiplied by the net investment per pole, as shown in the following formula:

$$\text{Net Cost of a Bare Pole} = \frac{\text{Factor} \times \text{Net Pole Investment}}{\text{Number of Poles}}$$

This formula rearranges the Pole Attachment Order's net cost of a bare pole formula for presentation purposes. Net pole investment is defined as the gross investment in poles less accumulated depreciation and accumulated deferred income taxes with respect to pole investment. We seek comment on the use of these factors for arriving at the net cost of bare pole.

28. The final component of the overall pole attachment formula is the carrying charge rate. Carrying charges are the costs incurred by the utility in owning and maintaining poles regardless of the presence of pole attachments. The carrying charges include the utility's administrative, maintenance, and depreciation expenses, a return on investment, and taxes. To help calculate the carrying charge rate, we developed a formula that relates each of these components to the utility's net investment.

29. Section 224(e)(3) states that: "[A] utility shall apportion the cost of providing usable space among all entities according to the percentage of usable space required for each entity." This is the allocation methodology developed by the Commission as applicable to cable systems—except that under the Commission's method the allocation rate is applied to the full cost of the pole. As noted, in the Pole Attachment NPRM, we are seeking comment on various aspects of the current formula including the current space presumptions. We propose to continue using our current rate methodology, modified to reflect only the cost associated with the usable space, because we believe this methodology to be as applicable to telecommunications carriers as to cable systems. Thus, we would apply the following formula:

$$\frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}} \times \frac{\text{Usable Space}}{\text{Pole Height}} \times \frac{\text{Net Cost of a}}{\text{Bare Pole}} \times \frac{\text{Carrying}}{\text{Charges}}$$

30. Alternatively, as we did in the Pole Attachment NPRM, we seek additional comment in the context of this proceeding on calculating a telecommunications carrier pole attachment rate using gross book costs instead of net book costs. Under this approach the cost of a bare pole and most carrying charges are computed using gross book costs. The rate of return and the income tax carrying charges must continue to be computed using net book costs because utility prices are generally set to allow them to earn an authorized rate of return on their net book costs. We currently compute the carrying charge elements for maintenance, depreciation and administrative expenses, as well as for return on investment and taxes, using net book costs. Under the proposed alternative, the carrying charge elements for maintenance, depreciation and administrative expenses would be calculated using gross book costs for both total plant investment and pole investment. For example, the administrative expense element is currently calculated by dividing total administrative and general expenses by net book cost. This yields a percentage that is applied to the net book cost of a bare pole. In contrast, a gross book cost approach to allocation would divide total administrative and general expenses by gross book costs. The resulting percentage would then be applied to the gross book cost of the bare pole. Prior to the Pole Attachment Order, the Commission had decided certain cases using gross book costs to calculate maximum reasonable pole attachment rates. In addition, the Commission has stated that if both parties to a pole attachment complaint agree, the pole attachment rates may be computed using gross book costs. The use of gross book costs appears consistent with the legislative history supporting section 224, which indicates that the Commission has significant discretion in selecting a methodology for determining just and reasonable pole attachment rates. We seek comment on this alternative to ensure a complete record in order to create a reasonable telecommunications carrier pole attachment rate methodology. We note, however, that because of the way administrative costs are allocated, the application of gross book costs may produce a slightly higher rate. We seek comment on whether this assumption is true and if so what the impact of this change would be.

31. We also seek comment on the applicability of the above formula when an entity either has overlashed to an existing attachment or is using dark fiber within the initial attachment of another entity. Should we still continue to apply the presumptive one foot of space occupied by the attacher when allocating the cost of the usable space or should the entity overlashing or using dark fiber be considered a separate attacher, with each using one foot of usable space? As noted previously, if the presumptive one foot is not appropriate, we inquire as to what presumption should be used?

VI. Conduit Attachment Issues

A. Application of the Pole Attachment Formula to Conduits

32. Conduit systems are structures that provide physical protection for cables and also allow new cables to be added inexpensively along a route, over a long period of time, without having to dig up the streets each time a new cable is placed. Conduit systems are usually multiple-duct structures with standardized duct diameters. The duct diameter is the principle factor for determining the maximum number of cables that can be placed in a duct. We seek additional comment on the differences between conduit owned and/or used by cable operators and telecommunications carriers and conduit owned and or used by electric or other utilities. We understand that there are inherent differences in the safety aspects of the latter conduits and ducts, and we seek comment on physical limitations that would affect the rate for such facilities. Where such conduit is shared, we seek information on the mechanism for establishing a just and reasonable rate. We seek comment on the distribution of usable and unusable space within the conduit or duct and how the determination for such space is made. In this NPRM we are not addressing the access or safety provisions, as those issues are more appropriately addressed in the context of the Local Competition Provisions Order. Rather, we are interested in the application of our formula for the purpose of setting just and reasonable rates. Our present formula does not appear to take such differences into consideration, and our experience in resolving disputes relating to electric or other utility conduit has been limited.

33. Usable space is based on the number of ducts and the diameter of the ducts. Section 224(e)(3) states that the cost of providing usable space shall be apportioned according to the percentage of usable space required for the entity using the conduit. In the Pole Attachment NPRM, the Commission has sought comment on a proposed conduit methodology. Moreover, we propose a half-duct methodology as the amount of space used by a cable system or telecommunications carrier that is, the space occupied by a cable system was generally a half-duct.

34. The proposed usable space formula for users of conduits would thus be represented as follows:

$$\frac{\text{1 Duct}}{\text{Average Number of Ducts less Adjustments for maintenance ducts}} \times \frac{1}{2} \times \frac{\text{Net Linear Cost of}}{\text{Usable Conduit Space}} \times \frac{\text{Carrying}}{\text{Charges}}$$

We seek comment on this presumption's applicability in determining usable space and allocating cost to the telecommunications carrier.

35. As discussed above, section 224(e)(2) requires that two-thirds of the cost of the unusable space be apportioned equally among all attaching entities. The unusable space formula would then be represented as follows:

$$2/3 \times \frac{\text{Net Linear Cost of Unusable Conduit Space}}{\text{Number of Attachers}} \times \text{Carrying Charges}$$

We seek comment on what portions of duct or conduit are "unusable" within the terms of the 1996 Act. We propose that a presumptive ratio of usable ducts to maintenance ducts be adopted to establish the amount of unusable space. We seek comment on how this proposal impacts determining an appropriate ratio of usable to unusable space within a duct or conduit.

36. As with poles, defining what an attaching entity is and establishing how to calculate the number of attaching entities is critical. We also seek comment on the use an attaching entity may make of its assigned space, including allowing others to use its dark fiber. Consistent with the half-duct convention proposed in the Pole Attachment NPRM, we believe that each entity using one half-duct be counted as a separate attaching entity. We seek comment on this method of counting attaching entities for the purpose of allocating the cost of the unusable space consistent with section 224(e).

VII. Rights-of-Way Issues

37. The access and reasonable rate provisions of section 224 are applicable where a cable operator or telecommunications carrier seeks to install facilities in a right-of-way but does not make a physical attachment to any pole, duct or conduit. The Commission's proceedings and cases generally have addressed issues involving physical attachments to poles, ducts, or conduits. Our experience relating to solely rights-of-way circumstances is limited. We seek information regarding the degree rights-of-way access issues will arise and the range of circumstances that will be involved. We ask whether the Commission should adopt rules reflecting a methodology and/or formula to determine a just and reasonable rate, or whether rights-of-way complaints should be addressed on a case-by-case basis. We seek comment on whether rights-of-way cases will be of such number that a methodology is necessary, and whether the range of circumstances involving rights-of-way can be discerned into a generic methodology. If a methodology is appropriate, we seek comment on the elements, including any presumptions, that will calculate the costs relating to usable and unusable space. We also seek information regarding whether information necessary for any formula is available through a utility's accounting structure, as costs relating to rights-of-way may be different than poles, ducts and conduit.

VIII. Implementation

38. Section 224(e)(4) requires the Commission to implement the telecommunications carrier rate methodology on February 8, 2001. Section 224(e)(4) states that "The regulations required under paragraph one shall become effective five years after enactment of the Telecommunications Act of 1996. Any increase in the rates for pole attachments that result from the adoption of the regulations required by this subsection shall be phased in equal annual increments over a period of five years beginning on the effective date of such regulations." The statutory language of section 224(e)(4) requires that any rate increase be phased in over five years in equal annual increments beginning on that date. We propose that the amount of increase should be phased in at the beginning of the five years and one-fifth of that amount should be added to the rate in each of the subsequent five years. We seek comment on this proposed five year phase in of the telecommunications carrier rate. We also seek comment on any other proposals that would equitably phase in the telecommunication carrier rate within the five years allotted by section 224(e)(4).

IX. Initial Regulatory Flexibility Act Analyses

39. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines established in paragraph 76 of this NPRM. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA.

40. *Need for Action and Objectives of the Proposed Rule.* In 1987, the Commission adopted its current pole attachment formula for calculating the maximum just and reasonable rates utilities may charge cable systems for pole attachments. In this NPRM, we seek comment as to whether the current pole attachment formula should be modified or adjusted to eliminate certain anomalies and rate instabilities particular parties assert have occurred. We have also tentatively proposed such possible modifications to the formula, should altering the formula become necessary, that would improve the accuracy of the formula. In addition, we propose changes to the formula to reflect the present part 32 accounting system that replaced the former part 31 rules in 1988. Finally, we propose a new conduit methodology that will determine the maximum just and reasonable rates utilities may charge cable systems and telecommunications carriers for their attachments to conduit systems.

41. *Legal Basis.* The authority for the action proposed for this rulemaking is contained in sections 1, 4(i), 4(j), 224, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 224, 303 and 403.

42. *Description and Estimate of the Number of Small Entities Impacted.* The RFA generally defines a "small entity" as having the same meaning as the terms "small business," "small organization," "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term small business concern under the Small Business Act. A "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). For many of the entities described below, the SBA has defined small business categories through Standard Industrial Classification (SIC) codes.

43. *Total Number of Utilities Affected.* Many of the decisions and rules proposed herein may have a significant effect on a substantial number of utility companies. Section 224 of the Statue defines a "utility" as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State." The SBA has provided the

Commission with a list of utility firms which may be affected by this rulemaking. Based upon the SBA's list, the Commission seeks comment as to whether all of the following utility firms are relevant to section 224.

44. *Electric Services* (SIC 4911). The SBA has developed a definition for small electric utility firms. The Census Bureau reported that 447 of the 1,379 firms listed had total revenues below five million dollars. The Census Bureau reports that a total of 1,379 electric utilities were in operation for at least one year at the end of 1992. According to SBA, a small electric utility is an entity whose gross revenues did not exceed five million dollars in 1992. *Electric and Other Services Combined* (SIC 4931). The SBA has classified this entity as a utility whose business is less than 95% electric in combination with some other type of service. The Census Bureau reports that a total of 135 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small electric and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 45 of the 135 firms listed had total revenues below five million dollars. *Combination Utilities, Not Elsewhere Classified* (SIC 4939). The SBA defines this utility as providing a combination of electric, gas, and other services which are not otherwise classified. The Census Bureau reports that a total of 79 such utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars.

45. *Natural Gas Transmission* (SIC 4922). The SBA's definition of a natural gas transmitter is an entity that is engaged in the transmission and storage of natural gas. The Census Bureau reports that a total of 144 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small natural gas transmitter is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 70 of the 144 firms listed had total revenues below five million dollars. *Natural Gas Transmission and Distribution* (SIC 4923). The SBA has classified this entity as a utility that transmits and distributes natural gas for sale. The Census Bureau reports that a total of 126 such entities were in operation for at least one year at the end of 1992. The SBA's definition of a small natural gas transmitter and distributer is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 43 of the 126 firms listed had total revenues below five million dollars. *Natural Gas Distribution* (SIC 4924). The SBA defines a natural gas distributor as an entity that distributes natural gas for sale. The Census Bureau reports that a total of 478 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small natural gas distributor is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 267 of the 478 firms listed had total revenues below five million dollars. *Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution* (SIC 4925). The SBA has classified this entity as a utility that engages in the manufacturing and/or distribution of the sale of gas. These mixtures may include natural gas. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small mixed, manufactured or liquefied petroleum gas producer or distributor is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 31 of the 43 firms listed had total revenues below five million dollars. *Gas and Other Services Combined* (SIC 4932). The SBA has classified this entity as a gas company whose business is less than 95% gas, in combination with other services. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small gas and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 24 of the 43 firms listed had total revenues below five million dollars.

46. *Water Supply* (SIC 4941). The SBA defines a water utility as a firm who distributes and sells water for domestic, commercial and industrial use. The Census Bureau reports that a total of 3,169 water utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small water utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 3,065 of the 3,169 firms listed had total revenues below five million dollars.

47. *Sewage Systems* (SIC 4952). The SBA defines a sewage firm as a utility whose business is the collection and disposal of waste using sewage systems. The Census Bureau reports that a total of 410 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sewerage system is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 369 of the 410 firms listed had total revenues below five million dollars. *Refuse Systems* (SIC 4953). The SBA defines a firm in the business of refuse as an establishment whose business is the collection and disposal of refuse "by processing or destruction or in the operation of incinerators, waste treatment plants, landfills, or other sites for disposal of such materials." The Census Bureau reports that a total of 2,287 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small refuse system is a firm whose gross revenues did not exceed six million dollars. The Census Bureau reported that 1,908 of the 2,287 firms listed had total revenues below six million dollars. *Sanitary Services, Not Elsewhere Classified* (SIC 4959). The SBA defines these firms as engaged in sanitary services. The Census Bureau reports that a total of 1,214 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sanitary service firms gross revenues did not exceed five million dollars. The Census Bureau reported that 1,173 of the 1,214 firms listed had total revenues below five million dollars.

48. *Steam and Air Conditioning Supply* (SIC 4961). The SBA defines a steam and air conditioning supply utility as a firm who produces and/or sells steam and heated or cooled air. The Census Bureau reports that a total of 55 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a steam and air conditioning supply utility is a firm whose gross revenues did not exceed nine million dollars. The Census Bureau reported that 30 of the 55 firms listed had total revenues below nine million dollars.

49. *Irrigation Systems* (SIC 4971). The SBA defines irrigation systems as firms who operate water supply systems for the purpose of irrigation. The Census Bureau reports that a total of 297 firms were in operation for at least one year at the end of 1992. According to SBA's definition, an irrigation service is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 286 of the 297 firms listed had total revenues below five million dollars.

50. *Total Number of Telephone Companies Affected* (SIC 4813). Many of the decisions and rules proposed herein

may have a significant effect on a substantial number of small telephone companies. The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, except Radiotelephone) to be a small entity when it has no more than 1500 employees. The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers (LECs), interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this NPRM. Below, we estimate the potential number of small entity telephone service firms or small incumbent LEC's that may be affected by this service category.

51. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. Of the 2,321 non-radiotelephone companies listed by the Census Bureau 2,295 were reported to have fewer than 1,000 employees. Thus, at least 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs, or small entities based on these employment statistics. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions or rules that come about from this NPRM.

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

53. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXCs that may be affected by the decisions and rules proposed in this NPRM.

54. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 57 companies reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 57 small entity CAPs that may be affected by the decisions and rules proposed in this NPRM.

55. *Wireless (Radiotelephone) Carriers.* Although wireless carriers have not historically affixed their equipment to utility poles, pursuant to the terms of the 1996 Act, such entities are entitled to do so with rates consistent with the Commission's rules discussed herein. SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by this NPRM.

56. *Cellular Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular service carriers

nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 792 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 792 small entity cellular service carriers that may be affected by the decisions and rules proposed in this NPRM.

57. *Mobile Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 117 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 117 small entity mobile service carriers that may be affected by the decisions and rules proposed in this NPRM.

58. *Broadband Personal Communications Services (PCS) Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F and the Commission has held auctions for each block. The Commission has defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions has been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auction. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

59. *Specialized Mobile Radio (SMR) Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in this NPRM may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this NPRM.

60. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this IRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions proposed in this NPRM.

61. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies (SIC 4812 and 4813). The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the decisions and rules adopted in this NPRM.

62. *Cable Systems* (SIC 4841). The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,423 such cable and other pay television services generating less than $11 million in revenue.

63. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable systems that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with

other cable systems. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this NPRM.

64. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable systems serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable systems under the definition in the Communications Act.

65. *Municipalities:* The term "small governmental jurisdiction" is defined as "governments of . . . districts, with a population of less than fifty thousand." There are 85,006 governmental entities in the United States. This number includes such entities as states, counties, cities, utility districts and school districts. We note that section 224 of the Act specifically excludes any utility which is cooperatively organized, or any person owned by the Federal Government or any State. For this reason, we believe that section 224 will have minimal if any affect upon small municipalities. Further, there are 18 States and the District of Columbia that regulate pole attachments pursuant to section 224(c)(1). Of the 85,006 governmental entities, 38,978 are counties, cities and towns. The remainder are primarily utility districts, school districts, and states. Of the 38,978 counties, cities and towns, 37,566 or 96%, have populations of fewer than 50,000.

66. *Reporting, Recordkeeping, and other Compliance Requirements:* The rules proposed in this NPRM will require a change in certain record keeping requirements. A pole owner will now have to maintain specific records relating to the number of attachers for purposes of computing the usable and unusable space calculation for the telecommunications carrier rate formula. We seek comment on whether small entities may be required to hire additional staff and expend additional time and money to comply with the proposals set forth in this NPRM. In addition, we seek comment as to whether there will be a disproportionate burden placed on small entities in complying with the proposals set forth in this NPRM.

67. *Significant Alternatives Which Minimize the Impact on Small Entities and Which Are Consistent With State Objectives:* The 1996 Act requires the Commission to propose a telecommunications carrier methodology within two years of the enactment of the 1996 Act. We seek comment on various alternative ways of implementing the statutory requirements and any other potential impact of these proposals on small business entities. We seek comment on the implementation of a methodology to ensure just, reasonable and nondiscriminatory pole attachment and conduit rates for telecommunications carriers. We also seek comment on how to develop a rights-of-way rate methodology for telecommunications carriers.

68. *Federal Rules which Overlap, Duplicate, or Conflict with the Commission's Proposal:* None.

X. Initial Paperwork Reduction Act of 1995 Analysis

69. This NPRM contains either proposed or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens and to obtain regular Office of Management and Budget ("OMB") approval of the information collections, invites the general public and OMB to comment on the information collections contained in this rulemaking, as required by the Paperwork Reduction Act of 1995. Public and agency comments are due at the same time as other comments relating to this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

XI. Procedural Provisions

70. *Ex parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission's rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

71. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before September 26, 1997 and reply comments on or before October 14, 1997. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. Parties are also asked to submit, if possible, draft rules that reflect their positions. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Larry Walke of the Cable Services Bureau, 2033 M Street, NW., Room 408A, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, NW., Room 239, Washington, DC 20554.

72. Parties are also asked to submit comments and reply comments on diskette, where possible. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Larry Walke of the Cable Services Bureau, 2033 M Street, NW., Room 408A, Washington, DC 20554. Such a submission must be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of

submission. The diskette should be accompanied by a cover letter.

73. Written comments by the public must be submitted at the same time as those of the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after publication of the NPRM in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

XII. Ordering Clauses

74. *It is ordered* that pursuant to sections 1, 4(i), 4(j), 224, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 224, 303 and 403, *notice is hereby given* of the proposals described in this Notice of Proposed Rulemaking.

75. *It is further ordered* that the Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act, 5 U.S.C. 603 (2).

76. For additional information regarding this proceeding, contact Larry Walke, Policy and Rules Division, Cable Services Bureau (202) 418–7200.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Note: This attachment will not be published in the Code of Federal Regulations.

Attachment—Pole Attachment Formulas (Modified as Proposed)

Telecommunications Companies:

Maximum Rate = (Space Occupied by Attachment × Carrying Charge Rate × Net Pole Investment × .95) ÷ Total # of Poles

Total Carrying Charge Rate = Administrative + Maintenance + Depreciation + Taxes + Return

Administrative Carrying Charge Rate = (Total Administrative and General (Accounts 6710+6720 + 6110+6120 + 6534+6535)) ÷ (Gross Plant Investment − Accum. Depreciation, Account 3100 − Accum. Deferred Taxes, Plant)

Maintenance Carrying Charge Rate = (Account 6411 − Rental Expense, Poles) ÷ Net Pole Investment

Depreciation Carrying Charge Rate = Depreciation Rate, Poles

Tax Carrying Charge Rate = Operating Taxes, Account 7200 ÷ (Gross Plant Investment − Accum. Depreciation, Account 3100 − Accum. Deferred Taxes, Plant)

Return Carrying Charge Rate = Applicable Rate of Return

Space Occupied by Attachment = 1 foot

Total Usable Space = 13.5 feet (Subject to Rebuttal)

Gross Plan Investment = Account 2001

Gross Pole Investment = Account 2411

Net Pole Investment = Account 2411 − Accum. Depreciation, Poles − Accum. Deferred Income Taxes, Poles

[FR Doc. 97–21818 Filed 8–15–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 960730210–7194–03; I.D. 012595A]

RIN 0648–XX65

Endangered and Threatened Species: Notice of Partial 6-Month Extension on the Final Listing Determination for Several Evolutionarily Significant Units (ESUs) of West Coast Steelhead

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

ACTION: Proposed rule; partial extension of final determination.

SUMMARY: NMFS has made final listing determinations for five Evolutionarily Significant Units (ESUs) of west coast steelhead under the Endangered Species Act (ESA). The ESUs listed as threatened or endangered species are the Upper Columbia River (endangered), Snake River Basin (threatened), Central California Coast (threatened), South-Central California Coast (threatened) and Southern California (endangered).

NMFS has also determined that substantial scientific disagreement exists regarding the sufficiency and accuracy of data relevant to listing five other west coast steelhead ESUs. Specifically, NMFS has determined that substantial scientific disagreements exist regarding the sufficiency and accuracy of data relevant to final listing determinations for the Lower Columbia River, Oregon Coast, Klamath Mountains Province, Northern California, and California's Central Valley ESUs. These scientific disagreements concern the data needed to determine the status of these species, the threats to their continued existence, and the geographic boundaries of certain ESUs. Consequently, NMFS extends the deadline for a final listing determination for these ESUs for 6 months to solicit, collect, and analyze additional information from NMFS scientists, co-management scientists, and scientific experts on this species enabling NMFS to make the final listing determination based on the best available data.

Several efforts are underway that may resolve scientific disagreement regarding the sufficiency and accuracy of data relevant to these listings. NMFS has undertaken an intensive effort to analyze data received during and after the comment period on the proposed ESUs from the States of Washington, Oregon, and California, as well as from peer reviewers. This work will include evaluating new population models, analyzing population abundance trends where new data are available, and examining new genetic data relative to the relationship between winter and summer steelhead and between hatchery and wild fish. Results of these analyses are anticipated within the next two to three months. NMFS will also receive and analyze additional genetic samples for California's Central Valley ESU as well as rigorously evaluate ecological characteristics to determine if further subdivision of this ESU is warranted.

During the 90-day comment period following the published proposed listings rule on August 9, 1996, NMFS held sixteen public hearings at which testimony was heard from 188 commenters. Additionally, NMFS received and continues to analyze 939 written comments.

DATES: The new deadline for final action on the deferred ESUs of west coast steelhead is February 9, 1998.

ADDRESSES: Protected Resources Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, 503–231–2005, Craig Wingert, 310–980–4021, or Joe Blum, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

Historically, steelhead likely inhabited most coastal streams in

Washington, Oregon, and California as well as many inland streams in these states and Idaho. However, during this century, over 23 indigenous, naturally-reproducing stocks of steelhead are believed to have been extirpated, and many more are thought to be in decline in numerous coastal and inland streams in Washington, Oregon, Idaho, and California (Nehlsen et al., 1991). Forty-three stocks of steelhead have been identified as being at moderate or high risk of extinction (Nehlsen et al. 1991).

The history of ESA listing petitions received regarding west coast steelhead is summarized in the proposed listings rule published on August 9, 1996 (61 FR 41541). The most comprehensive petition was submitted by Oregon Natural Resources Council and 15 co-petitioners on February 16, 1994. In response to this petition, NMFS collected and assessed the best available scientific and commercial data, including technical information from the Pacific Salmon Biological Technical Committee (PSBTC) and interested parties in Washington, Oregon, Idaho, and California. The PSBTC consisted primarily of scientists from Federal, state, and local resource agencies, Indian tribes, industries, universities, professional societies, and public interest groups possessing technical expertise relevant to steelhead and their habitats. A total of seven PSBTC meetings were held in the states of Washington, Oregon, Idaho, and California during the course of the west coast steelhead status review. NMFS also established a Biological Review Team (BRT) that conducted a coastwide status review for west coast steelhead (Busby et al., 1996). The BRT was composed of staff from NMFS' Northwest Fisheries Science Center and Southwest Regional Office, as well as a representative of the National Biological Survey.

Based on the results of the BRT report, and after considering other information and existing conservation measures, NMFS published a proposed listing determination (61 FR 41541, August 9, 1996) that identified 15 ESUs of steelhead in the States of Washington, Oregon, Idaho, and California. Ten of these ESUs were proposed for listing as threatened or endangered species, four were found not warranted for listing, and one was identified as a candidate for listing under the ESA.

Finding

Within 1 year from the date of a proposed listing, section 4(b)(6) of the ESA requires NMFS to take one of three actions: (1) Finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the 1-year period for not more than 6 months pursuant to section 4(b)(6)(B)(i).

Section 4(b)(6)(B)(i) of the ESA authorizes NMFS to extend the deadline for a final listing determination for not more than 6 months for the purpose of soliciting additional data. NMFS' ESA implementing regulations condition such an extension on finding "substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination." (50 CFR 424.17(a)(1)(iv)).

NMFS has now analyzed new information and public comment received in response to the August 9, 1996, proposed rule. NMFS' BRT has likewise analyzed this new information and has updated its conclusions accordingly (BRT Report memo from M. Schiewe to W. Stelle and W. Hogarth, July 7, 1997). Copies of the BRT's updated Status Review are available upon request (see **ADDRESSEES**).

Based on this analysis, NMFS has made final determinations for five ESUs of west coast steelhead. The ESUs listed as threatened or endangered are the Upper Columbia River (endangered), Snake River Basin (threatened), Central California Coast (threatened), South-Central California Coast (threatened) and Southern California (endangered). For NMFS' determination on the listing of five ESUs of west coast steelhead as threatened or endangered species, see the west coast steelhead ESU listing notice in the Rules and Regulations section of this **Federal Register**.

As a result of comments received in response to the August 9, 1996, proposal, NMFS has determined that substantial scientific disagreements exist regarding the sufficiency and accuracy of data relevant to final listing determinations for the Lower Columbia River, Oregon Coast, Klamath Mountains Province, Northern California, and California's Central Valley ESUs (BRT Report memo from M. Schiewe to W. Stelle and W. Hogarth, July 18, 1997). These scientific disagreements concern the data needed to determine the status of these species, the threats to their continued existence, and the geographic range of steelhead within certain ESUs. Therefore, NMFS extends the final listing determination deadline for the Lower Columbia River, Oregon Coast, Klamath Mountains Province, Northern California, and California's Central Valley ESUs for 6 months to solicit, collect, and analyze additional data. Several efforts are underway that may resolve scientific disagreement regarding the sufficiency and accuracy of data relevant to these ESUs. These efforts include: 1) Analysis of samples being collected this summer by the California Department of Fish and Game (CDFG) of the Central Valley ESU of steelhead to determine genetic makeup; and 2) NMFS review of the new Oregon Department of Fish and Wildlife (ODFW) risk analysis model for the Lower Columbia River, Central Oregon Coast, Klamath Mountain Province, and North California Coastal ESUs as well as outside peer review of those same models. A more detailed discussion of these efforts is provided below under "Prospects for Resolving Existing Disagreements."

Points of Substantial Scientific Disagreement

Some peer reviewers, in addition to some knowledgeable scientists from state fish and wildlife agencies, tribes, and the public, dispute the sufficiency and accuracy of data employed by NMFS in its proposed listing of west coast steelhead ESUs in California, Oregon, and Washington. The primary areas of dispute concern data relevant to: risk assessment, in particular the types of data used to determine abundance as well as the impacts of artificial production; and the configuration of certain ESU boundaries, including the relationship of summer and winter steelhead in the same ESUs. The following sections briefly discuss the types of data subject to substantial scientific disagreement.

Risk Assessment

Risk assessment involves the collection and analysis of data on the status of west coast steelhead and the threats presented by various human activities and natural occurrences. In its Factors for Decline report for west coast steelhead, NMFS identified the principal threats to steelhead as past and present hatchery practices, habitat loss, adverse ocean conditions, habitat blockages, and habitat fragmentation (NMFS, 1996).

With respect to abundance data, several commenters argued that NMFS lacked sufficient and accurate data to estimate current steelhead abundance. These commenters argued that NMFS failed to accurately estimate the number and effects of hatchery fish spawning in the wild, and that NMFS relied too heavily on the use of sport catch data. These commenters argued that this analysis upwardly biased NMFS assessment of the risks facing steelhead in those instances.

For example, in the Lower Columbia River ESU, the State of Oregon disagrees with NMFS' assessment of risks facing

steelhead in this ESU. ODFW argued that although steelhead populations in this ESU are depressed, their modeling suggests that recent actions protective of steelhead, together with re-analysis of updated data argue against NMFS' proposed determination. Because it received ODFW's information only in June 1997, NMFS has not fully evaluated the model or validated its results in order to assess overall abundance in this ESU shared by Oregon and Washington.

In the Oregon Coast ESU and the Oregon portion of the Klamath Mountains Province ESU, substantial scientific disagreement exists regarding the sufficiency of data used to assess the risks faced by steelhead. Specifically, ODFW criticized NMFS' assessment of these ESUs for relying on insufficient data (Chilcote, June 1997). ODFW argued that NMFS did not consider accurate data sets because NMFS was overly-reliant on sport catch data. ODFW reasoned that sport catch data, although the only complete data available, are inaccurate because of biases in its recording and because most fishing effort focuses on hatchery steelhead runs, thus reflecting poor wild steelhead abundance. ODFW also argued that NMFS analyzed a time series that was not inclusive of all the available data for these coastal steelhead populations. ODFW argued that NMFS' risk analysis, based on the available data at the time of the 1995 status review, was biased toward finding a relatively higher risk for these coastal Oregon ESUs, thus overstating the depressed condition of Oregon coastal steelhead and leading NMFS to incorrectly conclude that the proposed listing is warranted.

ODFW developed two different population models in an attempt to define the risk of extinction faced by steelhead in the Oregon ESUs. The first of these models applies spawner and recruitment data to determine population abundance in the context of habitat capacity. The second modeling effort attempts to assess the risk of extinction for those populations where sufficient data exist to estimate spawner-recruitment relationships (Chilcote, June 1997). To date, the models have produced status assessments that are inconsistent with those made by NMFS for the Lower Columbia River, Oregon Coast and Oregon portion of the Klamath Mountains Province ESUs. The results of these models could have direct bearing on NMFS' final listing determinations. Having received these models in June 1997, NMFS has not had time to fully evaluate them or their usefulness.

ODFW also contended that NMFS overstated the adverse effects of hatchery fish by not considering time series data that reflect recent reductions in hatchery production. ODFW argued that, by not using more updated data sets, NMFS based its proposed listing determinations in the Lower Columbia River, Oregon Coast and Oregon portions of the Klamath Mountains Province ESUs on insufficient data. Since the data ODFW used to estimate the proportion of hatchery steelhead in the ESUs is new, NMFS needs more time to evaluate the merits of this information.

In the Northern California Coast ESU, comments from a peer reviewer presented new information on the relationship between hatchery and wild steelhead stocks in California, as well as on the genetic differences between summer and winter steelhead in the Eel River, California. This new information may affect NMFS' determination and has not yet been fully analyzed.

ESU Boundary Definitions

Two points of scientific disagreement may affect ESU boundaries. One area of disagreement concerns NMFS's treatment of diverse life history forms within the individual ESUs, specifically the relationship between winter and summer steelhead in the same river basins. Comments focused on NMFS's use of primarily genetic data in making its determination to combine winter and summer steelhead into a single ESU. The commenters argued that not all relevant life history characteristics are apparent through an analysis of discrete genetic markers. Another point of disagreement concerns whether there is significant reproductive isolation between winter and summer steelhead to warrant their designation as separate ESUs. Resolving these disagreements may affect ESU boundaries. NMFS has recently obtained new samples of winter and summer steelhead from ODFW, and will be collecting additional information over the next few months.

The scientific disagreement concerning California's Central Valley ESU is of a similar nature. Disagreements have arisen concerning the boundaries of the ESU, and whether the Sacramento and San Joaquin Rivers contain distinct populations of steelhead. NMFS expects to complete its analysis of new genetic samples of steelhead from California's Central Valley received from CDFG so that it can address questions concerning ESU configurations within the Central Valley. In combination with the genetic data, NMFS will conduct a more rigorous evaluation of habitat and ecological characteristics throughout the ESU to determine if a finer-scale subdivision of California's Central Valley ESU is warranted.

Prospects for Resolving Existing Disagreements

Several efforts are underway that may resolve scientific disagreement regarding the sufficiency and accuracy of data relevant to these listings. NMFS has undertaken an intensive effort to analyze the recently received data on the proposed ESUs from the States of Washington, Oregon, and California, as well as from peer reviewers. This work will include evaluating the ODFW models, analyzing population abundance trends where new data are available, and examining new genetic data relative to the relationship between winter and summer steelhead and between hatchery and wild fish.

For California's Central Valley ESU, NMFS will receive and analyze additional genetic samples as well as rigorously evaluate ecological characteristics to determine if further subdivision of this ESU is warranted.

Determination

The scientific disagreements about data and analysis discussed above are substantial and may alter NMFS' assessment of the status of the Lower Columbia River, Oregon Coast, Klamath Mountains Province, Northern California Coast, and California's Central Valley steelhead ESUs. In light of these disagreements and the fact that more data are forthcoming on risk assessment and ESU boundaries, NMFS extends the final determination deadline for steelhead in the Lower Columbia River, Oregon Coast, Klamath Mountains Province, Northern California Coast, and California's Central Valley ESUs for 6 months, until February 9, 1998. During this period, NMFS will collect and analyze new information aimed at resolving these disagreements. New information or analyses may indicate that changing the proposed status of one or more of these ESUs of west coast steelhead are warranted, and NMFS will either finalize, withdraw, or modify the proposed rule accordingly.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 11, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–21660 Filed 8–13–97; 9:14 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970806191–7191–01; I.D. 072297A]

RIN 0648–AJ71

Fisheries of the Exclusive Economic Zone off Alaska; Improved Retention/ Improved Utilization

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 49 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This proposed rule would require all vessels fishing for groundfish in the Gulf of Alaska (GOA) to retain all pollock and Pacific cod beginning January 1, 1998, and all shallow-water flatfish beginning January 1, 2003. This proposed rule also would establish a 15-percent minimum utilization standard for pollock and Pacific cod beginning January 1, 1998, and for the shallow-water flatfish species group beginning January 1, 2003, that would be applicable to all at-sea processors. This action is necessary to respond to socioeconomic needs of the fishing industry that have been identified by the North Pacific Fishery Management Council (Council) and is intended to further the goals and objectives of the FMP.

DATES: Comments on the proposed rule must be received at the following address by October 2, 1997.

ADDRESSES: Comments must be sent to Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the proposed FMP amendment and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendment 49 are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at 907–586–7228. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the GOA are managed by NMFS under the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679.

The Council has submitted Amendment 49 for Secretarial review and a Notice of Availability of the FMP amendment was published (62 FR 40497, July 29, 1997) with comments on the FMP amendment invited through September 29, 1997. Comments may address the FMP amendment, the proposed rule, or both, but must be received by September 29, 1997, to be considered in the approval/disapproval decision on the FMP amendment. All comments received by September 29, 1997, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/ disapproval decision on the FMP amendment.

Management Background and Need for Action

In September 1996, the Council adopted an Improved Retention/ Improved Utilization (IR/IU) program for the Bering Sea and Aleutian Islands Management Area (BSAI) as Amendment 49 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. A proposed rule to implement Amendment 49 in the BSAI was published on June 26, 1997 (62 FR 34429). During development of the IR/IU program for the BSAI, the Council began to consider a parallel IR/ IU program for the GOA, also designated as Amendment 49. Amendments 49/49 are the result of over 3 years of analysis and debate by the Council of alternative solutions to the problem of discards occurring in the groundfish fisheries off Alaska. Additional information on the IR/IU regulations proposed for the BSAI and the alternatives considered by the Council during development of the program is found in the preamble to the proposed rule for the BSAI and in the EA/RIR/IRFA prepared for Amendment 49 in the BSAI (available from NMFS, see **ADDRESSES**).

In connection with development of Amendment 49 in the BSAI, the Council appointed an industry working group to examine some of the key implementation issues associated with the development of an IR/IU program. In September 1996, following its final action on the BSAI IR/IU program, the Council reconfigured this industry working group to better reflect GOA interests and concerns. The Council asked that the group meet and report back to the Council with specific recommendations for the GOA version of IR/IU.

In December 1996, the Council adopted the following Problem Statement for Amendment 49 in the GOA:

> The objective of the Council in undertaking improved retention and improved utilization regulations for Gulf of Alaska groundfish fisheries centers on the same basic concern that motivated an IR/IU program in the BSAI groundfish fisheries; that is, economic discards of groundfish catch are at unacceptably high levels. An IR/IU program for the GOA would be expected to provide incentives for fishermen to avoid unwanted catch, increase utilization of fish that are taken, and reduce overall discards of whole fish, consistent with current Magnuson-Stevens Act provisions.
>
> In addition, the Council recognizes the potential risk of preemption of certain existing GOA groundfish fisheries which could occur in response to economic incentives displacing capacity and effort from BSAI IR/IU fisheries. This risk can be minimized if substantially equivalent IR/IU regulations are simultaneously implemented for the GOA.

In April 1997, the industry working group recommended that the Council approve for the GOA, the same IR/IU program it had approved for the BSAI. The industry working group recommended only one difference from the BSAI program; that the shallow-water flatfish species complex be substituted for rock sole and yellowfin sole, which are not managed as separate species in the GOA. In April 1997, the Council released for public review an EA/RIR/IRFA for Amendment 49 in the GOA that analyzed the same suite of options that were previously analyzed for the IR/IU program in the BSAI, and that relied heavily on the analysis already completed for the IR/IU program in the BSAI.

In June 1997, after debate and public testimony, the Council voted unanimously to extend the IR/IU program to the GOA as Amendment 49 to the FMP. The Council accepted the recommendations of the IR/IU industry working group and adopted a program identical to that already approved for the BSAI with the only distinction being the substitution of the shallow-water flatfish species complex in the GOA for rock sole and yellowfin sole in the BSAI.

The program adopted by the Council would require full retention of pollock and Pacific cod beginning January 1, 1998, and full retention of shallow-water flatfish beginning January 1, 2003. In the GOA, shallow-water flatfish are managed under the FMP as a species group that is defined as all flatfish other than arrowtooth flounder, rex sole, flathead sole, and deepwater flatfish (Greenland turbot and Dover sole). The predominant species in the shallow-water flatfish species group are rock sole, yellowfin sole, butter sole, English sole, starry flounder, petrale sole, sand sole, and Alaska plaice. Some of these species are currently marketable, while others are not.

The utilization option adopted by the Council, the least restrictive of the three options under consideration, would allow retained pollock, Pacific cod and shallow-water flatfish to be processed into any product form, regardless of whether the resulting product is suitable for direct human consumption. Of present products, only meal and bait are regarded as not suitable for direct human consumption. Offal is considered to be processing waste rather than a product form. The other utilization alternatives considered and subsequently rejected by the Council would have limited product forms to those suitable for direct human consumption, or would have placed limits on the percentage of fishmeal produced from IR/IU species.

The Council established a 15-percent minimum utilization rate or aggregate product recovery rate (PRR) that would apply to all species covered by the IR/IU program. NMFS has calculated average PRRs for each species/product combination produced in the groundfish fisheries off Alaska. These standard PRRs are set forth at Table 3 of 50 CFR part 679. Because the lowest NMFS PRR for a non-roe, primary product produced from an IR/IU species is 16 percent (for deep skin pollock fillets), the IR/IU Industry Working group concluded that a 15 percent minimum utilization rate was achievable for all sectors of the industry and would allow for variations in actual PRRs by size of fish and season. If, under certain circumstances, a processor falls below 15 percent for a particular primary product, the vessel operator would be able to meet the minimum utilization requirement by retaining sufficient ancillary products to bring the aggregate utilization rate above 15 percent.

On October 11, 1996, the President signed into law the Sustainable Fisheries Act of 1996 (Public Law 104–297), which reauthorized and amended the Magnuson-Stevens Act. As amended, the Magnuson-Stevens Act now provides statutory authority for regulatory programs to improve retention and utilization in the groundfish fisheries off Alaska. Section 303(a)(11) of the Magnuson-Stevens Act requires the Council to "establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—(A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided." In implementing this provision of the Act, the Council is further required under section 313(f) to "submit conservation and management measures to lower, on an annual basis for a period of not less than 4 years, the total amount of economic discards occurring in the fisheries under its jurisdiction." The proposed IR/IU program, submitted by the Council, is intended to meet these statutory requirements.

Elements of the Proposed Rule

This proposed rule to implement Amendment 49 to the FMP for Groundfish of the Gulf of Alaska would expand the geographical scope of the already published proposed rule to implement Amendment 49 to the FMP for the Groundfish Fisheries of the Bering Sea and Aleutian Islands. In order to extend the IR/IU program to the GOA, this proposed rule would make three changes to the provisions of 50 CFR part 679, as proposed to be revised by the BSAI proposed rule. First, existing proposed § 679.27(a),

Applicability, which currently would extend coverage to any vessel fishing for groundfish in the BSAI or processing groundfish harvested in the BSAI, would be modified to extend coverage to any vessel fishing for groundfish in the GOA or processing groundfish in the GOA as well. Second, existing proposed § 679.27(b), which lists species that would be covered, would be modified by adding the shallow-water flatfish species complex for the GOA. Third, existing proposed § 679.27(h),

Minimum utilization requirements, which currently sets forth utilization requirements that would be required for catcher/processors in the BSAI, would be modified to include vessels processing IR/IU species harvested in the GOA. To assist the public in reviewing and commenting on the proposed IR/IU program as it would apply to the groundfish fisheries of the GOA, all elements of the program are summarized below.

Affected Vessels and Processors

The proposed IR/IU program would apply to all vessels fishing for groundfish in the GOA and all at-sea processors processing groundfish harvested in the GOA, regardless of vessel size, gear type, or target fishery. Because the Magnuson-Stevens Act does not authorize NMFS to regulate on-shore processing of fish, the requirements of this proposed rule would not be extended to shore-based processors.

The Council has assumed that the State of Alaska (State) will implement a parallel IR/IU program for shore-based processors. In testimony at the September 1996, April 1997, and June 1997 Council meetings, the State indicated its intent to implement parallel IR/IU regulations for the shore-based processing sector. Parallel State regulations are especially necessary to address the relationship between the processing plant and the delivering vessel. A shore-based IR/IU program must require a processor to accept all IR/IU species offered for delivery by a vessel fishing for groundfish in the GOA. Otherwise, rejection of deliveries by a processor would be the equivalent of discarding of IR/IU species by that processor.

IR/IU Species

The proposed IR/IU program for the GOA would define pollock, Pacific cod, and the shallow-water flatfish species group as IR/IU species. The shallow-water flatfish species group is defined in the FMP and the annual harvest specifications as all flatfish species other than deep water flatfish (Dover Sole and Greenland turbot), flathead sole, rex sole, and arrowtooth flounder. Retention and utilization requirements would apply to pollock and Pacific cod beginning January 1, 1998. Shallow-water flatfish would be added to the program beginning January 1, 2003. The purpose of the 5-year delay for shallow-water flatfish is to provide industry with sufficient time to develop more selective fishing techniques and/or markets for these fish.

Minimum Retention Requirements

The proposed rule would establish minimum retention requirements by vessel type (catcher vessel, catcher/processor, and mothership), and by the directed fishing status of the IR/IU species (open to directed fishing, closed to directed fishing, and retention prohibited). In general, vessel operators would be required to retain 100 percent of their catch of an IR/IU species unless a closure to directed fishing limits

retention of that species. When a closure to directed fishing limits retention of an IR/IU species, the vessel operator would be required to retain all catch of that species up to the maximum retainable bycatch (MRB) amount in effect for that species, and to discard catch in excess of the MRB amount. The specific retention requirements by vessel type and directed fishing status are set out in table format below:

If you own or operate a * * *	And * * *	You must retain on board until lawful transfer * * *
(i) Catcher vessel	(A) Directed fishing for an IR/IU species is open.	All fish of that species brought on board the vessel.
	(B) Directed fishing for an IR/IU species is prohibited.	All fish of that species brought on board the vessel up to the MRB amount for that species.
	(C) Retention of an IR/IU species is prohibited.	No fish of that species.
(ii) Catcher/processor	(A) Directed fishing for an IR/IU species is open.	A primary product from all fish of that species brought on board the vessel.
	(B) Directed fishing for an IR/IU species is prohibited.	A primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRB amount for that species.
	(C) Retention of an IR/IU species is prohibited.	No fish or product of that species.
(iii) Mothership	(A) Directed fishing for an IR/IU species is open.	A primary product from all fish of that species brought on board the vessel.
	(B) Directed fishing for an IR/IU species is prohibited.	A primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRB amount for that species.
	(C) Retention of an IR/IU species is prohibited.	No fish or product of that species.

Retention Requirements Under Directed Fishing Closures

NMFS assesses each groundfish TAC annually to determine how much of a species' TAC is needed as bycatch in other groundfish fisheries. The remainder is made available as a directed fishing allowance. NMFS closes directed fishing for a species or species group when the directed fishing allowance for that species has been reached in order to leave sufficient portions of the TAC to provide for bycatch in other fisheries. However, if TAC is reached, retention of that species becomes prohibited and all catch of the species must be discarded. Under existing regulations, a species or species group may be open or closed to directed fishing, or retention may be prohibited.

Directed fishing is defined in existing § 679.2 as any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the MRB amount for that species or species group. The MRB amount for a species is calculated as a percentage (by weight) of the species closed to directed fishing relative to the weight of other species that are open for directed fishing and retained on board the vessel. On catcher/processors, which retain product rather than whole fish, the MRB amount is determined using round-weight equivalents, which are calculated using NMFS PRRs set forth at Table 3 of 50 CFR part 679. The MRB percentage for each species is set forth at Table 11 of 50 CFR part 679. When directed fishing for a species is closed, bycatch amounts of the species may be retained on board a vessel up to the MRB amount in effect for that species, and catch in excess of the MRB amount must be discarded.

The MRB percentages serve as a management tool to slow down the rate of harvest of a species closed to directed fishing and to reduce the incentive for fishing vessels to target on that species. In most cases, an MRB of 20 percent is established to slow the harvest rate of a species yet avoid significant discard amounts of these species to the extent they are taken as bycatch in other open groundfish fisheries. Directed fishing closures are also made when a fishery reaches a prohibited species bycatch allowance, or to prevent overfishing of another groundfish species taken as bycatch.

Under the proposed regulations, if a vessel's bycatch of an IR/IU species exceeds an MRB amount in effect for that species, all catch in excess of the MRB amount would have to be discarded. This situation would be most likely to occur in trawl fisheries where bycatch of pollock is prevalent. The pollock TAC in the GOA is released in three seasonal allowances in January, July, and September. Each opening typically lasts a few days or less. During the remainder of the year, pollock may be a prevalent bycatch species on trawl vessels participating in Pacific cod and flatfish fisheries and could comprise more than 20 percent (the MRB percentage for pollock) of total catch by some vessels. If this occurs, affected vessels would be required to simultaneously retain and discard portions of the catch of an IR/IU species. Additional discussion of the relationship between the proposed IR/IU program and directed fishing closures is contained in the BSAI proposed rule.

Additional Retention Requirements

Bleeding Codends and Shaking Longline Gear. The minimum retention requirements outlined above would apply to all fish of each IR/IU species that are brought on board a vessel. Any activity intended to cause the discarding of IR/IU species prior to their being brought on board a vessel, such as bleeding codends or shaking fish off longlines, would be prohibited. NMFS recognizes that some escapement of fish from fishing gear does occur in the course of fishing operations. Therefore, incidental escapement of IR/IU species, such as fish squeezing through mesh or dropping off longlines, would not be considered a violation unless the escapement is intentionally caused by action of the vessel operator or crew.

At-sea Discard of Products. In addition to the retention requirements outlined above, the proposed rule would prohibit the at-sea discard of products from any IR/IU species.

Discard of Fish or Product Transferred from other Vessels. The retention requirements of this proposed

rule would apply to all IR/IU species brought on board a vessel, whether caught by that vessel or transferred from another vessel. Discard of IR/IU species or products that were transferred from another vessel would be prohibited.

IR/IU Species Used as Bait. IR/IU species could be used as bait provided the bait is physically attached to authorized fishing gear when deployed. Dumping IR/IU species as loose bait (i.e., chumming) would be prohibited.

Minimum Utilization Requirements

Beginning January 1, 1998, all catcher/processors and motherships would be required to maintain a 15-percent utilization rate for each IR/IU species. Calculation of a vessel's utilization rate would depend on the type of vessel (catcher/processor or mothership) and directed fishing status of the IR/IU species in question. The minimum utilization requirements by vessel type and directed fishing status are set out in tables at § 679.27(h) of the proposed regulations and are summarized below.

Catcher/processors. On a catcher/processor, when directed fishing for an IR/IU species is open, the total weight of retained or lawfully transferred products from IR/IU species harvested during a fishing trip would have to equal or exceed 15 percent of the round weight catch of that species during the fishing trip. When directed fishing for an IR/IU species is closed, the weight of retained products would have to equal or exceed either 15 percent of the MRB amount in effect for that species or 15 percent of the round weight catch of that species, whichever is lower. When retention of an IR/IU species is prohibited, there would be no minimum utilization rate and any retention of fish or products would be prohibited.

Motherships. On a mothership, when directed fishing for an IR/IU species is open, the total weight of retained or lawfully transferred products from an IR/IU species received during a reporting week would have to equal or exceed 15 percent of the round weight of that species received during the same reporting week. When directed fishing for an IR/IU species is closed, the weight of retained products would have to equal or exceed 15 percent of the MRB amount in effect for that species or 15 percent of the round weight catch of that species, whichever is lower. When retention of an IR/IU species is prohibited, there would be no minimum utilization rate and any retention of fish or products would be prohibited.

Recordkeeping Requirements

The proposed rule for the IR/IU program in the BSAI contains changes to existing recordkeeping requirements to aid the monitoring and enforcement of the IR/IU program. Because NMFS uses the same logbooks for both the BSAI and GOA, the recordkeeping requirements contained in this proposed rule were included in the collection-of-information request submitted to OMB for the BSAI IR/IU program. The IR/IU-related recordkeeping requirements contained in the BSAI proposed rule are as follows: Beginning January 1, 1998, all catcher vessels and catcher/processors that are currently required to maintain NMFS logbooks would be required to log the round weight catch of pollock and Pacific cod in the NMFS catcher vessel daily fishing logbook (DFL) or catcher/processor DCPL on a haul-by-haul or set-by-set basis. Motherships would be required to log the receipt of round weight of pollock and Pacific cod in the mothership DCPL on a delivery-by-delivery basis. Beginning January 1, 2003, this requirement would extend to rock sole and yellowfin sole in the BSAI and the shallow-water flatfish complex in the GOA. These changes are necessary to provide vessel operators and enforcement agents with round weight information for each IR/IU species in order to monitor compliance with the IR/IU program.

Technical Changes To Existing Regulations

Regulations at § 679.50 (c) and (d), which specify observer coverage requirements for motherships and shoreside processors based on "round weight or round-weight equivalent" of groundfish processed, would be revised by removing the term "round weight." Observer coverage requirements for motherships and shoreside processors during a calendar month would therefore be based only on the round-weight equivalent of groundfish processed. This change is necessary because the terms "round weight" and "round-weight equivalent" would no longer be synonymous under the proposed rule.

Classification

At this time, NMFS has not determined that Amendment 49 is consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule contains a revised collection-of-information requirement subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This revised collection-of-information requirement was included in the PRA submission to OMB for the proposed rule to implement IR/IU in the BSAI, and, consequently, a new submission is not being made for this rule to implement IR/IU in the GOA. Under the revision, vessel operators would be required to log the round weight of each IR/IU species on a haul-by-haul basis for catcher vessels and catcher/processors and on a delivery-by-delivery basis for motherships. The estimated current and new public reporting burdens for these collections of information are as follows: For catcher vessels using fixed gear, the estimated burden would increase from 20 minutes to 23 minutes; for catcher vessels using trawl gear, the estimated burden would increase from 17 minutes to 22 minutes; for catcher/processors using fixed gear, the estimated burden would increase from 32 minutes to 35 minutes; for catcher/processors using trawl gear, the estimated burden would increase from 29 minutes to 34 minutes; for motherships, the estimated burden would increase from 28 to 33 minutes. Send comments regarding reporting burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens to NMFS and OMB (see **ADDRESSES**).

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

An RIR was prepared for this proposed rule that describes the management background, the purpose and need for action, the management action alternatives, and the social impacts of the alternatives. The RIR also estimates the total number of small entities affected by this action and

analyzes the economic impact on those small entities.

An IRFA was prepared as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. In 1995 there were 221 vessels that participated in the various sectors of the GOA trawl fishery of which 165 vessels (75 percent) were determined to be small entities. The analysis concluded that the economic effects on longline, pot and jig gear vessels would not be significant. The economic effects on trawl vessels participating in the pollock, sablefish, deep-water flatfish, shallow-water flatfish, rockfish, and Atka mackerel fisheries also would not be significant. The analysis concluded that the economic effects on some trawl vessels participating in the Pacific cod, arrowtooth flounder, and rex sole fisheries could be significant. Finally, the analysis concluded that the economic effects on vessels participating in the flathead sole fishery taken as a whole, would be significant. The proposed rule would have a significant economic impact on an estimated 165 trawl vessels participating in various sectors of the GOA trawl fishery. This the upper limit of a range of possible impacts.

The analysis also concluded that for fish for which markets are limited or undeveloped (e.g., small Pacific cod, and some flatfish species) 100-percent retention requirements would impose direct operational costs that probably cannot be offset (in whole or in part) by expected revenues generated by the sale of the additional catch. No quantitative estimate can be made of these costs at present. In general, the impacts on any operation will vary inversely with the size and configuration of the vessel, hold capacity, processing capability, markets and market access, as well as the specific composition and share of the total catch of the three IR/IU species. The burden will tend to fall most heavily upon the smallest, least diversified operations, especially smaller catcher/processors. The ability of smaller catcher/processors to adapt to the proposed IR/IU program will be further limited due to programs such as the vessel moratorium, license limitation, and Coast Guard load-line requirements, which place severe limits on reconstruction to increase vessel size and/or processing capacity.

The economic impacts imposed by this rule would not be alleviated by modifying reporting requirements for small entities. Where relevant, this proposed rule employs performance standards rather than design standards and allows maximum flexibility in meeting its requirements. The Council also considered and rejected the following alternatives that might have mitigated impacts on small businesses. (1) An alternative that would have allowed exemptions or modified phase-in periods based on vessel size, was rejected because it would have diluted the reductions in bycatch and discards and would have provided an unfair advantage to a certain sector of the industry. (2) A "harvest priority program" that would have rewarded vessels demonstrating low bycatch was rejected because it would not reduce discard rates expeditiously enough. (3) A voluntary bycatch and discard reduction program was rejected because it would not have met statutory requirements of the Magnuson-Stevens Act.

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

The Administrator, Alaska Region, NMFS determined that fishing activities conducted under this rule would not affect endangered and threatened species listed or critical habitat designated pursuant to the Endangered Species Act in any manner not considered in prior consultations on the groundfish fisheries of the BSAI.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 12, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* 1801 *et seq.*, and 3631 *et seq.*

2. Section 679.27, which was proposed to be added on June 26, 1997 (62 FR 34437), is proposed to be amended by revising paragraphs (a), (b), and (h) as follows:

§ 679.27 Improved Retention/Improved Utilization Program.

(a) *Applicability.* The retention and utilization requirements of this section apply to any vessel fishing for groundfish in the BSAI or GOA, or processing groundfish harvested in the BSAI or GOA.

(b) *IR/IU species.* The following species and species groups are defined as "IR/IU species" for the purposes of this section:

(1) Pollock.

(2) Pacific cod.

(3) Rock sole in the BSAI (beginning January 1, 2003).

(4) Yellowfin sole in the BSAI (beginning January 1, 2003).

(5) Shallow-water flatfish species complex in the GOA as defined in the annual harvest specifications for the GOA (beginning January 1, 2003).

* * * * *

(h) *Minimum utilization requirements. (1) Catcher/processors.* The minimum utilization requirement for catcher/processors is determined by the directed fishing status for that species according to the following table:

If you own or operate a catcher/processor and * * *	Your total weight of retained or lawfully transferred products produced from the catch of that IR/IU species during a fishing trip must * * *
(i) Directed fishing for an IR/IU species is open	Equal or exceed 15 percent of the round weight catch of that species during the fishing trip.
(ii) Directed fishing for an IR/IU species is prohibited.	Equal or exceed 15 percent of the round weight catch of that species during the fishing trip or 15 percent of the MRB amount for that species, whichever is lower.
(iii) Retention of an IR/IU species is prohibited ..	Equal zero.

(2) *Motherships.* The minimum utilization requirement for motherships is determined by the directed fishing status for that species according to the following table:

If you own or operate a mothership and * * *	Your weight of retained or lawfully transferred products produced from deliveries of that IR/IU species received during a reporting week must * * *
(i) Directed fishing for an IR/IU species is open	Equal or exceed 15 percent of the round weight of that species received during the reporting week.

If you own or operate a mothership and * * *	Your weight of retained or lawfully transferred products produced from deliveries of that IR/IU species received during a reporting week must * * *
(ii) Directed fishing for an IR/IU species is prohibited.	Equal or exceed either 15 percent of the round weight of that species received during the reporting week or 15 percent of the MRB amount for that species, whichever is lower
(iii) Retention of an IR/IU species is prohibited ..	Equal zero.

3. In § 679.50, paragraphs (c)(3) introductory text, (d)(1), and (d)(2) are revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 1997.

* * * * *

(c) * * *

(3) *Assignment of vessels to fisheries.* At the end of any fishing trip, a vessel's retained catch of groundfish species or species groups for which a TAC has been specified under § 679.20, in round-weight equivalent, will determine to which fishery category listed under paragraph (c)(2) of this section the vessel is assigned.

* * * * *

(d) * * *

(1) Processes 1,000 mt or more in round-weight equivalent of groundfish during a calendar month is required to have an observer present at the facility each day it receives or processes groundfish during that month.

(2) Processes 500 mt to 1,000 mt in round-weight equivalent of groundfish during a calendar month is required to have an observer present at the facility at least 30 percent of the days it receives or processes groundfish during that month.

* * * * *

[FR Doc. 97–21833 Filed 8–15–97; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 62, No. 159
Monday, August 18, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Foreign Market Development Cooperator Program—FY 1998 Program Announcement Extension

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice extends the application deadline for participation in the Foreign Market Development Cooperator (Cooperator) Program for Fiscal Year 1998 and permits facsimile applications.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, STOP 1042, 1400 Independence Avenue, S.W., Washington, D.C. 20250–1042.

A **Federal Register** notice published July 14, 1997 (62 FR 37539) announced the Cooperator Program for Fiscal Year 1998 and set forth an application deadline of August 13, 1997. The deadline for submission of applications for the 1998 Cooperator Program is hereby extended to August 25, 1997 due to the disruption of parcel delivery services. Applications may be submitted by facsimile, hand delivered, or sent by postal delivery and must now be received by 5 p.m. Eastern Daylight Savings Time, August 25, 1997 at the following:

Facsimile: Director, Marketing Operations Staff on (202) 720–9361;

Hand Delivery (including Federal Express, DHL, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Avenue, S.W., Washington, D.C. 20250–1042;

U.S. Postal Delivery: U.S. Department of Agriculture, Marketing Operations Staff, STOP 1042, 1400 Independence Ave., S.W., Washington, D.C. 20250–1042.

For more detailed information regarding the application process or other terms and requirements of the Cooperator Program, contact the Marketing Operations Staff, FAS, USDA at the address above or telephone (202) 720–4327. Comments regarding the conduct of the Cooperator Program may be directed to either address as applicable.

All applications submitted by hand delivery or U.S. Postal Delivery should be submitted in triplicate (an original and two copies). Applicants submitting facsimile applications are requested to promptly submit an original and two copies by hand delivery or U.S. Postal Delivery.

Signed at Washington, DC, on August 12, 1997.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 97–21798 Filed 8–15–97; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plum Creek Access Requests Within the Green River Drainage, Mt. Baker-Snoqualmie National Forest, King County, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) on Plum Creek Timber Company's (Plum Creek) application to acquire easements which allow the construction and maintenance of roads across portions of the Mt. Baker-Snoqualmie National Forest in King County in the State of Washington. The easements will access to Plum Creek parcels that are intermingled with National Forest System lands and that are not currently served by roads. The EIS will address Plum Creek proposals to build roads to eight separate parcels of company lands.

Requirements of the access authorized in the Record of Decision will be consistent with the Mt. Baker-Snoqualmie National Forest Land and Resource Management Plan (LRPM) (as amended in April 1994), which provides guidance for all land management activities on the Mt. Baker-Snoqualmie National Forest

The Forest Service invites written comments and suggestions on the issues for the proposed project.

DATES: Comments concerning the scope of this analysis should be received in writing by September 19, 1997.

ADDRESSES: Send written comments to Dennis Bschor, Forest Supervisor, 21905 64th Avenue West, Mountlake Terrace, Washington 98043, Attention: Plum Creek Access Requests.

FOR FURTHER INFORMATION CONTACT: Lloyd Johnson, Realty Specialist, North Bend Ranger District, 42404 Southeast North Bend Way, North Bend, Washington 98045. Phone: 425–888–1421.

SUPPLEMENTARY INFORMATION: Plum Creek owns lands which are intermingled with National Forest System lands in the Green River Watershed, North Bend District, Mt. Baker-Snoqualmie National Forest. Some of the parcels that Plum Creek owns and wishes to manage for timber are not served by existing roads. Access to these parcels via roads necessitates crossing National Forest System lands. Because Plum Creek's purpose for requesting access is to harvest timber and to conduct forest management activities, consistent with a 50-year Habitat Conservation Plan for Plum Creek lands, the company has specifically requested permanent easements from the Forest Service to construct and maintain permanent roads for access to Plum Creek lands. Under Section 1323 of the Alaska National Interest Lands Conservation Act of 1980 (Pub. L. 96–487, 94 Stat. 2371; 16 U.S.C. 3210), the United States shall provide access to nonfederal lands within national forest boundaries, as deemed adequate to secure to the owner the reasonable use and enjoyment of those lands, subject to the rules and regulations applicable to ingress and egress to or from the National Forest System.

Depending on specific road location alternatives, the road projects are likely to range from about 0.25 to 2.5 miles in length. For this analysis, it is assumed that a 66-foot-wide right-of-way (ROW) would be established for each road corridor and that vegetation clearing would only occur within this ROW.

Vegetation removal would occur on approximately 24 to 32 feet of the ROW; the road surface proper would be approximately 14 feet wide. Because road grade and terrain would vary, the amount of the 66-foot ROW affected and the exact amount utilized per mile is unknown. Plum Creek would construct and maintain the roads according to Forest Service road construction standards and guidelines.

The Mt. Baker-Snoqualmie LRMP (as amended) provides guidance for access across National Forest System lands through its goals, objectives, standards, guidelines, and management direction.

An environmental document will be produced which will display alternatives considered, including no action and the proposed action, and an estimation of the effects of the alternatives. The EIS will analyze the direct, indirect, and cumulative effects of the alternatives. Past, present, and projected activities on both private and National Forest System lands will be considered. The EIS will disclose the effects of site-specific mitigation.

Comments from the public will be used to:

- Identify potential issues.
- Identify major issues to be analyzed in depth.
- Eliminate minor issues or those that have been covered by a previous environmental analysis, such as the Mt. Baker-Snoqualmie LRMP.
- Identify alternatives to the proposed action.
- Identify potential environmental effects of the proposed action and alternatives.
- Determine potential cooperating agencies and task assignments.

Issues identified as the result of internal scoping include:

- How will wildlife and wildlife habitat be affected by the project;
- Will unique plant communities be affected;
- Will fish habitat be affected downstream, especially in Sawmill Creek which has a distinct population of trout as well as coho and steelhead that are being planted by the State and the Muckleshoot Tribe;
- Will water quality be affected by sedimentation from mass wasting and surface erosion;
- Will large woody material be affected;
- Will water temperature be affected;
- The conversion of areas without roads to roaded areas; and
- Will cultural properties or heritage sites be impacted.

An initial scoping letter was mailed on August 8, 1997. One public scoping meeting will be held on September 9, 1997, at the North Bend Ranger District from 7:00 p.m. to 9:00 p.m. The responses and information provided during scoping will be compiled and will be incorporated into the analysis.

The draft EIS is expected to be filed in December 1997. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes that it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the EIS. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed in June 1998. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. The lead agency is the Forest Service. Dennis E. Bschor, Supervisor of the Mt. Baker-Snoqualmie National Forest, is the responsible official. As the responsible official, he will document the decision and the reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (CFR Part 215).

Dated: August 7, 1997.

Terry L. Degrow,

Acting Forest Supervisor.

[FR Doc. 97–21786 Filed 8–15–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe From Turkey; Final Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On April 8, 1997, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative reviews of the countervailing duty orders on certain welded carbon steel pipes and tubes and welded carbon steel line pipe from Turkey for the period January 1, 1995 through December 31, 1995. The Department has now completed these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Reviews* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Reviews* section of this notice.

EFFECTIVE DATE: August 18, 1997.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Kelly Parkhill, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3692 or (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 C.F.R. § 355.22(a), the review on pipe and tube covers Erciyas Boru Sanayii ve Ticaret A.S. (Erbosan), a pipe and tube producer and exporter, who specifically requested the review. The review on line pipe covers Mannesmann-Sumerbank Boru Endustrisi T.A.S. (Mannesmann), a line pipe producer and exporter, who specifically requested the review. These reviews also cover 28 programs.

Since the publication of the preliminary results on April 8, 1997 (62 FR 16782), the following events have occurred. We invited interested parties to comment on the preliminary results. On May 8, 1997, a case brief was submitted by the Government of Turkey (GRT), Mannesmann, which exported line pipe, and Erbosan, which exported pipe and tube to the United States during the review period (respondents). On May 15, 1997, rebuttal briefs were submitted by Mannesmann and by Wheatland Tube Company (petitioner).

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). Citations to the Department's regulations are in reference to those regulations codified at 19 CFR part 355, as they existed on April 1, 1996. The Department is conducting these administrative reviews in accordance with section 751(a) of the Act.

Scope of the Reviews

Imports covered by these reviews are shipments from Turkey of two classes or kinds of merchandise. The first class or kind is certain welded carbon steel pipe and tube, having an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe and tube or structural tubing, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A–53, A–120, A–135, A–500, or A–501. The second class or kind is certain welded carbon steel line pipe with an outside diameter of 0.375 inch or more, but not over 16 inches, and with a wall thickness of not less than .065 inch. These products are produced to various American Petroleum Institute (API) specifications for line pipe, most notably API–L or API–LX. These products are classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.10 and 7306.30.50. The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

We verified information provided by the GRT, Erbosan and Mannesmann, as provided in section 782(i) of the Act. We followed standard verification procedures, including meeting with government and company officials, and examining relevant accounting and other original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Analysis of Programs

Based upon the responses to our questionnaire, the results of verification, and written comments from the interested parties we determine the following:

I. Programs Conferring Subsidies

A. Program Previously Determined To Confer Subsidies

Pre-Shipment Export Credit

In the preliminary results, we found that this program conferred a countervailable subsidy on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter of pipe and tube	Assessment rate
Erbosan	1.77%

Manufacturer/exporter of line pipe	Assessment rate
Mannesmann	0.73%

B. New Programs Determined to Confer Subsidies

1. Investment Allowance

In the preliminary results, we found that this program conferred a countervailable subsidy on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter of pipe and tube	Assessment rate
Erbosan	0.02%

2. Freight Program

In the preliminary results, we found that this program conferred a countervailable subsidy on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter of pipe and tube	Assessment rate
Erbosan	1.02%

3. Resource Utilization Support Premium

In the preliminary results, we found that this program conferred a countervailable subsidy on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter of pipe and tube	Assessment rate
Erbosan	0.05%

4. Export Incentive Certificate Customs Duty and Other Tax Exemptions

In the preliminary results, we found that this program conferred a countervailable subsidy on the subject merchandise. We did not receive any comments on this program from the interested parties. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter of pipe and tube	Assessment rate
Erbosan	0.06%

Manufacturer/exporter of line pipe	Assessment rate
Mannesmann	0.02%

5. Foreign Exchange Loan Assistance

In the preliminary results, we found that this program conferred a countervailable subsidy on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the preliminary results for this program. Accordingly, the net subsidies for this program have changed and are as follows:

Manufacturer/exporter of pipe and tube	Assessment rate
Erbosan	1.10%

II. Programs Found To Be Not Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

A. Resource Utilization Support Fund
B. State Aid for Exports
C. Advance Refunds of Tax Savings
D. Export Credit Through the Foreign Trade Corporate Companies Rediscount Credit Facility (Eximbank)
E. Past Performance Related Foreign Currency Export Loans (Eximbank)
F. Export Credit Insurance (Eximbank)
G. Subsidized Turkish Lira Credit Facilities
H. Subsidized Credit for Proportion of Fixed Expenditures
I. Fund Based Credit
J. Regional Subsidies
   1. Additional Refunds of VAT (VAT +10%)
   2. Postponement of VAT on Imported Goods
   3. Incentive Premium on domestically Obtained Goods (Rebate of VAT on Domestically-Sourced Machinery and Equipment)
   4. Land Allocation (GIP)
   5. Taxes, Fees (Duties), Charge Exemption (GIP)

Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results for the programs noted above.

III. Programs Found To Be Terminated

In the preliminary results, we found that the following programs either never existed or were terminated and that no residual benefits were being provided:

A. Export Performance Credits
B. Deduction from Taxable Income for Export Revenues
C. Preferential Export Financing Under Decree 84/8861
D. Interest Spread Return Program (GIP)
E. Export Credits Under Communique No. 1
F. Corporate Tax Deferral
G. Payment of Certain Obligations of Firms Undertaking Large Investments
H. Subsidized Credit in Foreign Currency

We did not receive any comments on these programs from the interested parties. Accordingly, the final results remain unchanged from the preliminary results.

Analysis of Comments

Comment 1: Erbosan argues that the Department incorrectly found that the pre-shipment loan program is an untied export loan program. In Erbosan's view, the Department's decision was based on a finding that the loans are not specifically tied to a particular destination at the time the loans are approved. However, Erbosan maintains that the loans can be tied to particular destinations because proof of export must be provided in order to close out the loan. Once an export is used to close a loan it cannot be used to satisfy any other loan commitments.

According to Erbosan, it is the Department's long-standing policy to countervail pre-shipment loans obtained in connection with shipments to the United States if the loan can be tied to specific shipments. For example, in *Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey*, 61 FR 30366 (June 14, 1996) (*Turkish Pasta*), the Department found that these same pre-shipment loans could be linked to particular destinations. Erbosan also alleges that the Department took the same course regarding BANCOMEXT loans in *Preliminary Results of Administrative Review: Certain Textile Mill Products from Mexico*, 60 FR 5166 (January 26, 1995) and *Final Results of Administrative Review: Certain Textile Mill Products from Mexico*, 60 FR 20965 (April 28, 1995) (*Textile Mill Products from Mexico*). In this case, however, Erbosan argues that the Department departed from past practice and modified its test in this review by looking to see whether the destination is known at the time the loan is approved. Erbosan asserts that it makes no sense to link the benefit to the approval date since the benefit does not accrue from this program until the merchandise is shipped and the loan, with interest, is repaid. Erbosan continues that parties must be able to rely on the Department's past practice for purposes of being able to plan for the future. The Department's departure in this case, therefore, is not only unjustified, it is unreasonable.

Mannesmann does not agree with Erbosan's position and supports the Department's determination that the loans under the pre-shipment program are "untied." Mannesmann points out that Erbosan does not take issue with the factual basis of the Department's determination. Namely, that the export destinations actually used to close the loans may be different than the export destinations listed on the loan application. Accordingly, Mannesmann maintains that the destinations listed on the loan application are nothing more than "place-holders" since the actual destinations used to fulfill the export requirement may differ. For this reason, the Department appropriately found the pre-shipment loans "untied." Mannesmann states that Erbosan is correct to say that, when loans are tied to specific destinations, the Department countervails only loans that are tied to U.S. shipments. However, in this case, the Department specifically found that the loans were not tied to specific destinations because they were not tied at the time of application. Although the Department found these loans tied in *Turkish Pasta*, Mannesmann asserts that nowhere in that case does the Department discuss the fact that loans were not tied to destinations at the time of application, presumably because the Department was unaware of that fact.

Mannesmann also argues that the Department has not departed from past practice; the Department's practice was and is to tie U.S. loans to U.S. shipments where possible. In this case, the Department found that it was not possible to make that link because the destination that would ultimately be used to fulfill the export requirement was not known at the time of the loan application. According to Mannesmann, the Department has "modified its test" only to the extent that it addressed a fact pattern that it had not encountered before (or not been aware of before).

Finally, Mannesmann states that Erbosan is incorrect to assert that the benefits of pre-shipment export loans do not accrue until the merchandise is shipped and the loan repaid. These loans are designed to assist companies during the manufacturing stage, prior to shipment—hence the name, "pre-shipment" loans. Mannesmann asserts that during the period that the manufacturer benefits from the loans, the manufacturer does not need to specify the export destination and, thus, the Department's determination that these loans are untied is logical and reasonable and should be sustained in the final results.

The petitioner argues that the Department should reaffirm its position

that pre-shipment export loans are untied. According to the petitioner, the pre-shipment loans purportedly received in connection with exports to the U.S. cannot validly be segregated by export destination. The petitioner claims that Erbosan's own records demonstrate that pre-shipment export loans are granted to cover exports to all countries, and numerous exports to different destinations may be required to equal the export loan commitment. Thus, by Erbosan's own admission, the loans were not received in connection with exports to the United States as opposed to other export destinations. Since Erbosan can use any exports it chooses to close out a pre-shipment export loan, any identification of loans by Erbosan as specifically tied to U.S. sales would be an artificial construct subject to manipulation.

Department's Position: We disagree with Erbosan, and continue to believe that the pre-shipment loan program is an untied export loan program countervailable under section 771(5)(E)(ii). Erbosan asserts that the Department has unfairly modified its "test" for tying benefits to particular shipments by looking to see whether the destination is known at the time the loan is approved, but as Mannesmann correctly points out, the Department's practice is to attribute benefits to specific merchandise or particular destinations when the benefit is tied at the point of bestowal to that merchandise or destination. *See, e.g., Notice of Final Results of Countervailing Duty Administrative Review: Roses and Other Cut Flowers from Colombia,* 52 FR 48847, 48848 (December 28, 1987) (*Roses*). In this case, we examined the export destinations listed on the application in order to determine whether the loans were tied to particular shipments from their inception through their closure. In this case, we examined the export destinations listed on the application in order to determine whether the loans were tied to particular shipments from their inception through their closure. Based on the facts present in this case, we found pre-shipment export loans to be untied because the actual export destinations used to close out the loans were not always the same as the export destinations listed on the loan applications and exports to two or more different destinations were also used to close out a single loan. A loan cannot be said to be tied to a particular shipment when the recipient can pick and choose which export destinations to use to close out each loan.

While Erbosan is correct to note that the Department has found loans tied to specific shipments in *Textile Mill Products from Mexico,* and that we found pre-shipment export loans to be tied to particular shipments in *Turkish Pasta,* in those determinations, the Department did not make a finding that the loans were not tied to destinations at the time of application. Therefore, it is incorrect to point to these cases as evidence for the proposition that benefits need not be tied at the time of approval of the pre-shipment loans and, thus, that the Department is departing from its past practice in *Turkish Pasta* and *Textile Mill Products from Mexico.* Rather, we are consistent with our past practice of tying benefits to particular shipments by ascertaining whether the export destination was specified at the time that the pre-shipment loan was approved. *Roses* at 48848. We are not linking *per se,* as Erbosan alleges, the benefits from these loans to the application date. On the contrary, we are merely utilizing the more extensive information regarding this program in the instant review. We have determined that pre-shipment export loans could not be tied to particular shipments, but were available for exports in general.

Comment 2: The respondents argue that the Department improperly deducted an amount referred to as the "exchange difference" from the verified sales values used as the denominator to calculate the benefit rates. According to the respondents, the amount improperly deducted represents a portion of the proceeds recorded in a Turkish company's books from a sale that is invoiced in a foreign currency. Because of hyperinflation in Turkey, the respondents can calculate the precise Turkish Lira (TL) value of foreign currency sales only after payment is received and when the foreign currency is converted to TL. The respondents first record in their books an estimated TL value for the sale using the exchange rate in effect on the invoice date. When the companies receive final payment, the foreign currency value when converted to TL is higher than the amount that was recorded in the books at the time of invoicing. This difference is recorded in a separate exchange rate difference account—the kur farki account. According to the respondents, consistent with Turkish GAAP, these two accounts are added together to equal the total sales value reflected on the companies' audited financial statements.

The respondents continue that the value in the kur farki account reflects actual revenue earned from export sales. The values are not a result of an exchange rate scheme or a hedging mechanism to generate exchange rate gains. The respondents point out that the questionnaire specifically asked for the "total value" of total sales, and defined the term "value" as the "actual value booked and recorded in your accounting records." Accordingly, the respondents reported the total sales value as recorded in their accounting records, *i.e.,* the sum of the values in the sales revenue accounts plus the sum of the values in the kur farki account.

The petitioner argues that the Department correctly excluded the portion of the respondents' sales values that resulted from changes in the U.S. dollar/Turkish lira exchange rates. The petitioner states that the sales price is recorded using the exchange rate on the date of invoice and that subsequent changes in the exchange rate are not related to the sales price. If the sales price were dependent on the date of payment by the U.S. customer, the price would vary based on when payment was actually received. It is true that the effect of Turkey's hyperinflation is to create exchange rate gains on all sales where payment occurs after the invoice date. However, according to the petitioner, the gains are tied completely to the rate of change in the exchange rate and, as such, the gains are part of non-operating expenses and income, and are not properly recognized as sales revenue. As a result, the petitioner states that it is appropriate for the Department to correct the respondents' sales information for inappropriate changes in the sales value that were based on exchange rate gains.

Department's Position: We disagree with the respondents. Despite Turkey's hyperinflation, Turkish companies do not index any of the figures, other than fixed assets, in their financial statements to account for inflation. (*See* Mannesmann verification report at page 2). See also *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil,* 58 FR 37295, 37298 (July 9, 1993). Accordingly, we did not index any of the program benefits received nor the company-specific denominators (sales) in our calculations of the subsidy benefits for Mannesmann and Erbosan in the *Preliminary Results.* However, if we accepted the respondents' position and included exchange differences in their sales figures, it would be tantamount to indexing only half of the equation—the denominator for export subsidy programs. For example, a domestic sale will generate the same amount of TL between the date of sale and the date of payment. On the other hand, an export sale will generate more TL on the date of payment due to the effects of hyperinflation on the

exchange rate between that date and the date of sale. The result of including kur farki in the sales figures would be equivalent to indexing export sales for inflation and, thus, would inflate the denominator while the program benefits (the numerator) would remain unindexed. Such a result would unfairly distort the Department's calculation. We also disagree with the respondents' argument that, alternatively, the Department should adjust the calculations to determine the subsidy benefit to reflect the exchange rate in effect on the date of export and not the date of payment to ensure that the benefit is not overstated, as it is similarly designed to take advantage of the impact of hyperinflation on the TL/U.S. dollar exchange rate. Because, as described, both of the methods articulated by the respondents would inaccurately decrease the subsidy rate for export programs, we are maintaining our position in the *Preliminary Results* of not including exchange rate differences in the respondents' sales figures.

Comment 3: The respondents argue for the first time in their case brief that the Investment Allowance program should be deemed non-countervailable under section 771(5B)(C) of the Act, because the benefits are permissible "green light" subsidies provided only to companies located in disadvantaged regions. According to the respondents, the Investment Allowance program, to the extent that it provided greater benefits to disadvantaged regions than to developed regions, was specifically designed to promote development in disadvantaged regions. As a result, the Department should consider it a permissible "green light" benefit and find it not countervailable in the final results of this review.

Department's Position: A green light claim submitted for the first time in a case brief cannot be considered by the Department at this late stage in the proceeding. *See* 19 CFR 355.31. The respondents had ample opportunity to submit a green light claim and to provide supporting documentation regarding the Investment Allowance program within the time requirements of 19 CFR 355.31 for submitting factual information. This would have provided the Department with time to request and verify data, and provide the petitioner with an adequate opportunity to comment on the green light claim. Indeed, the GRT claimed green light status for the Resource Utilization Support Premium program (RUSP) in its November 25, 1996, supplemental questionnaire response. Subsequently, the Department issued three additional supplemental questionnaires regarding this green light claim in order to collect the information necessary for our analysis. We then examined this information with respect to RUSP during our verification in February 1997. However, the Department does not have the necessary information regarding the Investment Allowance program, such as a breakdown of Investment Allowance benefits by industry and region, to conduct an analysis of the green light claim for this program. As a result, we have not considered the claim of green light status for the Investment Allowance program in this proceeding.

Comment 4: The respondents disagree with the Department's decision in the Preliminary Results that the Resource Utilization Support Premium program (RUSP) does not meet the green light criteria set forth in Section 771(5B)(C) of the Act. They claim that the RUSP was specifically designed to promote the development of disadvantaged regions. Section 771(5B)(C) of the Act provides that, if certain conditions are met, the Department shall treat a subsidy to disadvantaged regions as non-countervailable if the subsidy is provided "pursuant to a general framework of regional development, to a person located in a disadvantaged region and if it is not specific within eligible regions * * *" In addition, the statute enumerates four conditions for making such a determination: (1) The disadvantaged region must be a clearly designated contiguous geographical area with a defined economic and administrative identity; (2) the designation of the region must be based on neutral and objective criteria indicating that the region is disadvantaged because of more than temporary circumstances; (3) the criteria must include a measure of economic development; and (4) the subsidy program to disadvantaged regions must include ceilings on the amount of benefits provided.

The respondents argue that the GRT's regional development plan met the first, third and fourth criteria, and that the Department wrongly rejected the GRT's "green light" claim based on the third criterion. Regarding the second criterion, the respondents argue that the GRT's regional development program was based on neutral and objective criteria as defined by the statute. Turkey's regional designations were based on various neutral and objective economic data that was analyzed using a statistical model of development known as Principal Component Analysis (PCA). The respondents claim that the Department seems to have accepted that the designations based on the PCA are neutral and objective, but that the few changes made by the Council of Ministers tainted the GRT's overall regional development plan. The respondents argue that the Council uses its judgment to modify a regional designation made by the PCA only in those cases that are necessary to eliminate certain regional disparities. The respondents conclude that the fact that the Council of Ministers may have some input into the regional designation process does not negate the neutral and objective criteria that are used to establish regional designations, but, according to the respondents, only reinforces their conclusion that the designations modified by the Council of Ministers are still based on neutral and objective criteria.

The petitioner replies that the Department correctly found that the respondents did not establish that the regional designations made by the GRT were based on neutral and objective criteria. The petitioner points out that the supporting documentation for the PCA during the period reviewed for green light status, 1989–1991, was no longer available. Thus, the validity of the green light claim was not subject to verification. Also, the petitioner states that the designation of provinces into development regions did not track closely the PCA rankings. Rather, the changes in rankings resulted from decisions made by the Council, which were based on factors not enumerated in the PCA. As a result, because the neutral and objective criterion has not been met, a green light finding is not appropriate.

Department's Position: We disagree with the respondents. The statute requires the Department to make a finding that all four specifically enumerated conditions of section 771(5B)(C)(i) have been met before a green light finding is made. Moreover, the SAA states that the green light provision governing assistance for disadvantaged regions must be strictly construed, and that the Department must determine that all of these statutory criteria have been satisfied. (See Statement of Administrative Action accompanying the URAA, reprinted in H.R. Doc. No. 316, 103d Cong., 2d Sess. 934 (1994)) (SAA). In the *Preliminary Results*, the Department did not state or imply that the GRT's regional development plan met all green light criteria except for the criterion requiring regions to be designated based on "neutral and objective" criteria. Rather, the Department indicated that because regions were not designated based solely on neutral and objective criteria, the Department did not need to reach

the three other listed criteria to determine whether GRT's regional development plan was a green light subsidy. The Department stated that "[s]ince the SAA states that all of the green light criteria must be met, we do not intend to analyze the GRT's compliance with the remaining criteria [beyond that concerning "neutral and objective"]." See *Preliminary Results* at 16787.

In any case, we cannot conclude that the GRT's regional development plan, "strictly construed," is based on neutral and objective criteria. First, the supporting documentation for the PCA covering the 1989–1991 period, the relevant period of our inquiry, was not available for verification. Second, as we stated in the *Preliminary Results*, the information on the record indicates that the designations of disadvantaged regions do not correspond to the purportedly neutral and objective criteria of the PCA. The provinces were rank ordered from first, most developed, to 67th, least developed. The record clearly shows that the designation of provinces into development regions did not track closely to the PCA rankings. For example, some provinces which received PCA rankings of 52 and 58 (out of a possible 67) were listed as normal development regions, while other provinces with higher PCA rankings were designated priority development regions. The GRT accounted for these discrepancies by explaining that the PCA is not the only basis for determining a province's regional designation. The PCA is only one step (albeit a primary one) toward determining the regional designations. The final determination is made by the Council of Ministers, taking into account factors that cannot be accounted for by the PCA, including the promotion of other development policies and goals, the impacts upon, and relationships with, other regional and non-regional development policies and programs, and the Ministers experience in development issues and programs. (For a further discussion, *see* the *Preliminary Results* at page 16787 and the GRT verification report at page 11).

The statute requires the neutral and objective criteria to be clearly stated in a relevant statute, regulation, or other official document so as to be capable of verification. As we learned at verification, the final regional development plan designations purportedly arrived at using the econometric model of the PCA, were subject to change by the Council of Ministers. However, the GRT provided no evidence regarding (1) the specific criteria used by the Ministers; (2) whether the criteria are neutral and objective; and (3) whether these criteria were clearly stated in the statute, regulation, or another official document. In addition, the documentation regarding additional factors that the Council considered when making these decisions was not available for verification (GRT verification report at page 12). Therefore, we determine that the RUSP assistance is not entitled to green light treatment.

Comment 5: The respondents argue that because the vast majority of provincial designations were not changed from the designations suggested by the PCA, the Department must find that RUSP subsidies are non-countervailable. Erbosan is located in the Kayseri province which, the respondents argue, clearly falls within the "normal" region grouping in the PCA. The respondents also argue that the Council of Ministers played no role in Kayseri's designation, and that Kayseri meets all the tests established in the statute for classification as "disadvantaged," including the economic tests of per capita income and unemployment outlined in Section 771(5B)(C)(ii) of the Act.

According to the respondents, because Kayseri's regional designation was based on the "objective and neutral" criteria of the PCA, any designations made to provinces outside of the region in question is irrelevant to the Department's inquiry. The Department must therefore look only at the region where the recipient of the benefit is located. The respondents state that if the Department continues to follow its practice of analyzing every single regional designation made under a country's regional development plan, the Department would never find that the statutory requirements are met.

The petitioner replies that the statute does not contemplate looking beyond an entire designation process in order to make an independent determination of whether an individual region could have been properly designated. According to the petitioner, the disqualification of the overall designation process for green light purposes renders every individual provincial designation unqualified for green light treatment. As a result, the Department should maintain its position of denying green light treatment to the RUSP program.

Department's Position: We disagree with the respondents. In order to conclude that a subsidy to a disadvantaged region is entitled to green light status and thus not countervailable, the subsidy must be provided pursuant to a general framework of regional development. Section 771(5B)(C)(iii) defines the term "general framework of regional development" to mean that regional subsidy programs are part of an internally consistent and generally applicable regional development policy, and that regional development subsidies are not granted in isolated geographical points having no, or virtually no, influence on the development of a region. Moreover, the statute directs the Department to apply the four main criteria, listed in Comment 4 above, to "each region" in the country when conducting a green light examination. *See* section 771(5B)(C)(i). Additionally, the SAA states that "to be non-countervailable, the government assistance must be directed both by law and in practice toward the development of the region as a whole." SAA at 934. Accordingly, the Department evaluated the GRT's green light claim for the RUSP program in light of the statute, as is appropriate when making a determination on the countervailability of a nationally available subsidy program. As a result, as fully explained in the *Preliminary Results*, our green light analysis was conducted in compliance with the statute, which precludes us conducting a separate green light analysis solely with respect to the Kayseri province.

Comment 6: The respondents argue that the Department failed to request the f.o.b. sales information, except for the sales to the United States, and, in order to compensate for this shortcoming, the Department incorrectly increased the subsidy for each program by multiplying the benefit by the ratio of the company's U.S. c&f and U.S. f.o.b. sales of the subject merchandise. The respondents argue that this methodology is inaccurate for two reasons: (1) The freight component of a particular sale will vary, sometimes significantly, depending on the destination, and (2) it overstates the benefit when the denominator is total sales, because domestic sales are made on an f.o.b. basis. Thus, they argue that using the ratio of U.S. c&f and U.S. f.o.b. sales to determine the f.o.b. value for total export sales inaccurately overstates the actual benefit.

The respondents also argue that they should not be penalized for the Department's failure to request information. They argue that, because they complied with the Department's requests for information, the Department should not use adverse information. The Department may use adverse information only when there has been noncompliance with a request

for information. According to the respondents, the Court of International Trade has stated that when the Department neglects to request information that it later finds necessary to its determination, the appropriate remedy is to request supplemental information from the parties. However, the respondents argue that because of time constraints, the Department should simply use the total sales and total export sales provided in the questionnaire responses that were verified by the Department, without making any adjustments to compensate for freight.

The petitioner counters that the Department should not change its methodology for approximating f.o.b. sales values. The petitioner contends that since the respondents state that they were able to provide the f.o.b. values they should have proffered them earlier. The petitioner also counters that because the respondents did not provide the f.o.b. values, which surely their experienced trade counsel knew were necessary to the Department calculations, the Department should not reward the respondents for withholding information by changing its calculation methodology.

Department's Position: We disagree with the respondents. It has been the Department's practice to request companies to provide sales information as actually recorded in their accounting records along with an explanation as to whether the sales were recorded on c.i.f., f.o.b. or some other basis. *See* Questionnaire dated April 15, 1996. In cases where the company's sales are not recorded on an f.o.b. basis, the Department adjusts the sales value to conform with the Department's longstanding practice to calculate an f.o.b.-based *ad valorem* subsidy rate, which is consistent with the assessment of the countervailing duties. (The Department instructs the Customs Service to collect cash deposits and assess countervailing duties on an f.o.b. invoice price basis.) *See*, Denominator Section of the General Issues Appendix in *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37236 (July 9, 1993) (*General Issues Appendix*).

We also disagree with the respondents that the Department is making an adverse inference by adjusting the c&f values to compensate for freight. Erbosan's questionnaire response states that export invoices are recorded on actual invoice value converted to TL whether it is an f.o.b. or c&f sale, and that domestic sales are recorded on gross value. (*See* questionnaire response dated June 13, 1996 at page 4). Mannesmann's questionnaire response did not state the basis for the sales information, except for the export sales of the subject merchandise to the United States, which were provided on a c&f and f.o.b. basis. (*See* questionnaire response dated June 13, 1996 at appendix 10). Because one respondent recorded and reported its sales on a combined f.o.b. and c&f basis and the other respondent recorded on a c&f basis, it is necessary to adjust the calculated subsidy rate, according to the methodology outlined in the *General Issues Appendix*, to ensure that the Customs Service collects the correct amount of subsidy based on the f.o.b. invoice price of the imported merchandise. The adjustment made by the Department is not adverse. It merely converts the respondents' information to a basis that allows the Department to correctly calculate an f.o.b. based *ad valorem* subsidy rate. Therefore, based on the information in the record, the Department has calculated a reasonable estimate of the f.o.b. value.

Comment 7: The respondents argue that the Department erroneously determined that exporters did not know the amount of benefits under the Freight Program on the date of export, and therefore incorrectly countervailed the benefits on the date the cash was received or, in the case of bonds, on the date of maturity. The respondents state that it is the Department's long-standing practice to measure countervailable benefits on the date of export in those cases in which the export benefit is earned on a shipment-by-shipment basis, and the exporter knows the amount of the benefit at the time of export. Therefore, they argue that because Turkish companies knew at the time of export that they were entitled to receive a rebate in the amount of $50 per ton for merchandise exported on Turkish vessels, and $30 per ton for merchandise exported on non-Turkish vessels on a shipment-by-shipment basis upon exportation, they knew the benefit at the time of export, and such benefits should be measured on an "earned" basis.

The respondents further argue that, because the shipments are invoiced in U.S. dollars and the benefit is expressed in U.S. dollars on the date of shipment, it is irrelevant that companies did not know the precise amount of TL that they would eventually receive. If the benefit had been denominated in TL, the value of the ultimate benefit received, as measured in constant TL, would not have been known at the time of export due to the high inflation in Turkey at the time. However, by contrast, U.S. dollars hold their value over time because the rates of TL inflation and TL devaluation against the dollar are about the same. Therefore, they argue that the long-term value of a benefit denominated in dollars was certain at the time of export.

The respondents also argue that policy considerations dictate that the benefits under the Freight Program should be countervailable on the date the benefit was earned. They state that the countervailing duty law is intended to offset export subsidies, and that the benefit should be countervailed when they will have the greatest effect on a country's exports to the United States, which they claim is why the Department established its "earned versus receipt" test. Therefore, the respondents argue that since the Freight Program terminated at the end of 1994, and there is no longer any incentive to motivate companies to export under this program, as a matter of policy, the Department should countervail benefits received during the period that the subsidies were actually used to encourage shipments to the United States.

The petitioner counters that, even if the respondents' argument that U.S. dollars hold their value better than TL given the hyperinflation in Turkey is valid, it does not lead to the conclusion that "the long-term value of a benefit denominated in dollars was certain at the time of export." Further, although the value may be "far more certain" when denominated in dollars, it is not true that the respondents knew the precise value of the benefit at the time of export.

The petitioner also counters that while the freight payments may be denominated in dollars, the benefit was paid in TL, and given the high inflation rate in Turkey there was no way for the exporter to predict at the time of export what the TL payment amount would be. Finally, the petitioner counters that the respondents argument that the benefit conferred should not be countervailed because the program has been terminated would inappropriately permit countervailable benefits to be ignored and should be rejected.

Department's Position: We agree with the respondents that it has been the Department's practice to countervail an export subsidy on the date of export on an "earned basis" rather than the date it is received where it is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis, and the exact amount of the countervailable export subsidy is known at the time of export. *See e.g., Certain Iron-Metal Castings from India; Final Results of Countervailing Duty*

Administrative Review, 60 FR 44843 (August 29, 1995). For example, in these *Final Results*, we have found the benefits under the Export Performance Credits Program were bestowed on the date of export because the exporters received the TL equivalent of a fixed percentage of the value of their U.S. dollar exports. Although at the time of receipt, the exporters received more TL than at the time of export, the value of the TL amount remained the same in U.S. dollar terms.

In the *Preliminary Results*, we stated that although the benefit under the Freight Program is calculated based on tonnage and not on the percentage of exports, we noted that a benefit determined by the amount of the tonnage may also be known and therefore "earned" at the time of export. However, even though the benefit was based on tonnage per shipment, it does not automatically follow that respondents knew the amount of the export subsidy at the time of shipment. In this case the facts indicate that respondents could not have known at the time of shipment the actual amount of TL that they would ultimately receive because the GRT arbitrarily chose an exchange rate based on a later date in time. Here, when the respondents ultimately received payment under this program, whether or not they would receive the U.S. dollar equivalent of TL was dependent upon the exchange rate chosen by the GRT, and was not determined by the amount of tonnage per shipment. (*See* GRT's verification report at page 17). Therefore, we cannot conclude that countervailable benefits bestowed on respondents under the Freight Program were "earned" on the date of export.

We also disagree with respondents' argument that the long-term value of a benefit denominated in dollars was certain at the time of export because the U.S. dollar holds its value over time since the rate of TL inflation and the TL devaluation against the dollar are about the same. Again, because the GRT arbitrarily chose the exchange rate to convert the benefit to TL, there was no way of knowing at the time of export, whether, at the time respondents received the TL equivalent, it would equal $50/$30 per ton. Therefore, as stated in the *Preliminary Results*, we have determined that the benefits under the Freight Program are bestowed when the cash is received, with respect to the cash payments, and not at the time of export. With regard to the portion of the rebate provided in bonds, we have determined that the benefits from the bonds are bestowed on the date of maturity. This is due to the fact that, even though there were no restrictions on the sale or transfer of the bonds, because of the rate of inflation, there was no secondary market to allow exporters to convert their bonds to cash prior to maturity. *See, e.g., Turkish Pasta* at 30368.

Finally, we disagree with the respondents' argument that the Department should countervail the benefit from this program on an earned basis because it makes no sense for the Department to countervail a benefit once a program has been terminated and therefore are no more subsidies to provide an incentive for companies to export. It is the Department's long-standing practice to countervail residual benefits from a terminated program. *See, e.g., Live Swine from Canada; Notice of Preliminary Results of Countervailing Duty Administrative Reviews; Initiation and Preliminary Results of Changed Circumstances Review and Intent to Revoke Order in Part*, 61 FR 26879, 26889 (May 29, 1996) and *Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews*, 61 FR 52408 (October 7, 1996). (*Live Swine from Canada*).

Comment 8: Erbosan argues that the Department's use of the average monthly exchange rates published by the Central Bank, rather than the actual exchange rates recorded in Erbosan's documentation of foreign exchange loans to calculate the benefit distorts the subsidy because the TL was devaluing rapidly against the U.S. dollar. Erbosan argues that the Department should use the actual daily exchange rate recorded in its loan documents reviewed by the Department at verification because these rates were used to convert the TL amount into U.S. dollars on the date the interest was repaid on the company's foreign currency loans and more accurately reflects the effect of hyperinflation on TL.

The petitioner counters that the loan fees were established when the loan was granted and not when the interest on the loan was paid. Therefore, the benefit from the exemption of the fees should be calculated from the date the fees would have otherwise applied, i.e., the date the loan was granted. The petitioner further counters that the Department's use of the monthly exchange rates understates rather than overstates the benefit provided.

Department's Position: We agree with the respondents that the actual exchange rates on the foreign exchange loan documentation are the appropriate rates to use in converting the benefit to U.S. dollars. The actual exchange rates represent the conversion rates that would have been applicable to the exempt fees had they been paid. Therefore, for these final results we have recalculated the benefit from the exemption of the foreign currency loan fees using the actual exchange rates on Erbosan's loan documentation in exhibit E–13. On this basis, we determine the countervailable subsidy to be 1.10 percent *ad valorem* for Erbosan for pipe and tube.

Comment 9: The respondents argue that in order for the Department and the GRT to avoid spending valuable resources reviewing terminated or non-existent programs in future countervailing duty investigations or reviews, the Department should announce in its final results that the following programs have either been terminated or do not exist: (1) State Aid for Exports, (2) Resource Utilization Support Fund (RUSF), (3) Advance Refunds of Tax Savings, (4) Support and Price Stability Fund, and (5) Land Allocation (General Incentives Program).

The respondents state that the State Aid for Exports program, which was established in 1995 to provide certain benefits to producers of certain agriculture products, was terminated on December 31, 1995, as noted in the Department's verification report. Therefore, they argue that since this program was limited to the agriculture sector, and no other sector could receive any residual benefits from this terminated program, the Department should find that this program has been terminated for companies not in the agricultural sector.

The respondents also state that the RUSF is a fund that was established by the GRT to pay for certain government-sponsored programs and not a program in itself. However, they argue that because of problems arising from translation of Turkish to English there has been a great deal of confusion in this and previous reviews concerning the RUSF. The respondents further state that, as noted in the government's verification report at page 20, the RUSF program found countervailable in *Turkish Pasta* at 30369 was the same as the Incentive Premium on Domestically Obtained Goods Program. They argue that because the GRT has demonstrated that the RUSF program terminated effective January 1, 1987, the Department should list the "RUSF program" as terminated.

The respondents further argue that the Department should state in the final results that the Advance Refund of Tax Savings program does not exist because there has never been such a program. They state that the reference to a program known as the Advance Refund

of Tax Savings in *Turkish Pasta* is apparently a misinterpretation or mistranslation of certain provisions contained in Turkey's budget laws. They also state that Article 44 of the 1987 Budget Law is the legal authority that permits the GRT to obtain reimbursement from individuals or companies that have received an overpayment of public funds, for example, tax refunds.

The respondents argue that because the Support and Price Stability Fund is a government fund used to finance programs such as freight rebate and export credit programs that may provide benefits to companies and is not a separate program in and of itself, the Department should announce in the final results that the program does not exist. They argue that such a statement will clarify this issue and eliminate any confusion on this subject in future investigations or reviews involving Turkish cases.

Finally, the respondents argue that the Land Allocation program was never implemented, therefore, as they informed Department verifiers, no company in Turkey has been or could ever be eligible to receive any benefits under this program. Therefore, they argue that the Department should find this program to be terminated in its final results.

The petitioner counters that any findings that a program has been terminated or does not exist is limited to the review at hand, because in future reviews the Department should investigate whether a terminated program has been reinstated or a program found not to exist has been created. Further, the petitioner counters that merely because a finding is made in this review does not exempt the programs involved from inquiry in the future.

Department's Position: The Department's practice is to continue to countervail programs previously found countervailable, and to examine programs for which we have not made a final determination regarding whether the program is non-countervailable or whether terminated programs have residual benefits. *See e.g., Live Swine from Canada* at 52420 citing to *Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Reviews*, 61 FR 28841 (June 6, 1996).

Regarding the State Aid for Exports program, at verification we examined a Communique that listed eligible products, and we did not find any steel products listed. Therefore, none of the steel companies under review could have received any benefits from this program. However, it is uncertain whether the eligible products are subject to change. Therefore, we are unable to conclude that steel products will never be covered under this program.

In *Turkish Pasta* at 30369, the Department found a countervailable benefit for RUSF and for the Incentive Premium on Domestically Obtained Goods programs. Therefore, although at the verification of these reviews, the government official said that based on the description of the RUSF program in *Turkish Pasta*, the so-called "RUSF program" is really a misnomer for the Incentive Premium on Domestically Obtained Goods, we were unable to substantiate that claim. However, in the instant proceeding, we found that none of the companies subject to review received benefits under either RUSF or Incentive Premium on Domestically Obtained Goods programs during the period.

Regarding the Advance Refunds of Tax Savings, as noted in the GRT's verification report at page 20, the government official said that Article 44 of the 1987 Budget Law pertains to general reimbursement to the GRT of public money. However, the Department's interpreter examined Article 44, and said that the Article did not appear to have any connection to tax savings, but was somewhat vague. (*See* GRT verification report at page 20). In addition, the GRT officials were unable to fully explain why they thought the Department was incorrect in finding this to be a program in *Turkish Pasta*. Further, we verified that none of the companies under review applied for, or used the Advance Refunds of Tax Savings during the period of review.

The Department did not include the Support and Price Stability Fund as a program in the *Preliminary Results*. We verified that this is a fund that is used to finance programs, and not a program in itself (GRT verification report at page 19). Because we have not included it in these final results, there is no need to list it as a terminated or non-existent program.

We agree with the respondents that, at verification, the officials said that the Land Allocation program was never implemented. However, we listed this program as not used because it was not terminated, and it is uncertain whether the program might be implemented and used in the future.

Final Results of Review

In accordance with 19 C.F.R. § 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to these administrative reviews. For the period January 1, 1995 through December 31, 1995, we determine the net subsidy to be as follows:

Manufacturer/exporter of pipe and tube	Net subsidy rate
Erbosan	4.02%

Manufacturer/exporter of line pipe and tube	Net subsidy rate
Mannesmann	0.75%

We will instruct the U.S. Customs Service ("Customs") to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed below of the f.o.b. invoice price on all shipments of each class or kind of merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

Manufacturer/exporter of pipe and tube	Cash deposit rate
Erbosan	3.97%

Manufacturer/exporter of line pipe	Cash deposit rate
Mannesmann	0.75%

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in § 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR § 355.22(a). Pursuant to 19 CFR § 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT

1993) (interpreting 19 CFR § 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR § 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding, conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. *See, Certain Welded Carbon Steel Pipe and Tube Products from Turkey; Final Results of Countervailing Duty Administrative Review, 53 FR 9791.* These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1995 through December 31, 1995, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: August 6, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–21828 Filed 8–15–97; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Consolidation and Amendment of Export Visa Requirements to Include the Electronic Visa Information System for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Philippines

August 12, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs consolidating and amending visa requirements.

EFFECTIVE DATE: September 1, 1997.

FOR FURTHER INFORMATION CONTACT: Lori Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In exchange of notes dated December 18, 1996, July 9, 1997, and July 23, 1997, the Governments of the United States and the Philippines agreed to amend the existing visa arrangement for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Philippines and exported on and after September 1, 1997. The amended arrangement consolidates existing provisions and new provisions for the Electronic Visa Information System (ELVIS). In addition to the ELVIS requirements, shipments will continue to be accompanied by an original visa stamped on the front of the original commercial invoice issued by the Government of the Philippines.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the existing visa requirements for textile products, produced or manufactured in the Philippines and exported on and after September 1, 1997.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66263, published on December 17, 1996). Also see 52 FR 11308, published on April 8, 1987.

Interested persons are advised to take all necessary steps to ensure that textile products entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 12, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 3, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Philippines for which the Government of the Philippines has not issued an appropriate export visa or exempt certificate.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to a the Export Visa Arrangement, effected by exchange of notes dated December 18, 1996, July 9, 1997, and July 23, 1997, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 1, 1997, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 300–369, 400–469, 600–670 and 831–859, including part categories and merged categories (but not Categories 355, 356, 655, 656, 455, 371 and 671), and which are not eligible for exemptions noted in the Exempt Certification Requirements below (also provided for in Annex A attached), produced or manufactured in the Philippines and exported on and after September 1, 1997 for which the Government of the Philippines has not issued an appropriate export visa and Electronic Visa Information System (ELVIS) transmission fully described below. Shipments covering merchandise in Categories 800–810 and 863–899 do not require a visa. However, should additional categories, merged categories or part categories be added to or changed in the Bilateral Agreement or become subject to import quotas, the entire category or categories shall be automatically included in the coverage of the Visa Arrangement. Merchandise exported on or after the date the category is added to or changed in the Agreement, or becomes subject to import quotas, shall require a visa and ELVIS transmission.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digits and letters, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for the Philippines is "PH"), and a six digit numeric serial number identifying the shipment; e.g., 7PH123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The original signature of the issuing official of the Government of the Philippines.

4. The correct category(s), part category(s), merged category(s), quantity(s) and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the U.S. Harmonized Tariff Schedules of the United States Annotated (HTS), e.g., "Cat. 340–510 DZ." Annex B lists all the part-category and merge category visas required for entry.

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Products covered by merged category quotas must be accompanied by either a merged category visa or the correct category visa corresponding to the actual shipment (e.g., quota Category 333/334 may be visaed as "Category 333/334" or if the shipment consists solely of Category 333 merchandise, the shipment may be visaed as "Category 333," but not as "Category 334").

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

If the visa is not acceptable then a new visa must be obtained from the the Philippine Government or a visa waiver issued by the U.S. Department of Commerce at the request of the Philippine Government and presented to the U.S. Customs Service before any portion of the shipment will be released. A visa waiver may be issued by the Department of Commerce at the request of the Embassy in Washington for the Government of the Philippines. The waiver, if used, only waives the requirement to present a visa at entry. It does not waive any quota requirements. Visa waivers will only be issued for classification purposes or for one time special purpose shipments that are not part of an ongoing commercial enterprise.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry or attempted entry, but will provide the importer a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice or a visa waiver.

The complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa shall be provided on the textile visa document.

If a shipment from the Phillppines has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, the shipment will be charged to the correct category limit whether or not a replacement visa or visa waiver is provided.

ELVIS Requirements:

A. Each ELVIS message will include the following information:

i. The visa number. The visa number shall be in the standard nine digits and letters, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for the Philippines is "PH"), and a six digit numeric serial number identifying the shipment; e.g., 7PH123456.

ii. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

iii. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity of the shipment in unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States, Annotated, or successor documents.

iv. The manufacturer ID number (MID). The MID shall begin with "PH," followed by the first three characters from each of the first two words of the name of the manufacturer, followed by the largest number on the address line up to the first four digits, followed by three letters from the city name.

B. Entry of a shipment shall not be permitted:

i. if an ELVIS transmission has not been received for the shipment from the Philippines;

ii. if the ELVIS transmission for that shipment is missing any of the following:

a. visa number
b. category or part category
c. quantity
d. unit of measure
e. date of issuance
f. manufacturer ID number;

iii. if the ELVIS transmission for the shipment does not match the information supplied by the importer, or the Customs broker acting as an agent on behalf of the importer, with regard to any of the following:

a. visa number
b. category or part category
c. unit of measure;

iv. if the quantity being entered is greater than the quantity transmitted; or,

v. if the visa number has previously been used, or canceled, except in the case of a split shipment or if any entry has already been made using the visa number.

C. A new, correct ELVIS transmission from the country of origin is required before a shipment that has been denied entry for one of the circumstances mentioned in B.i-v will be released.

D. A new, correct ELVIS transmission from the country of origin is required for entries made using a visa waiver under the procedure described above. Visa waivers will only be considered for classification purposes or for one time special purpose shipment that is not part of an ongoing commercial enterprise or for legitimate classification disputes.

E. Shipments will not be released for forty-eight hours in the event of a system failure. If system failure exceeds forty-eight hours, for the remaining period of the system failure the U.S. Customs Service will release shipments on the basis of the paper visaed document.

F. If a shipment from the Philippines is allowed entry into the commerce of the United States with an incorrect visa, no visa, an incorrect ELVIS transmission, or no ELVIS transmission, and redelivery is requested but cannot be made, the shipment will be charged to the correct category limit whether or not a replacement visa or waiver is provided or a new ELVIS message is transmitted.

G. The U.S. Customs Service will provide Philippine authorities with a report containing information on visa utilization that can be accessed at any time. This report will contain:

a. visa number
b. category number
c. quantity charged to quota
d. unit of measurement
e. entry number
f. entry line number.

Exempt Certification Requirements:

A. Textiles and textile articles provided for below, and in Annex A attached, will be exempt from levels of restraint quotas, and visa and ELVIS requirements if they are certified, prior to the shipment leaving the Philippines, by the placing of the original rectangular-shaped stamped marking in blue ink on the front of the original commercial invoice. The original exempt certification shall not be affixed to duplicate copies of the invoice. The original copy of the invoice with the original exempt certification will be required to enter the shipment into the United States. Duplicate copies of the invoice and/or exempt certification may not be used.

1. Handwoven and Handloomed Fabrics of the Cottage Industry

2. Handmade Articles and Garments of Handwoven and Handloomed Fabric: All items must be cut, sewn, or otherwise fabricated by hand in order to qualify for this exemption. They may not include machine stitching.

3. Traditional Folklore Handicraft Products: Only products which fall within the definition of "Philippine Items" in Annex A attached, qualify for this exemption provided that they are cut, sewn, or otherwise fabricated by hand. They may not include machine stitching.

B. requirements for Exempt Certification Stamp: Each exempt certification stamp will include the following information:

I. Date of issuance.

II. Signature of issuing official.

III. The basis for the exemption shall be noted as:

a. Handwoven fabric or handloomed fabric (whichever is appropriate).

b. Handmade textile products.

c. The name of the particular traditional folklore handicraft product (Philippine Items) as listed in Annex A attached, e.g., "Banaue cloth."

Shipments not requiring visas or exempt certifications:

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less do not require a visa, ELVIS transmission or exempt certification for entry and shall not be charged to Agreement levels.

Other Provisions:

Except as provided in the paragraph above, any shipment which requires a visa but which is not accompanied by a valid and correct visa and ELVIS transmission in accordance with the foregoing provisions, shall be denied entry by the Government of the United States of America unless the Government of the Philippines authorizes the entry and any charges to the Agreement levels.

An invoice may cover visaed merchandise or exempt certification merchandise, but not both.

The visa and exempt certification stamps remains unchanged.

The actions taken concerning the Government of the Philippines with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Annex A

Philippine Items
Philippine Traditional Folklore Handicraft
Textile Products

Philippine items are traditional Philippine products, cut, sewn or otherwise fabricated by hand in cottage units of the cottage industry. The following is the agreed upon list of such items:

Annex A—Continued

A. Batik and hablon fabrics—hand woven fabrics of the cottage industry.

B. Banaue cloth—cotton handloom fabric in multi-colors.

C. Other hand woven and handloom fabrics of the cottage industry.

D. Articles and garments made by hand from hand woven and hand loomed fabrics.

Annex B

Merged Categories
331/631
333/334
338/339
340/640
341/641
342/642
347/348
351/651
352/652
359–C/659–C
359–O/659–O
445/446
638/639
645/646
647/648

Part Categories	
359–C	Cotton overalls and coveralls: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.
359–O	Other: all HTS numbers except those in Category 359–C.
369–S	Swimwear: only HTS number 6307.10.2005.
369–O	Other: all HTS numbers except those in Category 369–S.
659–C	Man-made fiber overalls and coveralls: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.
659–H	Hats: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.
659–O	Other: all HTS numbers except those in Categories 659–C and 659–H.
669–P	Poly bags: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.
669–O	Other: all HTS numbers except those in Category 669–P.
670–L	Luggage: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.
670–O	Other: all HTS numbers except those in Category 670–L.

[FR Doc. 97–21784 Filed 8–15–97; 8:45 am]
BILLING CODE 3510–DR–F

CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Sequestration Update Report for Fiscal Year 1998 to Congress and the Office of Management and Budget

Pursuant to Section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Sequestration Update Report for Fiscal Year 1998 to the House of Representatives, the Senate, and the Office of Management and Budget.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

[FR Doc. 97–21792 Filed 8–13–97; 11:34 am]
BILLING CODE 1450–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for Grants To Support the Martin Luther King, Jr. Service Day Initiative

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: Pursuant to the King Holiday and Service Act of 1994, which amended the National and Community Service Act of 1990, the Corporation for National and Community Service (the

Corporation) seeks to mobilize more Americans to observe the Martin Luther King, Jr. Federal Holiday as a day of service in communities and to bring people together around the common focus of service to others.

Specifically, under Section 12653(s) of the National and Community Service Act of 1990, as amended, the Corporation is authorized to pay for the Federal share of the cost of planning and carrying out service opportunities in conjunction with the Federal legal holiday honoring the birthday of Martin Luther King, Jr. on January 19, 1998.

Accordingly, the Corporation announces the availability of individual grants up to $5,000 for service projects under the Martin Luther King, Jr., Day of Service initiative. The Corporation plans to provide a total of between $100,000 and $225,000 in grants depending upon the quality of applications.

DATES: The deadline for submission of applications is September 30, 1997. Applications, one with original signature and two copies, must be received by the Corporation at the address listed below no later than 5:00 p.m. Eastern Daylight Time on that date. Applications may not be submitted by facsimile.

ADDRESSES: Applications may be obtained from, and must be submitted to, the following address: MLK Day of Service, The Corporation for National Service, 1201 New York Avenue, NW, 8th Floor, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: For further information, contact Rhonda Taylor at 202–606–5000 ext. 282. This notice may be requested in an alternative format for the visually impaired by calling 202–606–5000, ext. 260. The Corporation's T.D.D. number is 202–565–2799 and is operational between the hours of 9 a.m. and 5 p.m. Eastern Daylight Time.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a Federal government corporation that engages Americans of all ages and backgrounds in community-based service. This service addresses the nation's education, public safety, environmental, or other human needs to achieve direct and demonstrable results with special consideration to service that effects the needs of children. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. The Corporation supports a range of national service programs including AmeriCorps, Learn and Serve America, and the National Senior Service Corps.

Pursuant to the National and Community Service Act of 1990, as amended, the Corporation may make grants to share the cost of planning and carrying out service opportunities in conjunction with the Federal legal holiday honoring the birthday of Martin Luther King, Jr. The Corporation intends that the activities supported by these grants will (1) get necessary things done in communities, (2) strengthen the communities engaged in the service activity, (3) reflect the life and teaching of Martin Luther King, Jr., and (4) begin or occur in significant part on the Federal legal holiday.

By "getting things done," initiatives will help communities meet education, public safety, environmental, or human needs through direct and demonstrable service through effective citizen action. Accordingly, the Corporation expects an initiative sponsor to identify an unmet need that is important to the community and design a project that produces a demonstrable impact on that community need or issue. Special consideration will be given to service projects in literacy as well as those which benefit the children and young people. To the maximum extent possible, young people should be included as service providers and resources in project planning, not just as the recipients of service.

By "strengthening communities" through sustained service, projects should be collaborations that bring people together in pursuit of a common objective that is of value to the community. Initiatives should engage a full range of local partners in the communities served. Service projects should be designed, implemented, and evaluated with these partners, including national service programs (AmeriCorps, Learn and Serve America, National Senior Service Corps), community-based agencies, local and state King Holiday Commissions, schools and school districts, volunteer organizations, communities of faith, businesses and foundations, state and local governments, labor organizations, and colleges and universities.

By "reflecting the life and teaching of Martin Luther King", initiatives should demonstrate his proposition that "Everybody can be great because everybody can serve," through the types of service activities listed above.

By "begin or occur in significant part on the Federal legal holiday", a portion of the community service activities supported by the grant must occur on the holiday itself to strengthen the link between the observance of Martin Luther King, Jr.'s birthday, the Federal legal holiday (January 19, 1998), and service that reflects his life and teaching. Although celebrations and reflections may be a part of the activities planned on the holiday, for the purposes of this grant, celebrations and reflections alone do not constitute direct service.

Service opportunities to be considered for this program "shall consist of activities reflecting the life and teachings of Martin Luther King, Jr., such as cooperation and understanding among racial and ethnic groups, nonviolent conflict resolution, equal economic and educational opportunities, and social justice." 42 U.S.C. 12653(s)(1).

Project areas for which grant applications will be considered include, but are not limited to, the following types of service activities: a day of service plan that is designed to produce a sustained service commitment; community-wide servathons that bring a broad cross-section together in one day of service, including schools or school districts that seek to involve all students and teachers; service-learning projects that link student service in schools and universities with community-based organizations; faith-based service collaborations that bring together communities of faith and secular human service programs (subject to the limitations listed below); community-wide initiatives that are making a sustained effort to mentor, protect, nurture, teach, or inspire to serve a targeted group of young people, with a special emphasis on those most in need (in line with the goals and initiatives that stem from the Presidents' Summit for America's Future); or intense efforts to help solve a narrowly defined community problem with a burst of one-day energy. A priority objective of the grant is to engage young people in service. Particularly important is the enlistment of young people for one hundred hours a year, one of the special goals proposed at the Presidents' Summit.

The grants supported under this announcement may be made for up to $5,000 each. Grant funding will be available on a one-time, non-renewable basis for a budget period not to exceed seven months, beginning not sooner than November 1, 1997 and ending not later than June 30, 1998. Grants provided for this program, together with all other Federal funds used to plan or carry out the service opportunity, may not exceed 30 percent of the cost of planning and carrying out the service opportunity. In determining the non-

Federal share of the costs of the program supported by the grant, the Corporation may consider in-kind contributions (including facilities, equipment, and services) made to plan and carry out the service opportunity. Grants under this program constitute Federal assistance and therefore may not be used primarily to inhibit or advance religion in a material way.

Eligible Applicants

By law, any entity otherwise eligible for assistance under the national service laws shall be eligible to receive a grant under this announcement. The applicable laws include the National and Community Service Act of 1990, as amended, and the Domestic Volunteer Service Act of 1973, as amended.

Eligible applicants include, but are not limited to: nonprofit organizations, State Commissions, state and local governments, institutions of higher education, local education agencies, educational institutions, private organizations that intend to utilize volunteers in carrying out the purposes of this program, and foundations.

The Corporation especially invites applications from organizations with the experience and commitment to fostering service on Martin Luther King, Jr. Day, including applicable State Martin Luther King, Jr. Commissions, local education agencies, faith-based partnerships, Volunteer Centers of the Points of Light Foundation, and United Ways and other community-based agencies.

Grant recipients from the 1997 Martin Luther King, Jr., Day of Service Initiative will be eligible only if in compliance with the terms of that grant award.

Pursuant to the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), which engages in lobbying activities, is not eligible.

Overview of Application Requirements

To be considered for funding applicants should submit the following in the required format:

1. An Application for Federal Assistance, Standard Form 424.
2. A Project Narrative in the prescribed format describing:
   a. Clearly-defined service activities being planned in observance of Martin Luther King, Jr. Day, some of which must take place on the legal Federal holiday (January 19, 1998), but which may extend for the budget period (November 1, 1997 through June 30, 1998).
   b. The partnerships in the local community that are being engaged in support of the day and/or a description of sustained service activities over a period of time.
   c. The organization's background and capacity to carry out this program.
   d. The proposed staffing of the activity.
3. A Budget Form.
4. A Budget Narrative.
5. A signed Certification and Assurances form relating to conditions attendant to the receipt of federal funding.
6. Three complete copies (one original and two copies) of the application.

Narrative

The narrative portion of the application may be no longer than 15 single-sided pages and must: (1) Be typed double-spaced in font no smaller than 12 point on 8½ by 11 inch paper; (2) have one inch margins at the top, bottom, left, and right; and (3) have each page of the narrative numbered. All applications must be received by 5:00 p.m. Eastern Daylight Time, September 30, 1997 at the following address: MLK Day of Service, Corporation for National Service, 1201 New York Avenue, NW, 8th Floor, Washington, DC 20525

To ensure fairness to all applicants, the Corporation reserves the right to take remedial action, up to and including disqualification, in the event an application fails to comply with the requirements relating to page limits, line spacing, font size, and application deadlines.

Budget

Budget information should show projected costs starting no earlier than November 1, 1997, and extending no later than June 30, 1998. Proposed start and end dates must be shown in section 13 of the Application for Federal Assistance, Standard Form 424. See the attached instructions for budget in the Standard Form 424 for further guidance in completing the Budget Form and Budget Narrative.

Selection Process and Criteria

The applications will be reviewed initially to confirm that the applicant is an eligible recipient and to ensure that the application contains the information required. The Corporation will assess applications based on their responsiveness to the objectives included in this announcement based on the following criteria listed below (in descending order of importance):

1. *Quality.* The proposal must demonstrate the applicant's ability to: meet community needs through meaningful service activities, establish strong community partnerships, fulfill the goals of Martin Luther King Jr.'s teaching with preference given to projects that also serve young people.

2. *Organizational Capacity.* The application must demonstrate the organization's ability to carry out the activities described in the proposal, including the use of high quality staff.

3. *Cost.* The applicant must demonstrate how this small grant will be used, including the sources and uses of matching support.

Awards

The Corporation anticipates making awards under this announcement no later than November 15, 1997.

Dated: August 12, 1997.

Stewart Davis,

Acting General Counsel, Corporation for National and Community Service.

[FR Doc. 97–21734 Filed 8–15–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Finding of No Significant Impact for the Defense Logistics Agency Late Base Realignment and Closure (BRAC) Actions

AGENCY: Defense Logistics Agency (DLA), Department of Defense.

ACTION: Notice.

SUMMARY: The Defense Logistics Agency (DLA) prepared a programmatic environmental assessment pursuant to the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508) for implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) which evaluated the potential environmental and socioeconomic effects associated with realigning designated missions and personnel to enduring DLA activities pursuant to recommendations by the BRAC Commission and related discretionary action plans. The environmental assessment resulted in a finding of no significant environmental or socioeconomic impact.

EFFECTIVE DATE: August 18, 1997.

FOR FURTHER INFORMATION CONTACT: Daniel W. McGinty, Staff Director, Congressional and Public Affairs, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, ATTN: CAAR, Fort Belvoir, VA 22060–6220, (703) 767–6222.

SUPPLEMENTARY INFORMATION: In summary, the DLA proposed action, identified as the preferred alternative, is to:

- Relocate the Defense Contract Management District West to a

purchased office building in the Los Angeles/Long Beach area. Relocate the Defense Contract Management Area Office Detroit, Detroit Arsenal, MI, to existing facilities on the realigned Detroit Arsenal. Relocate the Defense Contract Management Area Office Dayton, Gentile, Air Force Station (AFS), OH, to Wright Patterson Air Force Base (AFB), Dayton, OH. Relocate the Defense Contract Management Area Office Stratford, Stratford Army Engine Plant, CT, to GSA lease facilities in the Stratford, CT, area.

• Relocate the Defense Distribution Depot missions that remain after the disestablishment of the Defense Distribution Depot Letterkenny, PA (DDLP) (with the exception of a DLA satellite operation at Letterkenny Army Depot to support the continuing missile maintenance mission); the realignment of Defense Distribution Depot Columbus, OH (DDCO); and closure of Defense Distribution Depot Memphis, TN (DDMT), Defense Distribution Depot Ogden, UT (DDOU) and Defense Distribution Depot McClellan, CA (DDMC), and the redistribution of the remaining mission and materials to the enduring Defense Distribution Depots. Relocate the specified mission from DDLP and discretionary mission from Defense Distribution Depot Red River, TX (DDRT) to the Defense Distribution Depot Anniston, AL (DDAA). Privatize and ultimately disestablish the Defense Distribution Depot San Antonio, TX (DDST). Relocate the Deployable Medical Systems (DEPMEDS) from DDOU to Hill AFB, Ogden, UT.

• Reorganize the Inventory Control Points (ICPs) from five to three (except for the Defense Fuel Supply Center) into the Defense Supply Centers, Columbus, OH (DSCC), Philadelphia, PA (DSCP), and Richmond, VA (DSCR). Relocate the mission of the Defense Electronics Supply Center, Gentile AFS, Dayton, OH, to the DSCC, disestablishing the Defense Industrial Supply Center, Philadelphia, (DISC) and redistribute the residual mission among the enduring Defense Supply Centers. Relocate the Defense Personnel Support Center (to become DSCP) to the Naval Aviation Supply Office (Naval Inventory Control Point, Philadelphia).

• Enclave Defense National Stockpile (DNSC) material at Letterkenny Army Depot, Chambersburg, PA, Seneca Army Depot, Romulus, NY, and Sierra Army Depot, Herlong, CA. Sell strategic materials and ores and return the following sites to the permitting military service at Savanna Army Depot, Savanna, IL, DDMT, and Naval Surface Warfare Center, Louisville, KY. If, in the future, it were determined that materials must be relocated, then site-specific NEPA analysis, if appropriate, would be conducted.

• Relocate the Headquarters, Defense Reutilization and Marketing Service (DRMS) organizations located at closing installations. Specifically, relocate the Defense Reutilization and Marketing Service-International Sales Office at DDMT to the Headquarters, DRMS, Battle Creek, MI, and the Defense Reutilization and Marketing Service-Operations West at DDOU to Hill AFB, UT.

• Close 11 Defense Reutilization and Marketing Offices (DRMOs) located at closing and realigning military installations and relocate any residual mission to the enduring DRMOs. Surplus and hazardous property would be disposed by reutilization, transfer, donation, sale, or ultimate disposal (service contract) prior to the DRMO relocation or disestablishment. Relocate DRMO San Antonio, Kelly AFB, to new facilities at Brooks AFB, TX, or lease back current facilities from the Kelly AFB Local Redevelopment Authority (KLRA)—whichever is determined to be the most operationally efficient and cost effective. Site-specific NEPA analysis to determine potential environmental and socioeconomic effects would be conducted, if appropriate, by the U.S. Air Force.

• Relocate the operational sites of the Defense Systems Design Center (DSDC) located at closing installations. Specifically, relocate DSDC–H from DDOU to Hill AFB, DSDC–NJ, from DDMT to the Federal Center Building, Battle Creek, MI, and DSDC–SMA from DDLP, Chambersburg, PA, to the Defense Distribution Depot, Susquehanna, PA.

Alternatives considered included the proposed action, which was the preferred alternative, and the no action alternative. No other alternative was considered feasible because it would entail modernization or renovation of existing facilities, leasing of off-base facilities, and construction of new facilities beyond that determined essential to meet minimum requirements to accommodate relocating activities. Criteria used in the decisionmaking process included adhering to the approved BRAC Commission recommendations, maintaining effective and efficient customer support by locating support as close as possible to customers, and maximizing use of existing facilities. Any other alternative would require excessive facility construction and/or modifications, diminish customer support, and increase costs to conduct business.

Based upon the EIFS model output, the 1,620 personnel relocating to the Defense Construction Supply Center, Columbus, OH, from Gentile AFS, would not create a significant socioeconomic effect in the region of influence. The population increase in Columbus, OH, would be less than 0.12 percent for that region of influence. Additionally, employment would be created in the region of influence and a slight increase in the support infrastructure within the region would occur (e.g., increases in traffic and school populations).

Site-specific NEPA analysis to determine the potential environmental and socioeconomic effects beyond the programmatic level will be conducted, if appropriate, for the following actions: Privatizing the Defense Distribution Depot McClellan, CA (DDMC) and Defense Distribution Depot San Antonio, TX (DDST); relocating the Deployable Medical Systems (DEPMEDS) from DDOU to Hill AFB, Ogden, UT; temporary and permanent construction of a hazardous materials storage warehouse at the Defense Distribution Depot San Joaquin, CA (Tracy site); and the construction of a new facility at Brooks AFB or lease back of the current facilities from the KLRA for the DRMO located at Kelly AFB, TX. If, in the future, it were determined that DNSC materials must be relocated, then site-specific NEPA analysis, if appropriate, would be conducted.

Separate site-specific NEPA analyses to determine the potential environmental and socioeconomic effects beyond the programmatic level have been conducted for the following actions: relocation of the Defense Electronics Supply Center mission to the Defense Supply Center, Columbus, OH (DSCC), for which an environmental assessment (EA) for the construction of the operational facility was conducted and a Finding of No Significant Impact (FONSI) signed on June 27, 1991; conversion of the Defense Distribution Depot Columbus, OH (DDCO) to a storage site for slow moving/war reserve materiel, a project that would be categorically excluded from analysis in accordance with DLAR 1000.22; completion of an AF Form 813 by the Air Force on July 27, 1994, which documented that the Air Force approved a categorical exclusion from a full EA for activities relocating from Gentile AFS to Wright Patterson AFB; and completion of an EA and FONSI by the Navy on November 22, 1996, associated with the relocation of the Defense Personnel Support Center (DPSC) to the Naval Aviation Supply Office (Naval Inventory Control Point,

Philadelphia, PA) and the consolidation of the Defense Industrial Supply Center with DPSC.

The military services exercising their land-owning responsibilities will conduct the NEPA analysis for the disposal and reuse of DLA sites.

For the other actions, the environmental assessment showed that implementing the proposed action would cause minimal or no adverse environmental and socioeconomic effects. A positive effect would be realized through a reduction in DLA's consumption of resources and thereby lessen negative environmental effects associated with routine support of Armed Forces activities. Analysis of the consequences of the proposed action does not indicate any environmental impact mitigation measures required or optional at the program level. Accordingly, an environmental impact statement will not be prepared.

A public comment period regarding the environmental assessment will begin at the time of publication of this notice and will conclude 30 days following. Copies of the environmental assessment are available for inspection at the address listed above. Interested parties may contact the DLA Public Affairs Office at (703) 767–6200.

Dated: August 12, 1997.

Jan B. Reitman,

Staff Director (Environmental and Safety Policy).

[FR Doc. 97–21799 Filed 8–15–97; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Reporting and Dissemination Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10 (a) (2) of the Federal Advisory Committee Act.

DATES: August 27, 1997.

TIME: 3:00 p.m. (et).

LOCATION: National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L. 103–382):

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On August 27, 1997 between the hours of 3:00–4:30 P.M. the Reporting and Dissemination Committee of the National Assessment Governing Board will hold a teleconference meeting. The purpose of this meeting is to consider plans for release of the Board's report on the 1996 NAEP Science Achievement Board. There will be a brief presentation on the contents and format of the report, followed by determination of a release date, release plan, and dissemination activities. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 A.M. to 5:00 P.M.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 97–21781 Filed 8–15–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of workshop and meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming workshop and meeting of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the public of their opportunity to attend both of these events.

DATES: Workshop, September 25, 1997; meeting, September 26, 1997.

TIME: Workshop, 8:30 a.m. to 4 p.m.; meeting, 8:30 a.m. to 3 p.m.

LOCATION: Room 100, 80 F St., N.W., Washington, DC 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, 80 F St., N.W., Washington, DC 20208–7564. Telephone: (202) 219–2065; fax: (202) 219–1528; e-mail; Thelma __ Leenhouts@ed.gov.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The Board will conduct a workshop on September 25 consisting of panels and group discussions of a redesign of the educational research, development and dissemination system. On September 26, the Board will hold its quarterly meeting. The agenda will include a discussion of the 1999 Research Priorities Plan, a presentation on the findings of the Third International Mathematics and Science Study, and final review prior to publication for public comment of the proposed standards for the evaluation of performance of recipients of grants, contracts and cooperative agreements. A final agenda will be available from the Board's office on September 18.

Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 80 F Street, N.W., Washington, DC 20208–7564.

Dated: August 13, 1997.

Eve M. Bither,

Executive Director.

[FR Doc. 97–21802 Filed 8–15–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain and Wetlands Involvement Notification for Department of Energy (DOE) Permission for the Off-Loading and Transportation of Commercial Low Level Radioactive Waste Across the Savannah River Site (SRS)

AGENCY: Department of Energy (DOE).

ACTION: Notification of floodplain and wetlands involvement.

SUMMARY: DOE proposes to allow Chem-Nuclear Systems, L. L. C. (CNS) to use SRS for landing transport barges at the existing SRS boat ramp and off-loading trailered low-level radioactive waste packages for movement across SRS to the nearby CNS facility. Project activities would include modification of the aforementioned boat ramp on the Savannah River as needed for off-loading activities, and construction of a bridge across Lower Three Runs. These activities would necessitate temporary construction access, excavation of soils to accomplish the widening, and placement of fill material adjacent to the banks of Lower Three Runs to create two bridge entrance ramps. In accordance with title 10 CFR part 1022, DOE will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain or wetlands.

DATES: Comments on the proposed action due on or before September 2, 1997.

ADDRESSES: Comments regarding this assessment should be addressed to Andrew R. Grainger, SRS National Environmental Policy Act (NEPA) Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, Building 773–42A, Room 212, Aiken, South Carolina 29802. The fax/phone number is (800) 881–7292. The e-mail address is nepa@srs.gov.

FOR FURTHER INFORMATION ON GENERAL FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone (202) 586–4600 or (800) 472–2756.

A location map showing the project sites and further information can be obtained from the Savannah River Operations Office (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION: The proposed action entails DOE granting permission to CNS to off-load and transport two trailered low-level radioactive waste packages across SRS to the nearby CNS facility in Barnwell County, South Carolina. The packages consist of two oversize/overweight steam generators from a Florida Power and Light Company facility located in St. Lucie, Florida. A transport barge carrying a single steam generator at a time would make a landing at the existing SRS boat ramp. Transport dates of the two shipments would be scheduled at least one month apart. Due to the size of the barge required to transport the steam generators on the Savannah River, the ramp would be modified prior to landing. Each steam generator would then be off-loaded and shipped via SRS and state roads to the CNS Barnwell facility. Additionally, in order to establish the most direct route between the SRS boat ramp and the Barnwell facility for the shipment of these steam generators, CNS desires to construct two bridge support structures and associated access roads, adjacent to an existing permanent SRS bridge on SRS Road B below the Par Pond dam.

The modifications to the SRS boat ramp would involve widening the facility for a distance of approximately eight feet downstream and stabilizing the upstream bank which forms the opposite side of the ramp. The widening would involve removal of a small elevated, upland bank bordering the entire downstream side of the boat ramp. The bank is currently dominated by a canopy of mature loblolly pine (*Pinus taeda*), and a midstory and understory of sweetgum (*Liquidambar styraciflua*), willow oak (*Quercus phellos*), water oak (*Q. nigra*), southern red oak (*Q. falcata*), American holly (*Ilex opaca*) and scattered herbaceous vegetation. This modification would make the available barge access at the ramp approximately 60 feet wide. Merchantable timber would be salvaged and other vegetative cover removed. The stabilization would entail activities (e.g., removal of the overhanging bank and stabilization with riprap) to arrest ongoing bank erosion present on the upstream side of the ramp. Approximately 3,700 cubic yards of soil would be removed to accomplish the widening and bank stabilization. The entire area in question is located within the 100-year floodplain. Permitting under both Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act would be required to implement the proposed action.

The bridge construction across Lower Three Runs would be necessary to enable use of the shorter transportation route from the off-loading site to the CNS Barnwell facility. The existing bridges at that stream crossing do not have sufficient load capacity to support the subject trailered shipments. The proposed crossing structure would include construction of graveled access roads and ramps on either side of the stream corridor. These ramps would consist of pre-stressed concrete piles, concrete caps, concrete retaining walls, and riprap. The bridge span would consist of removable beams which would only be placed to support transport of shipments along this proposed route. Placement of fill materials within the existing SRS Road B right-of-way would be necessary to develop the access roads on either side of the stream crossing. Small wetland, drainage features exist within the proposed new access road right-of-way and ramp locations on both sides of Lower Three Runs stream corridor. The total wetland areas on the east and west sides of the stream corridor are approximately 0.5 and 0.8 acres, respectively. These wetlands are characterized by an emergent marsh habitat dominated by cattail (*Typha latifolia*), sedge (*Cyperus* spp.), bulrush (*Scirpus* spp.), rush (*Juncus* spp.), and pickerelweed (*Pontederia* spp.). Hydrology is provided through channeled storm water runoff from the roadway right-of-way and the area below the toe of the Par Pond dam. The soils appear to be largely erosional sediment. Most of the project area on the east side of the stream and approximately one-quarter of the area on the west side are located within the 100-year floodplain. This proposed action would be authorized by the U.S. Army Corps of Engineers under a CWA Section 404 Nationwide permit.

A number of mitigation activities would be implemented to minimize potential impacts to the floodplain and wetlands. Operation of construction equipment in the wetland and floodplain areas would be minimized. Temporary access for construction vehicles and equipment would entail the placement of mats on the wetland areas. Silt fences and other erosion control structures as needed would be installed to ensure there is no deposition in the downslope wetland areas. Wetland acreage that is impacted as a result of the aforementioned fill activities adjacent to Lower Three Runs will require permitted mitigation.

Additionally, an erosion control plan would be developed so that the proposed action complies with applicable State and local floodplain protection standards and further to ensure that no additional impacts to wetlands will occur due to erosion and

sedimentation. Best management practices would be employed during construction and maintenance activities associated with this proposed action.

In accordance with DOE regulations for compliance with floodplain and wetland environmental review requirements (title 10 CFR part 1022), DOE will prepare a floodplain and wetlands assessment for this proposed DOE action. The assessment will be included in the environmental assessment (EA) being prepared for the proposed action in accordance with the requirements of NEPA. A floodplain statement of findings will be included in any finding of no significant impact that is issued following the completion of the EA or may be issued separately.

Issued in Aiken, SC, on August 4, 1997.

Lowell E. Tripp,

Director, Engineering and Analysis Division, Savannah River Operations Office.

[FR Doc. 97–21793 Filed 8–15–97; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Friday, August 28, 1997, 6:00 p.m.–9:30 p.m.

ADDRESSES: Comfort Inn, 433 South Rutgers Avenue, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Sandy Perkins, Site-Specific Advisory Board Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–1590.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

This Board meeting has been specially called and will focus on approval to spend Board funds to have an independent consultant review the permitting and operations of the Toxic Substances Control Act incinerator.

Public Participation

The meeting is open to the public and comments will be taken during the meeting. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Sandy Perkins at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–1590.

Issued at Washington, DC on August 12, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–21794 Filed 8–15–97; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–165–006]

Alabama-Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 12, 1997.

Take notice that on August 6, 1997, Midcoast Interstate Transmission, Inc. (formerly Alabama-Tennessee Natural Gas Company, hereinafter MIT), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective June 1, 1997.

Second Substitute First Revised Sheet No. 154

MIT states that the tariff sheet is filed in compliance with the July 29, 1997 letter order issued in the captioned proceeding.

MIT states that copies of its filing were served on all affected entities.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21767 Filed 8–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94–158–008]

Columbia Gas Transmission; Notice of Compliance Filing

August 12, 1997.

Take notice that on August 8, 1997, Columbia Gas Transmission Corporation (Columbia Transmission) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet bearing an effective date of September 8, 1997.

Second Revised Sheet No. 96

Columbia Transmission states that it is making the submission to comply with the letter order issued by the Federal Energy Regulatory Commission on July 11, 1997, in Docket No. RP94–158–007. Therein, Columbia Transmission was requested to file to remove certain tariff sheets which detailed certain direct bill amounts associated with its Account No. 191, which are no longer necessary.

Columbia Transmission states further that copies of this filing have been mailed to all of its customers, affected

state regulatory commissions, and all parties on the official service list in Docket No. RP94–158, *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with § 385.211 of the Commission's regulations. All such protests must be filed as provided in § 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. Copies of this filing is on file with the Commission and is available for public inspection in the Commission's Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21764 Filed 8–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–603–001]

Egan Hub Partners, L.P.; Notice of Petition to Amend

August 12, 1997.

Take notice that on August 8, 1997, Egan Hub Partners, L.P. (Egan Hub) 44084 Riverside Parkway, Suite 340, Leesburg, Virginia 20176, filed, in Docket No. CP97–603–001, an amendment to its pending application in Docket No. CP97–603–000 requesting authorization to operate each of the previously certificated Compressor Units 3 and 4 at the Egan Hub Storage Facility in Acadia Parish, Louisiana at its full rated horsepower of 4,450, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before September 12, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21752 Filed 8–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–684–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

August 12, 1997.

Take notice that on August 6, 1997, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP97–684–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to upgrade the existing Deming Industrial Park Meter Station, located in Luna County, New Mexico, thereby permitting additional firm deliveries of natural gas to the City of Deming, New Mexico (Deming), under El Paso's certificate issued in Docket No. CP82–435–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to upgrade the existing Deming Industrial Park Meter Station, located in Section 7, Township 24 South, Range 8 West, Luna County, New Mexico, by adding one 2-inch O.D. senior orifice meter and modifying the existing EFM for dual run capability. El Paso states the upgraded metering facilities, upon completion, will have a maximum peak day capacity of 1,800 Mcf of natural gas. El Paso asserts that it has sufficient mainline peak day capacity to transport and deliver such gas volumes without detriment or disadvantage to El Paso's other customers.

El Paso states that Deming will reimburse them for the costs related to the upgrade of the Deming Industrial Park Meter Station, estimated to be $17,300, including respective overhead and contingency fees.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21753 Filed 8–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–114–006]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

August 12, 1997.

Take notice that on August 7, 1997, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to become effective August 1, 1997:

Fifth Revised Sheet No. 203

Equitrans states that the purpose of this filing is to comply with the Commission's Letter Order issued on July 28, 1997 in the captioned docket. The Commission found that the textual changes were acceptable for Fourth Revised Sheet No. 202, however, the tariff sheet was incorrectly paginated and should have been Fifth Revised Sheet No. 203 instead of Sheet No. 202.

Pursuant to § 154.205 and any other applicable provision of the Commission's Regulations, Equitrans requests that the Commission grant any waivers necessary to permit the proposed tariff sheet to take effect on August 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21760 Filed 8–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–154–006]

Koch Gateway Pipeline Company; Notice of Compliance Filing

August 12, 1997.

Take notice that on August 8, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to become effective August 1, 1997:

First Revised Sheet No. 2402
Second Revised Sheet No. 2403
First Revised Sheet No. 2404
First Revised Sheet No. 2405
Original Sheet No. 2406

In compliance with the Commission's Letter Order issued July 29, 1997, in the above captioned docket, Koch states that this filing reflects GISB Standard 4.3.6 to become effective August 1, 1997.

Koch also states that it has served copies of this filing upon each person designated on the official service list compiled by the secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed as provided by § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21763 Filed 8–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–443–000]

Northern Border Pipeline Company; Notice of Compliance Filing

August 12, 1997.

Take notice that on August 8, 1997, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective September 8, 1997:

First Revised Sheet Number 119

Northern Border asserts that the purpose of this filing is to comply with the Order No. 636–C, issued February 27, 1997, in Docket Nos. RM91–11–006 and RM87–34–072. In Order No. 636–C, the Commission required that any pipeline with a right-of-first refusal tariff provision containing a contract term longer than five years revise its tariff to reflect the new five year cap.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21765 Filed 8–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–116–000]

OkTex Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

August 12, 1997.

Take notice that on August 7, 1997, OkTex Pipeline Company (OkTex) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with an effective date of October 1, 1997:

Tenth Revised Sheet No. 5

OkTex states that the Tenth Revised Sheet No. 5 increases the OkTex Annual Charge Adjustment Clause (ACA) from $0.0020 to $0.0021 per Dekatherm.

OkTex states that copies of the filing were served upon the Company's jurisdictional customers and upon interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21766 Filed 8–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2114–060]

Public Utility District No. 2 of Grant County, Washington; Notice of Application for Approval of Canadian Entitlement Allocation Extension Agreement Beyond the Term of the License

August 12, 1997.

On July 24, 1997, pursuant to Section 22 of the Federal Power Act, 16 U.S.C. § 815, Public Utility District No. 2 of Grant County, Washington (Grant), filed an application requesting Commission approval of the Canadian Entitlement Allocation Extension Agreement (CEAA) for the Priest Rapids Project No. 2114, for a period extending approximately 19 years beyond the 2005 expiration date of the license. The project is located on the Columbia River in Chelan, Douglas, Kittitas, Grant, Yakima, and Benton Counties, Washington.

Section 22 provides that contracts for the sale and delivery of power for periods extending beyond the termination date of a license may be entered into upon the joint approval of the Commission and the appropriate state public service commission or other similar authority in the state in which the sale or delivery of power is made. Grant states in its application that approval of the CEAA is in the public interest because it implements provisions of a 1961 Treaty between the United States and Canada, 15 U.S.T. 1555.

The CEAA was executed on April 29, 1997, between Grant and the United States of America, acting by and through the Bonneville Power Administration, and provides for the delivery of power from the Priest Rapids Project for transfer to Canada in exchange for Grant's use of the improved streamflow provided by Canadian water storage projects pursuant to the 1961 Treaty. Grant will retain one-half of the power generation benefits of the improved streamflow

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, 385.211 and 385.214. In determining the appropriate action to take, the Commission will consider all protests and other comments, but only those who file a motion to intervene may become a party to the proceeding. Comments, protests, or motions to intervene must be filed by September 17, 1997; must bear in all capital letters the title "COMMENTS," "PROTEST," or "MOTION TO INTERVENE," as applicable and "Project No. 2114." Send the filings (original and 14 copies) to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any filing must also be served upon each representative of the licensee specified in its application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21756 Filed 8–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2145–030]

Public Utility District No. 1 of Chelan County, Washington; Notice of Application for Approval of Canadian Entitlement Allocation Extension Agreement Beyond the Term of the License

August 12, 1997.

On July 24, 1997, pursuant to Section 22 of the Federal Power Act, 16 U.S.C. § 815, Public Utility District No. 1 of Chelan County, Washington (Chelan), filed an application requesting Commission approval of the Canadian Entitlement Allocation Extension Agreement (CEAA) for the Rocky Reach Project No. 2145, for a period extending approximately 18 years beyond the 2006 expiration date of the license. The project is located on the Columbia River in Chelan County, Washington.

Section 22 provides that contracts for the sale and delivery of power for periods extending beyond the termination date of a license may be entered into upon the joint approval of the Commission and the appropriate state public service commission or other similar authority in the state in which the sale or delivery of power is made. Chelan states in its application that approval of the CEAA is in the public interest because it implements provisions of a 1961 Treaty between the United States and Canada, 15 U.S.T. 1555.

The CEAA was executed on April 29, 1997, between Chelan and the United States of America, acting by and through the Bonneville Power Administration, and provides for delivery of power from the Rocky Reach Project for transfer to Canada in exchange for Chelan's use of the improved streamflow provided by Canadian water storage projects pursuant to the 1961 Treaty. Chelan will retain one-half of the power generation benefits of the improved streamflow.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, 385.211 and 385.214. In determining the appropriate action to take, the Commission will consider all protests and other comments, but only those who file a motion to intervene may become a party to the proceeding. Comments, protests, or motions to intervene must be filed by September 17, 1997; must bear in all capital letters the title "COMMENTS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and "Project No. 2145." Send the filings (original and 14 copies) to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any filing must also be served upon each representative of the licensee specified in its application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21757 Filed 8–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–137–009]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 12, 1997.

Take notice that on August 7, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised Tariff sheets set forth in compliance with the Commission's July 21, 1997 Order in this docket, to become effective June 1, 1997:

Second Revised 26th Revised Sheet No. 14
Second Substitute 13th Revised Sheet No. 14a
Second Revised 26th Revised Sheet No. 16
Second Substitute 13th Revised Sheet No. 16a
Second Substitute 4th Revised Sheet No. 20
Second Substitute 2nd Revised Sheet No. 20a

On June 12, 1997, Southern filed in this proceeding certain rate sheets which reflected the calculation set forth in GISB Standard 5.3.22 to determine maximum daily volumetric capacity release rates for firm service. On July 21, 1997, the Commission issued an order in this docket in response to Southern's compliance filing that directed Southern to use an annual rate period and four decimal places when calculating such rates. Accordingly, Southern submitted the revised Tariff sheets set forth above.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedures. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21761 Filed 8–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–686–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

August 12, 1997.

Take notice that on August 7, 1997, Williston Basin Interstate Pipeline Company (Williston), 200 North Third Street, Suite 300, Bismarck, ND 58501, filed in Docket No. CP97–686–000 a request pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for approval to abandon 4,280 feet of four-inch lateral pipeline located in Richland County, MT, under Wiliston's blanket certificate issued in Docket No. CP82–487–000 *et al.*, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston asserts that the pipeline proposed to be abandoned herein was originally constructed in 1978 to allow the receipt of gas from a supplier at the Petrolane-Perry Gas Processing Company Plant (Plant) and/or to deliver natural gas to the supplier to be used as field fuel. Williston further asserts that the Plant was shut down in the early 1980's and that Williston has not received natural gas from the Plant since 1983 or made deliveries of natural gas through this pipeline since 1993. Williston thus proposes to purge this pipeline and abandon it in place.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21754 Filed 8–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–148–005]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

August 12, 1997.

Take notice that on August 7, 1997, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective August 1, 1997:

Second Revised Sheet No. 371
First Revised Sheet No. 372
Sheet Nos. 373–499

Williston Basin states that the revised tariff sheets reflect modifications to Williston Basin's FERC Gas Tariff in compliance with the Commission's Letter Order issued July 24, 1997 in Docket No. RP97–148–004. Williston Basin states that the tariff sheets reflect the Gas Industry Standards Board (GISB) Standard No. 4.3.6 adopted by the Commission in Order No. 587–C.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21762 Filed 8–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7890–014]

Matthew Bonaccorsi; Notice Of Availability of Environmental Assessment

August 12, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed an exemption surrender application for the Wendell Dam Project, No. 7890–014. The Wendell Dam Project is located on the Sugar River in Sullivan County, New Hampshire. The EA finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. For further information, please contact the project manager, Ms. Hillary Berlin, at (202) 219–0038.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21759 Filed 8–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–136]

Grand River Dam Authority; Notice of Availability of Final Environmental Assessment

August 12, 1997.

A final environmental assessment (FEA) is available for public review. The FEA analyzes the environmental impacts of an application filed by Grand River Dam Authority (licensee) to permit Brian Miller and Dennis Blakemore, d/b/a Honey Creek Landing, Ltd., LLC, (HCL) to construct new marina docking facilities on the Honey Creek arm of Grand Lake, the project reservoir. HCL requests permission to construct 7 floating boat docks containing a total of 242-slips. The marina would be located on the north shore of the creek immediately west of U.S. Highway 59 in the Town of Grove. In the FEA, staff concludes that approval of the licensee's proposal

would not constitute a major Federal action significantly affecting the quality of the human environment. The Pensacola Project is on the Grand River, in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21755 Filed 8–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–202–000]

USFG Pipeline Company; Notice of Extension of Time To Comment on the Environmental Assessment

August 12, 1997.

On July 9, 1997, an Environmental Assessment was circulated for public comment on the above docketed project. The closing period for comments was August 8, 1997. The Office of the Governor of the State of Tennessee requested an extension of time to comment on the Environmental Assessment. The comment period is herein extended to August 22, 1997.

As stated in the original notice, comments should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

A copy of any comments should also be sent to the Environmental Review and Compliance Branch, PR–11.1, at the above address.

Kevin P. Madden,

Director, Office of Pipeline Regulation.

[FR Doc. 97–21827 Filed 8–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2543–059]

The Washington Water Power Co.; Notice of Availability of Final Environmental Assessment

August 12, 1997.

A final environmental assessment (FEA) is available for public review. The FEA is for an application for the Spokane River Hydroelectric Project (FERC No. 2545) to construct a sediment by-pass tunnel on the left side of the Nine Mile Development powerhouse. The project is located on the Spokane River in Spokane, Stevens, and Lincoln Counties, Washington, and Kootenai and Benewah Counties, Idaho. 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 EA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C., 20426. Copies can also be obtained by calling the project manager, John Novak at (202) 219–2828.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21758 Filed 8–15–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5876–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Obtaining Unbilled Grant Expenses From Grant Officials at Year-End

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Obtaining Unbilled Grant Expenses From Grant Officials at year-end, EPA ICR No. 1810.01. The ICR describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before September 17, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1810.01

SUPPLEMENTARY INFORMATION:

Title: Obtaining Unbilled Grant Expenses From Grant Officials at Year-end (EPA ICR No. 1810.01). This is a new collection.

Abstract: EPA's Financial Management Division (FMD) prepares annual financial statements that present the financial position and results of operations for EPA. The financial statements must comply with the Statements of Federal Financial Accounting Standards (SFFAS) and other accounting requirements. EPA's Office of the Inspector General (OIG) audits these financial statements to determine whether they fairly and accurately reflect EPA financial conditions.

To meet the SFFAS requirements, EPA must report the estimated amount of its accrued liabilities. These accrued liabilities include: (1) Grant expenses incurred during the fiscal year that the grant recipient has paid and recorded in its accounting records but has not yet billed to EPA; and (2) grant expenses that vendors have billed the grant recipient between October 1 and November 15 (following the end of the Federal fiscal year) that relate to the prior fiscal year. EPA, working with its OIG, has evaluated the use of existing reports as a source of accrued liability information. However, for grants paid through the ACH electronic funds transfer mechanism, EPA has been unable to determine how to obtain this information without contacting the grant recipients themselves. ACH drawdown requests do not include period of performance data, which is essential for determining accruals. To minimize the amount of burden associated with gathering this data, EPA believes that information from a sample of 103 grants is sufficient to meet its financial statement needs. EPA would use estimation techniques to project the amount of grant accruals applicable to all EPA grants paid through ACH.

The grant recipients selected in the sample would only be asked to report the accrual information on the specific grant, and not all EPA grants to that grantee. Further, other EPA grant recipients would not be affected by this information collection request. EPA will also request information from the selected grant recipients on their billing practices in order to conduct additional analyses to improve our accrual estimates.

Unless EPA is able to obtain this information from the selected grant recipients, and develop a reasonable estimate of accruals based on that data, EPA does not believe it will be able to obtain an unqualified ("clean") audit opinion from the OIG on its financial statements. Thus the information is crucial for EPA to meet its fiduciary responsibilities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB

control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Ch. 15. The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 3, 1997, (FR Vol. 62, No. 106); 1 comment was received asking for clarification of the information EPA was requesting.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 6.75 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities receiving grants from EPA.

Estimated Number of Respondents: 103.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 695 hours.

Estimated Total Annualized Cost Burden: $15,647.50.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1810.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 13, 1997.

Richard Westlund,

Acting Regulatory Information Division.

[FR Doc. 97–21817 Filed 8–15–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5876–2]

Ambient Air Monitoring Reference and Equivalent Methods DKK Corporation; Designation of Equivalent Method

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of designation.

SUMMARY: Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another equivalent method for the measurement of ambient concentrations of sulfur dioxide.

FOR FURTHER INFORMATION CONTACT: Berne I. Bennett, Human Exposure and Atmospheric Sciences Division (MD–77B), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2366.

SUPPLEMENTARY INFORMATION: Notice is given that designation of equivalency has been granted to DKK Corporation, Kichijoji-Kitamachi-shi, Tokyo, 180, Japan, for model GFS–32 Ambient Air SO_2 Ultraviolet Fluorescent Analyzer. The newly designated method is identified as follows:

EQSA–0701–115, DKK Corporation model GFS–32 Ambient SO_2 ultraviolet fluorescent analyzer, operated within the 0.000 to 0.500 ppm range in the temperature range of 20°C to 30°C.

A representative analyzer has been tested for the applicant by the Zedek Corporation, Durham, NC, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of those tests and other information submitted by the applicant, EPA has determined in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is acceptable for use by States and other air monitoring agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation manual associated with the method and subject to any limitations specified in the applicable designation (see description of the method above).

Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modification of Methods by Users). In general, a designation applies to any analyzer which is identical to the analyzer described in the designation.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the user.

(2) The analyzer must not cause any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B–1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a designation has been cancelled, or if adjustment of the analyzer is necessary under 40 CFR part 53.11(b) to avoid cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although it may be sold without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until notice has been received under 40 CFR part 53.14(c) that the original designation or a new designation applies to the method as modified or until notice under 40 CFR 53.8(b) has been received of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, persistent or repeated noncompliance with any of these conditions should be reported to: National Exposure Research Laboratory (Department E, MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Technical questions concerning this method should be directed to the manufacturer. Additional information concerning this action may be obtained from Berne I. Bennett, Human Exposure and Atmospheric Sciences Division (MD–77B), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, 919) 541–2366

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 97–21804 Filed 8–15–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140260; FRL–5729–1]

Access to Confidential Business Information by Armstrong Data Services and Subcontractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Armstrong Data Services (ADS), Incorporated of Vienna, Virginia and ADS's subcontractor, Premier Incorporated, 6551 Loisdale Court, Springfield, Virginia, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA occurred as a result of an approved waiver dated May 16, 1997, which requested granting Premier Incorporated, Sub-contractor to Armstrong Data Services, Inc. immediate access to TSCA CBI. This waiver was necessary to allow Premier Inc. to assist with the Confidential Business Information Center's document processing activities; perform a complete system analysis; and provide maintenance to sustain its performance.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W5–0024, subcontractor Premier Incorporated, of 6551 Loisdale Court, Springfield, VA, will assist the Office of Pollution Prevention and Toxic (OPPTS) in conducting a system analysis and provide data base maintenance support to the OPPT CBIC document tracking system.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W5–0024, Premier will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Premier personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Premier access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Premier will be authorized access to TSCA CBI at EPA Headquarters under the EPA *TSCA Confidential Business Information Security Manual.*

Clearance for access to TSCA CBI under this contract may continue until September 30, 2000.

Premier personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: July 8, 1997.

Allan S. Abramson,

Director, Information Management Division, Office of Pollution and Prevention and Toxics.

[FR Doc. 97–21806 Filed 8–15–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–59362; FRL–5735–7]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–97–9. The test marketing conditions are described below.

DATES: This notice becomes effective August 8, 1997. Written comments will be received until September 2, 1997.

ADDRESSES: Written comments, identified by the docket number [OPPT–59362] and the specific TME number should be sent to: TSCA Nonconfidential Information Center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB–607 (7407), 401 M St., SW., Washington, D.C. 20460, (202) 554–1404, TDD (202) 554–0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by [OPPT–59362]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Shirley D. Howard, New Chemicals Notice Management Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–447k, 401 M St. SW., Washington, DC 20460, (202) 260–3780. e-mail: Howard.sd@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–97–9. EPA has determined that test marketing of

the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Notice of receipt of this application was not published in advance of approval. Therefore, an opportunity to submit comments is being offered at this time. EPA may modify or revoke the test marketing exemptions if comments are received which cast significant doubt on its finding that this test marketing activity will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–97–9. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substances produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substances.

TME–97–9

Date of Receipt: June 27, 1997. The extended comment period will close September 2, 1997.

Applicant: USR Optonix, Inc.

Chemical: (G) Silicic Acid Magnesium Strontium Salt, Dysprosium Europium Doped.

Use: (G) Pigment for wax and plastics.

Production Volume: 10,000 kg/Year.

Number of Customers: Two.

Test Marketing Period: Six Months. Commencing on first day of commercial manufacture.

Risk Assessment: EPA identified human health concerns for lung toxicity based on data on an analogous chemical substance. However during manufacturing and use, predicted exposure to workers is not expected to be significant. The TME substance is not expected to be toxic to aquatic organisms at the surface water concentrations predicted. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: August 8, 1997.

Flora Chow,

Chief, New Chemicals Notice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 97–21808 Filed 8–15–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Appraisal Standards.

Form Number: None.

OMB Number: 3064–0103.

Annual Burden: Estimated annual number of respondents—328,600; Estimated time per response—.25 hours; Average annual burden hours—82,125 hours.

Expiration Date of OMB Clearance: October 31, 1997.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 989–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before September 17, 1997 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: FIRREA directs the FDIC to prescribe appropriate standards for the performance of real estate appraisals in connection with Federally related transactions under its jurisdiction. The information collection activities attributable to Part 323 are a direct consequence of the statutory requirements and the legislative intent.

Dated: August 12, 1997.

Federal Deposit Insurance Corporation.

Steven F. Hanft,

Assistant Executive Secretary.

[FR Doc. 97–21735 Filed 8–15–97; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Asset Marketing Survey—Loans and Real Estate.

Form Number: 7240/01; 7240/03.

OMB Number: 3064–0089.

Annual Burden: Estimated annual number of respondents—1,900; Estimated time per response—.25 hours; Average annual burden hours—475 hours.

Expiration Date of OMB Clearance: September 30, 1997.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management

and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before September 17, 1997 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC has established a nationwide automated asset marketing system whereby prospective investors can be matched with specific loan portfolios and real estate available for sale by the FDIC. The information contained in the prospective investor file is collected on two forms, Form 7240/01—Loan Sales Survey and Form 7240/03—Property Sales Survey.

Dated: August 12, 1997.

Federal Deposit Insurance Corporation.

Steven F. Hanft,

Assistant Executive Secretary.

[FR Doc. 97–21736 Filed 8–15–97; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Thursday, August 21, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed amendments to the prudential restrictions (firewalls) imposed on the operations of section 20 subsidiaries of bank holding companies (proposed earlier for public comment; Docket No. R–0958).

2. Publication for comment of proposed amendments to the Federal Reserve Board's risk-based capital guidelines concerning treatment of recourse obligations, direct credit substitutes, and securitized transactions (proposed earlier for public comment; Docket No. R–0835).

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: August 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–21876 Filed 8–14–97; 10:26 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 11:00 a.m., Thursday, August 21, 1997, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–21877 Filed 8–14–97; 10:26 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry (BSC, ATSDR), Department of Health and Human Services, has been renewed for a 2-year period beginning July 28, 1997, through July 28, 1999.

For further information, contact Charles Xintaras, Sc.D., Executive Secretary, BSC, ATSDR, 1600 Clifton Road, NE, Mailstop E28, Atlanta, Georgia 30333, telephone 404/639–0708 or fax 404/639–0586.

Dated: August 11, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–21790 Filed 8–15–97; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pulmonary Artery Catheter and Clinical Outcomes Workshop: Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled "Pulmonary Artery Catheter and Clinical Outcomes Workshop" to address critical concerns related to the use of pulmonary artery catheters, and to identify any other significant issues that clinicians, manufacturers, and other interested parties may have in clinical use of this device.

DATES: The public workshop will be held on Monday, August 25, 1997, from 8 a.m. to 5 p.m., and Tuesday, August 26, 1997, from 9 a.m. to 12 m. Submit written notices of participation by August 21, 1997.

ADDRESSES: The public workshop will be held at the Holiday Inn Old Town Select, 480 King St., Alexandria, VA. Submit written notices of participation to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Carole C. Webb, Center for Devices and Radiological Health (HFZ–520), 1350 Piccard Dr., Rockville, MD 20850, 301–594–3948, or internet "CCW@cdrh.fda.gov".

SUPPLEMENTARY INFORMATION: Pulmonary artery catheters (PAC's), also known as right heart catheters, provide data on blood pressure, blood flow, and oxygen levels that many doctors consider crucial to the care of critically ill hospital patients. A study reported in the September 18, 1996, *Journal of the American Medical Association* (JAMA), however, suggests use of these catheters may increase risks of morbidity and mortality (the JAMA article).

PAC's have been used in the practice of critical care medicine since 1970. The initial marketing of these devices preceded FDA's authority to regulate medical devices which began in 1976. The JAMA article by Connors et al. examined the survival of patients monitored with and without this device in an intensive care setting. The Connors et al. study does not provide evidence that the catheter itself is unsafe; however, it does raise questions about the benefit to patients of the device as it is currently being used. Concerns about the benefits and risks of using PAC's are not new. As early as 1987, other scientists found a greater risk of morbidity and mortality in use of PAC's, but those early studies, as in the Connors et al. study, were not randomized. Although the Connors et al. study showed a relationship between use of PAC's and a higher risk of death, it did not show that use of the catheter caused those additional deaths. The additional risk might be related to how information gained from the catheter is used or the result of medical therapy a patient receives. It is possible the results may not apply when the catheter is used for diseases or in situations other than those studied by Connors et al. The device provides important clinical information relied upon in determining a course of treatment. However, FDA and the National Institutes of Health (NIH) believe rigorous scientific evaluations of the device may be needed in evaluating the context of appropriate clinical care.

The Pulmonary Artery Catheter and Clinical Outcomes Workshop will be cosponsored by FDA and NIH. The goals of the workshop are to summarize the following:

(1) Clinical indications, benefits, and major risks of PAC use;

(2) Current standards for clinical practice in PAC use;

(3) The need and specific clinical issues for PAC use in specific patient populations;

(4) To identify suggestions or opportunities for future research, regulatory action, or clinical practice guidelines.

The workshop will commence with introductions, overviews of goals, discussion of contemporary clinical knowledge of PAC use, and catheter technology issues. Two concurrent sessions will be convened in the morning and afternoon. Each session will cover two major disease and trauma topics in separate breakout groups. The first pair of breakout groups will focus on PAC use in respiratory disease and trauma/perioperative/postoperative management. The second pair of breakout groups will include sepsis/multiorgan dysfunction syndrome and cardiovascular disease. The objective of these sessions will be to debate critical clinical issues specific to these areas. Attendees may observe any available session and may participate in open discussions. Following these sessions, cochairs will guide their teams to identify pragmatic and prioritized research considerations. On August 26, 1997, each group will present their report to the entire workshop. Open discussions and concluding remarks will follow. Cochairs will only remain after the formal part of the workshop to discuss areas of disagreement and to write the first draft of the final document. It is expected the final document will be delivered to Federal agencies within 2 weeks.

Dated: August 13, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–21835 Filed 8–13–97; 2:56 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–04]

Office of the Assistant Secretary for Fair Housing and Equal Opportunity; Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity; HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: October 17, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Josie D. Harrison, Reports Liaison Officer, Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451–7th Street, SW, Room 5124, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Susan Scanlan (202) 708–2740 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Survey Questionnaires.

OMB Control Number: 2529–0045.

Description of the need for the information and proposed use: HUD will use this information to assess the adequacy of its customer service and review comments and suggestions made by its customers to better enhance its customer service as required by Executive Order 12862.

Agency form numbers: None.

Members of affected public: Complainants, Respondents of complaints, Public Housing Authorities (PHAs), Private Property Managers and Representatives for Complainants,

members of the mortgage lending industry who have signed voluntary agreements with HUD.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: This survey will be completed on a voluntary basis. The number of actual respondents can not be exactly calculated as there are various programs being surveyed each with their own unique set of customers. The attached sample survey instruments have been pretested. The amount of time required to complete the questionnaires is estimated at not more than 15 minutes for the complainants, and not more than 30 minutes for all other recipients.

Status of the proposed information collection: This is an amended survey instrument that is being completed to assess the customer service given by the Office of Fair Housing and Equal Opportunity.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 8, 1997.

Laurence D. Pearl,

Acting Deputy Assistant Secretary for Program Operations and Standards.

[FR Doc. 97–21768 Filed 8–15–97; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–05]

Office of the Assistant Secretary for Housing, Federal Housing Commissioner; Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

DATES: Comments due: October 17, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451–7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Michael Diggs, telephone number (202) 708–3944 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Owner/Tenant Certification for Multifamily Housing Programs.

OMB Control Number: 2502–0204.

Description of the need for the information and proposed use: Housing Programs, subsidies, rental assistance, eligibility criteria. Information is needed to determine tenant eligibility and to compute tenant annual rents for those occupying HUD subsidized housing units.

Agency form numbers: HUD 50059, 50059D, 50059F, 50059G.

Members of affected public: Businesses or other for-profit, Non-profit institutions, individuals or households, federal agencies or employees, small business or organizations.

Status of the proposed information collection: Extension without change.

Authority: Section 236 of the Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 8, 1997.

Karen A. Miller,

Deputy Assistant Secretary for Multifamily Housing.

[FR Doc. 97–21769 Filed 8–15–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4211–N–02]

NOFA for Lead-Based Paint Hazard Control in Privately-Owned Housing, Fiscal Year 1997; Notice of Extension of Application Deadline Date Due to United Parcel Service (UPS) Labor Strike

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

ACTION: Notice of funding availability for FY 1997; extension of application deadline date.

SUMMARY: On June 3, 1997 (62 FR 30380), HUD published a notice announcing the availability of approximately $50 million for two categories of lead hazard control activities in privately-owned housing. The June 3, 1997 notice of funding availability (NOFA) provided that applications had to be received by HUD no later than 3:00 p.m. (Eastern Time) on August 5, 1997. Due to the United Parcel Service (UPS) labor strike, HUD is retroactively extending the application deadline date to 5:00 p.m. (Eastern Time), August 5, 1997. HUD will also accept late applications which are either postmarked on or contain a receipt of delivery to a private express mail carrier by midnight (Eastern Time) on August 5, 1997. HUD is extending the application due date in order to prevent the unfair rejection of NOFA applications which, although completed on a timely basis, could not be delivered to HUD by the original deadline date due to the UPS strike.

FOR FURTHER INFORMATION CONTACT: For Category A applicants: Ellis G. Goldman, Director, Program Management Division, Office of Lead Hazard Control, Room B–133, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–1785, extension 112 (this is not a toll-free number). For Category B applicants: Melissa F. Shapiro, telephone (202) 755–1785, extension 153 (this is not a toll-free number). For hearing- and speech-impaired persons, the telephone number may be accessed via TTY (text telephone) by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

On June 3, 1997 (62 FR 30380), HUD published a notice announcing the competition for two categories of grant funding: Category A for approximately $46 million for a grant program for State and local governments to undertake lead-based paint hazard control in

eligible privately-owned housing units; and Category B for approximately $4 million for grants to State and local governments for assistance in undertaking lead-based paint hazard control in eligible privately-owned housing units on or near Superfund or "Brownfield" sites.

The June 3, 1997 notice of funding availability (NOFA) provided that applications had to be received by HUD no later than 3:00 p.m. (Eastern Time) on August 5, 1997. Due to the United Parcel Service (UPS) labor strike, HUD is retroactively extending the application deadline date to 5:00 p.m. (Eastern Time), August 5, 1997. HUD will also accept late applications which are either postmarked on or contain a receipt of delivery to a private express mail carrier by midnight (Eastern Time) on August 5, 1997.

HUD is extending the application due date in order to prevent the unfair rejection of NOFA applications which, although completed on a timely basis, could not be delivered to HUD by the original deadline date due to the UPS strike.

Dated: August 11, 1997.

David E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 97–21771 Filed 8–15–97; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mission Valley Power Utility, Montana Power Rate Adjustment, Bureau of Indian Affairs, Department of the Interior

ACTION: Notice of proposed rate adjustment.

SUMMARY: The Bureau of Indian Affairs (BIA) proposes to adjust the electric power rates for customers of Mission Valley Power (MVP), the Confederated Salish and Kootenai Tribal entity operating the power facility of the Flathead Irrigation and Power Project of the Flathead Reservation under a Public Law 93–638 contract. The following table illustrates the impact of the rate adjustment:

POWER RATE REVISION FOR MVP

Class	Present rate	Proposed rate
RESIDENTIAL		
Basic Rate	$11.00/mo. (includes 125 kwh)	$5.00/mo.
Energy Rate	$0.04828/KWH (over 125 kwh)	$0.04725/kwh.
Minimum Monthly Bill	Not Applicable	$10.00/mo—May 1 thru October 31. $20.00/mo—November 1 thru April 30.
#2 GENERAL		
Basic Rate	$11.00/mo. (includes 107 kwh)	This rate is being replaced by Small Commercial (without demand).
Energy Rate	$0.05604/KWH (over 107 kwh)	
SMALL COMMERCIAL (WITHOUT DEMAND)—RATE REPLACES #2 GENERAL ABOVE		
Basic Rate		$5.00/mo.
Energy Rate		$0.05495/kwh.
SMALL AND LARGE COMMERCIAL (WITH DEMAND)		
Basic Rate	None	Rate Being Replaced.
Monthly Minimum	$38.00	See new Separate Rate.
Demand Rate	$4.514/kw of billing demand	Structures for Small Commercial and Large Commercial.
Energy Rate	$0.04345/kwh—First 18,000 kwh $0.03592/kwh—Over 18,000 kwh	
SMALL COMMERCIAL WITH DEMAND—RATE REPLACES PREVIOUS SMALL AND LARGE COMMERCIAL		
Basic Rate:		
Single Phase		$20.00/mo.
Three Phase		$40.00/mo.
Demand Rate		$4.50/kw.
Energy Rate		$0.0405/kwh.
LARGE COMMERCIAL WITH DEMAND—RATE REPLACES PREVIOUS SMALL AND LARGE COMMERCIAL		
Basic Rate		$125.00/mo.
Monthly Minimum		None.
Demand Rate		$5.00/KW.
Energy Rate		$0.03115/kwh.
IRRIGATION		
Horsepower Rate	$11.30/hp	$11.05/hp.
Energy Rate	$0.03642/kwh	$0.03572/kwh.
Minimum Seasonal Rate	$132.00 or $6.00/hp, whichever is greater	No Adjustment.
Area Lights Installed on Existing Pole or Structure:	Monthly Rate:	Monthly Rate:

POWER RATE REVISION FOR MVP—Continued

Class	Present rate	Proposed rate
7,000 lumen unit, M.V.*	$7.00	$6.85
20,000 lumen unit, M.V.*	$10.00	$9.80
9,000 lumen unit, H.P.S.	$6.50	$6.35
22,000 lumen unit, H.P.S.	$8.75	$8.58
Area Lights Installed with New Pole:	Monthly Rate:	Monthly Rate:
7,000 lumen unit, M.V.*	$8.75	$8.60
20,000 lumen unit, M.V.*	$11.50	$11.25
9,000 lumen unit, H.P.S.	$8.25	$8.10
22,000 lumen unit, H.P.S.	$10.50	$10.30
Street Lighting (Metered):		
Basic Rate	$11.00/mo. (includes 107 kwh)	$5.00/mo.
Energy Rate	$0.05615 (over 107 kwh)	$0.05495/kwh.
Street Lighting (Unmetered):		
This rate class applies to municipalities or communities where there are ten or more lighting units billed in a group. This rate schedule is subject to a negotiated contract with MVP and is unchanged as part of this rate adjustment.		

DATES: Comments must be submitted on or before September 17, 1997.

ADDRESSES: Written comments on rate adjustments should be sent to: Assistant Secretary—Indian Affairs, Attn: Branch of Irrigation and Power, MS#4513–MIB, Code 210, 1849 "C" Street, NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Area Director, Bureau of Indian Affairs, Portland Area Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, telephone (503) 231–6702; or, General Manager, Mission Valley Power, P. O. Box 1269, Polson, Montana 59860–1269, telephone (406) 883–5361.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 7, 1946, c. 802, Section 3 (60 Stat. 895; 25 U.S.C. 385c); the Act of May 25, 1948 (62 Stat. 269); and the Act of December 23, 1981, section 112 (95 Stat. 1404). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

MVP has been informed by its suppliers of wholesale power, Bonneville Power Administration (BPA), Montana Power Company (MPC), and the Louisiana Gas & Electric Company (LGE), that they are adjusting their rates to MVP. Accordingly, the BIA is proposing to adjust the rates at the recommendation of MVP to reflect the adjusted cost of service and power provided to MVP by the BPA, MPC, and LGE. The proposed rate change will impact MVP's Basic Rate, Demand Rate, Horsepower Rate and various other energy rates within each rate class.

MVP is also proposing a general adjustment of electric rates. New, less expensive wholesale power rates from the Bonneville Power Administration, and the opportunity for additional savings available by purchasing a portion of the wholesale needs from an independent third-party source, will result in annual purchased power savings of approximately $900,000 annually for the next five fiscal years. Through action by MVP's Board of Directors, the Bureau of Indian Affairs proposes to lower rates across all customer classes by an average of 2.3% for the five year period, resulting in an effectual rebate to consumers of approximately 35% of the anticipated savings. The additional 65%, or approximately $600,000, will be retained by the utility for funding the construction of new office and operations facilities which are critically required for the utility to continue providing safe, efficient and cost effective service. The proposed rate structure is the result of a Cost of Service study by the MVP consultant, Economic and Engineering Services, Inc., public comments and formal recommendations from the Consumer Council and the Utility Board. The effective date of the proposed BPA rate change will be the first of the month following the publication date of the final notice of Rate Adjustment.

Dated: August 8, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–21721 Filed 8–15–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

Missouri Recreational Riverways Final Environmental Impact Statement/ General Management Plan

AGENCY: National Park Service, Interior.

ACTION: Availability of Final Environmental Impact Statement/ General Management Plan for the Missouri/Niobrara/Verdigre Creek National Recreational Rivers in Charles Mix, Bon Homme, and Gregory counties, South Dakota, and Boyd and Knox counties, Nebraska.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the National Park Service (NPS) announces the availability of the Final Environmental Impact Statement/General Managment Plan (FEIS/GMP) for the Missouri/ Niobrara/Verdigre Creek National Recreational Rivers. The Draft FEIS/ GMP for the recreational rivers was on 58-day public review from July 19 to September 14, 1996.

The NPS will manage a 39-mile section of the Missouri River from Fort Randall Dam to the headwaters of Lewis and Clark Lake, a 20-mile section of the Niobrara measured upriver from its confluence with the Missouri River, and an 8-mile section of Verdigre Creek from the northern municipal boundary of the town of Verdigre to its confluence with the Niobrara River. The action is in response to a mandate by Congress in Pub. L. 102–50, an amendment to the Wild and Scenic Rivers Act (16 U.S.C. 1271–1287). The FEIS/GMP was prepared by the National Park Service.

The NPS's preferred alternative for the Missouri/Niobrara/Verdigre Creek National Recreational Rivers is identified in the FEIS/GMP as Alternative 5. Under the preferred

alternative the NPS would work cooperatively with landowners, local and state government agencies, and others to protect river resources. The boundary for the recreational rivers would include a minimum setback of 200 feet from the ordinary high water flow of the rivers, plus Federal and State fee lands within a quarter mile of the rivers and several significant fish and wildlife habitat areas.

Four other alternatives were also considered: A no action alternative; an alternative that emphasizes rural landscape protection through cooperative approaches with a boundary setback of 200 feet from the ordinary high water flow; an alternative that emphasizes biological resource protection with a boundary that includes significant bottomlands and areas affected by a discharge flow of 60,000 cfs from Fort Randall Dam; and an alternative that emphasizes recreational development with a boundary typically at 200 feet from the ordinary high water mark, but extending further on Corps of Engineers-owned land, potential public use areas, and on biologically significant lands.

DATES: The 30-day no action period for review of the FEIS/GMP will end on September 22, 1997. A record of decision will follow the no action period.

FOR FURTHER INFORMATION CONTACT: Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591. Telephone: 402–336–3970.

Dated: August 11, 1997.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 97–21774 Filed 8–15–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 9, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by September 2, 1997.

Patrick Andrus,

Acting Keeper of the National Register.

ARIZONA

Coconino County

Railroad Addition Historic District (Boundary Increase), 122 E US 66, Flagstaff, 97001086

Maricopa County

Kenilworth Historic District (Boundary Increase), (Roosevelt Neighborhood MRA), 312 W. Culver, Phoenix, 97001085

Yavapai County

West Prescott Historic District (Boundary Increase), (Prescott Territorial Buildings MRA), 619–621 Glendale Ave., Prescott, 97001087

FLORIDA

Dade County

Sweeting Homestead, Address Restricted, Biscayne National Park vicinity, 97001088

GEORGIA

Charlton County

Mizell, William, Sr., House, 101 Palm St., Folkston, 97001089

Terrell County

Dawson Historic District, Roughly bounded by US 80, Pecan St., Seaboard Airline RR tracks, Crawford St., Thirteenth Ave., and Central of Georgia RR track, Dawson, 97001090

MASSACHUSETTS

Worcester County

Harvard Center Historic District, Ayer, Still River, Old Littleton, Bolton and Oak Hill Rds, Elm and Fairbanks Sts, Lovers Ln., Massachusetts Ave. and Old Boston Tnpk., Harvard, 97001091

MICHIGAN

Wayne County

Cass—Davenport Historic District, (Cass Farm MPS), Roughly bounded Cass Ave., Davenport, and Martin Luther King Jr. Blvd., Detroit, 97001100

Chapel of St. Theresa—the Little Flower, (Cass Farm MPS), 46 Parsons, Detroit, 97001099

Detroit Edison Company Willis Avenue Station, (Cass Farm MPS), 50 W. Willis, Detroit, 97001097

Detroit—Columbia Central Office Building, (Cass Farm MPS), 52 Seldon, Detroit, 97001098

Graybar Electric Company Building, (Cass Farm MPS), 55 W. Canfield, Detroit, 97001096

Hotel Stevenson, (Cass Farm MPS), 40 Davenport, Detroit, 97001095

Jefferson Intermediate School, (Cass Farm MPS), 938 Selden, Detroit, 97001094

League of Catholic Women Building, (Cass Farm MPS), 100 Parsons, Detroit, 97001093

Sts. Peter and Paul Academy, (Cass Farm MPS), 64 Parsons, Detroit, 97001101

West Canfield Historic District, (Cass Farm MPS), Roughly bounded by Third Ave., Calumet, Second Ave., and W. Canfield, Detroit, 97001092

NEW HAMPSHIRE

Belknap County

Washington Mooney House, Jct. of NH 104 and I–93, New Hampton, 97001102

NEW MEXICO

Bernalillo County

Pyle, Ernie, House, 900 Girard Blvd., SE, Albuquerque, 97001103

SOUTH CAROLINA

Spartanburg County

Cowpens Depot, 120 Palmetto St., Cowpens, 97001104

Reidville Academy Faculty House, Jct. of College and Main Sts., Reidville, 97001105

SOUTH DAKOTA

Hyde County

Gerhart, Augustus and Augusta, House, 321 Iowa St., Highmore, 97001106

Spink County

Salem Church, 208 Ohio St., Tulare vicinity, 97001107

TENNESSEE

Washington County

Bowers—Kirkpatrick Farmstead, 3033 Boone's Creek Rd., Gray vicinity, 97001108

TEXAS

Tarrant County

Cotton Belt Railroad Industrial Historic District, (Grapevine MPS), Along RR tracks, roughly bounded by Hudgins, Dooley, and Dallas Sts., Grapevine, 97001109

Travis County

Conner, Dr. Beadie E. and Willie R., House and Park, 3111 E. 13th St., Austin, 97001110

VIRGINIA

Arlington County

Washington National Airport Terminal and South Hangar Line, Thomas Ave., Arlington, 97001111

Page County

Skyline Drive Historic District (Boundary Increase), (Historic Park Landscapes in National and State Parks MPS), Within Shenandoah National Park, areas known as Headquarters, Big Meadows, Dickey Ridge, Simmons Gap, and Piney R, Luray vicinity, 97001112

[FR Doc. 97–21775 Filed 8–15–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Availability of the Yakima River Basin Water Enhancement Program, Draft Basin Conservation Plan for Public Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Bureau of Reclamation Commissioner Eluid Martinez, on behalf of the Secretary of the Interior, has released the Draft Basin Conservation Plan for the Yakima River Basin Water Enhancement Program for a public comment period. The Draft Conservation Plan was developed by the Yakima River Basin Conservation Advisory Group, appointed by the Secretary of the Interior in accordance with Title XII of Pub. L. 103–434 authorizing the Yakima River Basin Water Conservation Program (Conservation Program). The Plan outlines objectives, problems and needs, and potential water conservation solutions. It provides guidelines, processes, and procedures to participate in the Conservation Program.

DATES: The Draft Conservation Plan will be available August 15, 1997. Written comments on the Plan will be accepted through October 31, 1997, at the Bureau of Reclamation, Upper Columbia Area Office in Yakima, Washington, at the address indicated below.

ADDRESSES: Copies of the Plan are available in public libraries throughout the Yakima River Basin or can be obtained by contacting Jerry Jacoby at the Bureau of Reclamation, Upper Columbia Area Office, Yakima River Basin, Water Enhancement Project, P.O. Box 1749, Yakima WA 98907–1749.

FOR FURTHER INFORMATION CONTACT: Jerry Jacoby, Resource Conservationist, (509) 575–5848, Ext. 282, or (800) 905–7565, Press 6.

SUPPLEMENTARY INFORMATION: The Conservation Program is a voluntary program, structured to provide economic incentives with cooperative Federal, State, and local funding to stimulate the identification and implementation of structural and nonstructural water conservation measures in the Yakima River Basin. Improvements in the efficiency of irrigation water delivery and use will result in improved stream flows for fish and wildlife, and improve the reliability of water supplies for irrigation.

Dated: August 12, 1997.

Walt Fite,

Area Manager, Upper Columbia Area Office.

[FR Doc. 97–21789 Filed 8–15–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended, and the Resource Conservation and Recovery Act of 1976, as Amended

Under section 122 the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, and 28 CFR 50.7, notice is hereby given that on August 5, 1997, a proposed consent decree in *United States* v. *Caldwell County, et al.*, Civil Action No. 5:97CV125–V, was lodged with the United States District Court for the Western District of North Carolina.

In this action, the United States sought the reimbursement of costs and the performance of work at the Caldwell Systems Site ("Site") in Caldwell County, North Carolina. The United States incurred these costs for a variety of actions authorized by section 104 of CERCLA, which included investigating the release and threatened release of hazardous substances at the Site, as well as investigating the health risks faced by people who formerly worked at the Site. The United States' costs for these actions are approximately $5.26 million. Under the consent decree, Caldwell County and 42 private companies agree to remove contaminated soil, to monitor groundwater, and to remove constaminants from groundwater if necessary. This work is valued at approximately $6.2 million. The 42 private companies also agree to guarantee a minimum recovery from a future de minimis settlement with other potentially liable parties at the Site, if EPA decides to offer such a settlement.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC. 20530, and should refer to *United States* v. *Caldwell County, et al.*, D.J. Ref. No. 90–11–2–615A.

The consent decree may be examined at the Office of the United States Attorney, Suite 1700, Carillon Building, 227 West Trade Street, Charlotte, North Carolina; at U.S. EPA Region 4, 61 Forsythe Street, S.E., Atlanta, Georgia; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC, (202) 624–0892. To review the consent decree at U.S. EPA Region 4, interested persons should make arrangements by calling Charles Mikalian at (404) 562–9575. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005. When requesting a copy, please enclose a check in the amount of $124.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–21747 Filed 8–15–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Cominco Alaska, Inc.*, No. A97–267CIV (JKS) (D. Alaska), was lodged on July 14, 1997, with the United States District Court for the District of Alaska, With regard to the Defendant, the Consent Decree resolves a claim filed by the United States on behalf of the United States Environmental Protection Agency ("EPA") pursuant to the Clean Water Act, *as amended*, 33 U.S.C. 1251, *et seq.*

The United States entered into the Consent Decree in connection with the Red Dog Mine and Mill, located approximately 90 miles north of Koetzebue, Alaska, The Consent Decree provides that the Defendant will pay to the United States a civil penalty of $1.7 million for violations of the Clean Water Act at the Site. Further, the Defendant will be required to develop and implement three Supplemental Environmental Projects set forth in the Consent Decree, at an estimated capital cost of $3.1 million.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Cominco Alaska, Inc.*, DOJ Reg. #90–5–1–1–5010.

The proposed Consent Decree may be examined at the office of the United States Attorney, 222 West Seventh Avenue #9, Anchorage, Alaska 99513–7567; the Region 10 office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy refer to the referenced case and enclose a check in the amount of $25.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section.

[FR Doc. 97–21745 Filed 8–15–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on August 8, 1997, five proposed Consent Decrees in *United States* v. *Levine, et al.*, Civil Action No. 97–71163, were lodged with the United States District Court for the Eastern District of Michigan.

In this action, the United States sought to recover response costs under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), incurred at or in connection with a release or threatened release of hazardous substances at a site operated by Moreco Energy, Inc., located at 14445 Linwood St. in Detroit, Wayne County, Michigan, and known as the Enterprise Oil Superfund Site. The five Consent Decrees completely resolve the claims of the United States in this action.

Under the first Consent Decree ("Cummins Consent Decree"), Cummins Engine Co., Inc., Commercial Steel Treating Corp., CSX Transportation, Inc., Consolidated Rail Corp., PSI Telecommunications, Inc., Bentley Lube Centers, Inc., Ring Screw Works, Inc., L.E. Borden Co., and The Worthington Steel Co., will transfer $545,740 of funds already placed in an interest-bearing escrow account to the EPA Hazardous Substance Superfund. Under the second Consent Decree ("Victory Lane Consent Decree"), Victory Lane Quick Oil Change, Inc., will pay $24,000, plus interest, in six quarterly installments to the EPA Hazardous Substance Superfund. Under the third Consent Decree ("MNP Consent Decree"), MNP Corp. will pay $20,000, plus interest, in five quarterly installments to the EPA Hazardous Substance Superfund. Under the fourth Consent Decree ("Buggy Lube Consent Decree"), Buggy Bath & Lube, Inc. will pay $12,330, plus interest, in five quarterly installments to the EPA Hazardous Substance Superfund. Under the fifth Consent Decree ("Levine Consent Decree"), H. Fred Levine will pay $87,500, plus interest, in three equal installments to the EPA Hazardous Substance Superfund.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the five Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Levine, et al.*, D.J. Ref. No. 90–11–3–1656.

The Consent Decrees may be examined at the Office of the United States Attorney, 211 W. Fort St., Suite 2300, Detroit, MI 48226–3211, at the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. A copy of the Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the above-referenced case and enclose a check payable to the Consent Decree Library in the following amounts ($.25 per page reproduction costs): For the Cummins Consent Decree, $9.00; for the Victory Lane Consent Decree, $6.75; for the MNP Consent Decree, $6.75; for the Buggy Lube Consent Decree, $6.75, and for the Levine Consent Decree, $6.25. Please specify precisely which Decree is being requested.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–21746 Filed 8–15–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In accordance with Departmental policy, 28 CFR 50.7 and pursuant to Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that proposed Consent Decrees in *United States* v. *Mary Ruth Smith, et al.*, Civil Action No. C90–0232–L(R), were lodged on August 5, 1997, with the United States District Court for the Western District of Kentucky.

This case concerns the Smith Farm Superfund Site, located in Bullit County, in Kentucky (the "Site"). The Environmental Protection Agency ("EPA") divided the Site into two Operable Units ("OUs") to simplify the remediation at both an unpermitted disposal area (OU 1) and a former landfill disposal area (OU 2). EPA issued a Record of Decision ("ROD") for OU 1 on September 29, 1989, and amended the ROD on September 30, 1991. EPA issued the ROD for OU 2 on September 17, 1993. The selected remedy at the Site for both OUs is the installation of a landfill cap and a leachate collection system. EPA estimates the remedy to cost approximately $38 million. The United States has incurred approximately $5 million in past response costs. EPA estimates that the total Site costs are $43 million.

Under the decrees, Ford Motor Company agrees to undertake all remedial work necessary at the Site, while ultimately being responsible for 54.5% of the actual Site costs, and nine other major parties (Akzo Nobel Coatings, Inc.; The B.F. Goodrich Company; General Electric Company; Hoechst Celanese Corporation; Jim Beam Brands Company; Navistar International Transportation Corporation; Rohm and Haas Kentucky Incorporated; Safety Kleen Envirosystems Company; and Waste Management of Kentucky, LLC.) agree to a "cashout" settlement representing 41% of the $43 million estimated overall Site response costs and fund or perform 41% of any future work.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and

Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Mary Ruth Smith, et al.*, DOJ Ref. #90–11–3–549.

The United States filed a complaint in this matter in March 1990, pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, to recover past and future response costs incurred and to be incurred by the United States with respect to the Site, and injunctive relief for the Site.

The proposed Consent Decrees may be examined at the office of the United States Attorney, Western District of Kentucky, 510 West Broadway, Louisville, KY 40202; the Office of the United States Environmental Protection Agency, Region 4, 61 Forysth Street, S.W., Atlanta, Georgia, 30303; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. Copies of the proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the Consent Decree with Ford Motor Company, please refer to the referenced case and enclose a check in the amount of $190.50 (25 cents per page reproduction costs), payable to the Consent Decree Library for a copy of the Consent Decree with Ford Motor Company with its attachments or a check in the amount of $17.75, for a copy of that proposed Consent Decree without its attachments. In requesting a copy of the Consent Decree with the nine other parties (Akzo Nobel Coatings, Inc.; The B.F. Goodrich Company; General Electric Company; Hoechst Celanese Corporation; Jim Beam Brands Company; Navistar International Transportation Corporation; Rohm and Haas Kentucky Incorporated; Safety Kleen Envirosystems Company; and Waste Management of Kentucky, LLC.), please refer to the referenced case and enclose a check in the amount of $9.00 (25 cents per page reproduction costs), payable to the Consent Decree Library for a copy of the Consent Decree with attachments or a check in the amount of $8.25, for a copy of that proposed Consent Decree without its attachments.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–21473 Filed 8–15–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act; the Toxic Substances Control Act; and the Resource Conservation and Recovery Act

Notice is hereby given that on July 28, 1997 a proposed consent decree in *United States* v. *Southeastern Pennsylvania Transportation Authority, et al.*, Civ. A. No. 86–1094, was lodged with the United States District Court for the Eastern District of Pennsylvania. The complaint in this action seeks judgment under: Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99–499, 42 U.S.C. 9606, 9607(a); Section 7 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2606; and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973. This action involves the Paoli Railroad Yard Superfund in the City of Paoli, Chester County, Pennsylvania.

The consent decree resolves the claims of the United States against three Defendants: Consolidated Rail Corporation ("Conrail"), National Railroad Passenger Corporation ("Amtrak"), and Southeastern Pennsylvania Transportation Authority ("SEPTA"). Under the terms of this decree Settling Defendants shall: (A) perform the RD/RA for all Site work on the actual rail yard portion of the Site, (B) pay $500,000 in past costs, and, (C) pay $850,000 for Natural Resource Damages.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *Southeastern Pennsylvania Transportation Authority, et al.*, DOJ Reference No. 90–11–2–152. In accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request a public meeting in the affected areas.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut St., Room 1250, Philadelphia, PA 19106; the Region III office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA; and at the Consent Decree Library, 1120 "G" Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of each proposed decree may be obtained in person or by mail from the Consent Decree Library at the address listed above. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of $61.00 (with exhibits) (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Div.

[FR Doc. 97–21743 Filed 8–15–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–9]

Oscar I. Ordonez, M.D.; Conditional Grant of Registration

On November 8, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Oscar I. Ordonez, M.D., (Respondent) of Winchester, Indiana, notifying him of an opportunity to show cause as to why DEA should not deny pending applications for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that his registration would be inconsistent with the public interest. By letter dated November 28, 1995, Respondent, through counsel, timely filed a request for a hearing, and following prehearing procedures, a hearing was held in Indianapolis, Indiana on June 19, 1996, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument.

On June 17, 1997, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that the Deputy Administrator grant Respondent's application upon Respondent's filing of a certificate or other demonstration of completion of a course of at least sixteen hours of formal training in the regulation and proper handling of controlled substances. Neither party filed exceptions to the Administrative Law Judge's recommended decision, and on July 18,

1997, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

Subsequently, by letter dated July 22, 1997 to the Acting Deputy Administrator, Respondent requested that the decision in this matter be expedited, that the Acting Deputy Administrator approve a program which Respondent intends to attend in November 1997, and that the Acting Deputy Administrator grant Respondent a temporary DEA registration upon proof that Respondent has registered for the program and a permanent registration upon evidence of successful completion of the course. In his letter, Respondent indicated that Government counsel had no objections to this petition. By letter to the Acting Deputy Administrator dated July 25, 1997, Government counsel indicated that she had not reviewed the information about the program Respondent intends to attend not any petition for an expedited determination, and has not agreed or stipulated to such petition. The regulations do not provide for the submission of additional information after the record has been transmitted to the Deputy Administrator, but before the Deputy Administrator renders his decision, but under the circumstances of this case, the Deputy Acting Administrator has nonetheless considered these two letters in rendering his decision in this matter.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the opinion and recommended ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issued and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent graduated from medical school in 1983, and in July 1984, began a one year pediatric residency in New York. He then moved to Miami, Florida to accommodate his then-wife, where he worked as a physician's assistant because he was unable to find a residency program there. In July 1987, Respondent moved to Cincinnati, Ohio upon acceptance to a residency program in internal medicine, however, his wife remained in Miami.

While in Ohio, Respondent's marriage suffered as a result of financial concerns, other personal problems, and the fact that his wife still lived in Miami. In an effort to save his marriage and to alleviate some of his financial concerns, Respondent entered into an arrangement with his wife's brother, whereby the brother would mail Respondent packages of illicit cocaine, which Respondent repackaged and then mailed to their final destination. Respondent testified that he knew that what he was doing was wrong, and was in the process of deciding to divorce his wife and stop this arrangement, when in November 1988, he was arrested. On January 18, 1989, Respondent pled guilty in the Hamilton County, Ohio Court of Common Pleas, to one felony count of trafficking. He was fined $5,000 and served 12 months of an 18 month sentence. Respondent was released from prison on January 18, 1990.

Respondent and his first wife divorced, and after his release from prison, Respondent remarried and participated in a residency program in internal medicine in New York from July 1, 1990, until June 3, 1991. Respondent and his family then moved to Savannah, Georgia where Respondent completed another residency program in June 1993. Respondent next sought employment in Indiana to be closer to his and his wife's families.

Knowing that he wanted to practice medicine in Indiana, on December 3, 1992, Respondent applied for an Indiana medical license. On February 25, 1993, the Medical Licensing Board of Indiana (Board) denied Respondent's application since he had been convicted of a crime "that has a direct bearing on [his] ability to practice competently." On March 16, 1993, Respondent petitioned the Board to review its decision, and following a hearing, the Board issued its Findings of Fact and Order on June 14, 1993, granting Respondent's application. Thereafter, by letter dated July 12, 1993, the Indiana Health Professions Bureau granted Respondent an Indiana controlled substances registration.

During his state application process, Respondent was recruited by Randolph County Hospital in Winchester, Indiana. The Chief Executive Officer of the hospital testified that Randolph County is a designated Health Professional Shortage Area and was in need of general internists and that Respondent's background and communication skills impressed him. Respondent was very candid during the interview process about his conviction. The hospital extended Respondent an offer, and he moved to Winchester in June 1993, and began working in the emergency room of the hospital. On August 1, 1993, Respondent began a private practice in Winchester in internal medicine.

In June 1993, Respondent applied for a DEA Certificate of Registration. He indicated on the application that he had been convicted of a crime relating to controlled substances, and as a result, DEA initiated an investigation to determine whether to grant Respondent's application or to issue an Order to Show Cause proposing to deny it. In December 1993, DEA received information that a pharmacy had received a prescription signed by Respondent for Xanax, a Schedule IV controlled substance, with no DEA number on the prescription. As a result, in January 1994, DEA investigators visited several pharmacies in the vicinity where Respondent had applied with DEA to be registered, and retrieved 21 prescriptions for Ritalin and four prescriptions for MS Contin, both Schedule II controlled substances, written by Respondent between August 31 and November 29, 1993. The investigators noted that two of the prescriptions for Ritalin authorized refills, which are not permitted for Schedule II substances.

Respondent testified at the hearing that he believed that since he had unrestricted Indiana licenses, obtaining a DEA registration was "just a formality." He further testified that he mistakenly believed that he could use the hospital's DEA number to issue controlled substance prescriptions, and that the director of the emergency room at the hospital told Respondent that he could use the hospital's number. However, a DEA investigator testified at the hearing in this matter that DEA regulations permit a physician to use a hospital's DEA number to administer or dispense, but not prescribe controlled substances. The investigator further testified that 21 CFR 1301.76 provides that a registrant shall not employ an individual with access to controlled substances if that individual has been convicted of a felony offense related to controlled substances. Consequently, not only was Respondent not authorized to prescribe controlled substances using the hospital's DEA registration, he could not be employed at the hospital with access to controlled substances without the hospital first obtaining a waiver of 21 CFR 1301.76.

When Respondent was advised by the hospital's attorney that he could not write controlled substance prescriptions without his own DEA registration, and that he could not use the hospital's DEA registration, he ceased issuing prescriptions. On March 21, 1994, Respondent and the hospital entered into a Physician Employment Agreement providing that Respondent would be an employee of the hospital,

contingent upon DEA's granting of a waiver of the regulation precluding his employment in light of his felony conviction. On June 20, 1994, the hospital filed a request with DEA for a waiver of 21 CFR 1301.76(a), in order to employ Respondent with access to controlled substances, and later submitted to DEA requested information regarding how the hospital monitors and restricts access to controlled substances. As of the date of the hearing, no action had been taken on this waiver request.

During the course of investigating Respondent's application for registration, DEA investigators met with the pharmacy technician of the hospital on July 31, 1995, and obtained records, known as proof of use sheets, which seemingly indicated that on a number of occasions, Respondent ordered controlled substances for hospitalized patients. The pharmacy technician told the investigators that a nurse usually fills out the sheets, and that the doctor listed on the form is the one who authorized the administration of the controlled substance. However, the Director of Pharmacy for the hospital testified at the hearing before Judge Bittner that there was no consistent method for filling out the sheets, and therefore it was not possible to determine by looking at these sheets whether the doctor listed was the admitting or attending physician, or the physician who ordered the controlled substance. The Director of Pharmacy testified that he checked each entry on the controlled substance proof of use sheets which listed Respondent as the physician against the actual medical orders, and in each instance the physician ordering the administration of the controlled substance was someone other than Respondent.

Respondent testified at the hearing that he did not order controlled substances for hospitalized patients, but that his name appeared on the proof of use sheets because he was the attending physician. Respondent further testified that as the attending physician, if he determined that a patient required a controlled substance, he would consult with another physician and have that physician order the medication for the patient.

As of the date of the hearing, Respondent was the Chief of Staff at the hospital, having been elected to that position by his peers. Also, since January 1, 1996, Respondent has been a member of the hospital's Board of Trustees.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny any pending applications for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

Regarding factor one, it is undisputed that on June 14, 1993, the Board granted Respondent an unrestricted license to practice medicine in the State of Indiana, and thereafter, he was issued an Indiana controlled substances registration. While this certainly weighs in favor of Respondent being issued a DEA registration, it is not dispositive of the issue.

As to Respondent's experience in dispensing controlled substances and his compliance with applicable laws relating to controlled substances, it is undisputed that Respondent engaged in the unlawful trafficking of cocaine in violation of Ohio state law. It is also undisputed that during a three-month period in 1993, Respondent issued a number of Schedule II prescriptions while not registered with DEA to do so, in violation of 21 U.S.C. 822. It is equally clear, that Respondent was not permitted to use the hospital's DEA registration number to issue such prescriptions. In light of 21 CFR 1301.76(a), the hospital could not employ Respondent with access to controlled substances since he had been convicted of a controlled substance related felony offense. Even if the hospital had obtained a waiver of this regulation, Respondent could still not use the hospital's DEA registration to prescribe controlled substances. The regulation in effect at the time of the events at issue in this proceeding would have only allowed Respondent to administer or dispense controlled substances, but not prescribe, using the hospital's DEA number. *See* 21 CFR 1301.24 (1993).

Accordingly, the Acting Deputy Administrator concludes that Respondent unlawfully issued prescriptions for Schedule II controlled substances. The Acting Deputy Administrator concurs with Judge Bittner's finding that "Respondent did not intentionally violate [21 U.S.C. 822]; however, this finding does not resolve the issue because an applicant for a DEA registration is properly expected to have some familiarity with, and understanding of, the Controlled Substances Act and its implementing regulations and the obligations they impose upon registrants." Yet, the Acting Deputy Administrator is cognizant of the fact that Respondent issued these prescriptions over a three-month period in 1993, and he stopped writing such prescriptions upon being told that he was not authorized to do so.

In addition, Respondent violated 21 U.S.C. 829 and 21 CFR 1306.12, by authorizing the refilling of two Schedule II prescriptions. Like Judge Bittner, the Acting Deputy Administrator finds that "[a]lthough it does not appear that Respondent intended to violate the [Controlled Substances Act], his ignorance of its requirements is troubling."

Further, the Acting Deputy Administrator finds that the evidence does not support a finding that Respondent improperly ordered controlled substances for hospitalized patients. While Respondent's name appeared on the proof of use sheets, the testimony of Respondent and the Director of Pharmacy of the hospital, as well as documentary evidence, indicate that Respondent was not in fact the physician who ordered the administration of the controlled substances.

While there has been no evidence of Respondent's improper handling of controlled substances since 1993, the Acting Deputy Administrator is concerned about Respondent's apparent lack of knowledge of the provisions of the Controlled Substances Act and its implementing regulations. It is the responsibility of a registrant to be familiar with the requirements for the proper handling of controlled substances. Respondent's past experience in dispensing controlled substances is troubling and Respondent admitted at the hearing that he had not read the DEA regulations.

Finally, as to factor three, it is undisputed that Respondent was convicted of one felony count of trafficking cocaine, and as a result

served 12 months in an Ohio prison. The Acting Deputy Administrator is extremely dismayed by Respondent's conduct which led to his conviction. As Judge Bittner noted, "[m]aintaining the boundary between the licit and illicit drug markets is one of the greatest responsibilities placed upon a DEA registrant." However, this conduct occurred in 1988, and there is no evidence that Respondent has engaged in such behavior since that time. Further, Respondent has expressed remorse for his past actions.

The Administrative Law Judge concluded that Respondent practices medicine in an underserved area, that the conduct which led to his conviction occurred eight years before the hearing in this matter, and that Respondent's subsequent misprescribing of controlled substances "was due to ignorance rather than an intent to circumvent the Controlled Substances Act and its implementing regulations." Therefore, Judge Bittner concluded "that the public interest is best served by granting Respondent's application, contingent upon his demonstrating knowledge, understanding, and acceptance of the obligations concomitant to a DEA registration." Judge Bittner recommended that Respondent's application for registration be granted upon demonstration of completion of a course of at least 16 hours in the regulation and proper handling of controlled substances.

The Acting Deputy Administrator finds that the Government has established a *prima facie* case for the denial of Respondent's application for registration in light of Respondent's conviction, his improper prescribing of controlled substances, and his apparent lack of knowledge regarding the proper handling of controlled substances. However, the Acting Deputy Administrator also finds that the conduct which led to Respondent's conviction occurred in 1988, and there is no evidence of any similar conduct since that time. His improper prescribing of controlled substances occurred in 1993, and likewise, there is no evidence of any similar conduct since that time.

Therefore, the Acting Deputy Administrator finds that it would not be in the public interest at this time to deny Respondent's application for registration. Nevertheless, in light of Respondent's apparent lack of knowledge regarding the proper handling of controlled substances, the Acting Deputy Administrator agrees with Judge Bittner that Respondent should undergo at least 16 hours of formal training in the regulation and proper handling of controlled substances before being issued a DEA registration.

The Acting Deputy Administrator has considered Respondent's July 22, 1997 letter requesting that the Deputy Administrator approve a program that Respondent intends to attend in November 1997, as acceptable to meet the Administrative Law Judge's recommended condition of registration, and that the Deputy Administrator issue Respondent a temporary DEA registration upon proof that Respondent has registered for the program. The Acting Deputy Administrator concludes that the course Respondent intends to attend, or a similar course, would be acceptable to fulfill the training condition of registration. However, in light of Respondent's apparent lack of knowledge regarding the proper handling of controlled substances, the Acting Deputy Administrator declines to grant Respondent a temporary registration pending the completion of the course. The purpose of requiring Respondent to undergo this training is for Respondent to have an understanding and appreciation of the laws and regulations relating to controlled substances, before he is issued his own DEA registration to handle such substances.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Oscar I. Ordonez, M.D., be, and it hereby is granted upon receipt by the DEA Indianapolis office of evidence of successful completion of at least 16 hours of formal training in the regulation and proper handling of controlled substances. This order is effective August 18, 1997.

Dated: August 11, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–21834 Filed 8–15–97; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–114]

Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Utilex, Inc. of P.O. Box 991, Greenville, NC 27834, has applied for a partially exclusive license to practice the inventions described and claimed in U.S. Patent Nos. 5,166,679; 5,214,388; 5,363,051; 5,442,347; 5,373,245; 5,515,001; 5,521,515; 5,539,292 entitled respectively, "Driven Shield Capacitive Proximity Sensor," "Phase Discrimination Capacitative Array Sensor System," "Steering Capaciflector Sensor," "Double Driven Shield Capacitive Type Proximity Sensor," "Capaciflector Camera," "Current Measuring OP–AMP Devices," "Frequency Scanning Capaciflector," and "Capaciflector-Guided Mechanisms" and the following NASA invention disclosed in NASA Case No. GSC 13,710–1, "3–D Capaciflector." All of the aforementioned inventions are assigned to the United States of America as represented by the National Aeronautics and Space Administration. The field of use will be limited to utility meter reading applications. Written objections to the prospective grant of a license to Utilex, Inc. should be sent to Ms. Eileen Lehmann.

DATES: Responses to this notice must be received by October 17, 1997.

FOR FURTHER INFORMATION CONTACT:

Ms. Eileen Lehmann, Patent Attorney, NASA Goddard Space Flight Center, Mail Code 204, Greenbelt, MD 20771; telephone (301) 286–7351.

Dated: August 7, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–21825 Filed 8–15–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office; National Industrial Security Program Policy Advisory Committee: Notice of Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.2) and implementing regulation 41 CFR 101.6, announcement is made for the following committee meeting:

Name of Committee: National Industrial Security Program Policy Advisory Committee (NISPPAC).

Date of Meeting: September 11, 1997.

Time of Meeting: 2:30 p.m. to 4:30 p.m.

Place of Meeting: National Imagery and Mapping Agency, 3200 South Second Street, St. Louis, Missouri 63118–3399.

Purpose: To discuss National Industrial Security Program policy matters.

This meeting will be open to the public. However, due to space limitations and access procedures, the names and telephone numbers of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than September 5, 1997. ISOO will provide additional instructions for gaining access to the location of the meeting.

For Further Information Contact: Steven Garfinkel, Director, Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, NW, Room 100, Washington, DC 20408, telephone (202) 219–5250.

Dated: August 11, 1997.

Mary Ann Hadyka,

Policy and Communications Staff.

[FR Doc. 97–21738 Filed 8–15–97; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Notice of Establishment

The Deputy Director of the National Science Foundation and the Chairman of the National Science Board have determined that the establishment of the NSB Public Service Award Committee is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration and the Office of Management and Budget.

Name of Committee: NSB Public Service Award Committee.

Purpose: To provide advice and recommendations to the National Science Board on the selection of the NSB Public Service Award recipient. The NSB Public Service Award is a nonmonetary annual award designed to recognize individuals, a company, corporation, or organization, for their contribution in increasing the public's understanding of science.

Balanced Membership Plans. The Committee will be balanced with eight members, six appointed and two ex officio, selected from the academic, scientific, and the private sectors who are knowledgeable about the public's view and understanding of science and technology and its importance in today's society. The two ex officio members are the Director, National Science Foundation; and Chairman, National Science Board.

Responsible NSF Official: Susan Fannoney, Executive Secretary of the Public Service Award Committee, National Science Board, Room 1225, National Science Foundation, 4301 Wilson Boulevard, Arlington, VA 22300, telephone (703) 306–2000.

Dated: August 12, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–21780 Filed 8–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel (1569).

Date: September 10, 11, & 12, 1997.

Time: 8:00 a.m. to 6:00 p.m. each day.

Place: Rooms 310, 340, 360, 380, & 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Alan M. Gaines, Section Head, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA, (703) 306–1553.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate earth sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 12, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–21779 Filed 8–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Engineering (1170).

Date and Time: September 4–5, 1997, 8:00 a.m.–5:00 p.m.

Place: Rm. 530, NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. George A. Hazelrigg, Program Director, Division of Design and Integration Engineering Program, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1330.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Design and Integration Engineering Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: August 12, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–21777 Filed 8–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel In Experimental Programs To Stimulate Competitive Research (EPSCoR); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental Programs to Stimulate Competitive Research (EPSCoR) #1198.

Date & Time: September 8, 1997, 11:30 am–6:00 pm; September 9, 1997, 8:00 am–12:00 noon.

Place: Crystal City Hyatt, 2799 South Jefferson Davis Highway, Arlington, Virginia 22202, PHONE (703) 418–1234, FAX (703) 418–1233.

Type of Meeting: Closed.

Contact Person: Dr. Richard J. Anderson, Head, Office of Experimental Program to Stimulate Competitive Research (EPSCoR), National Science Foundation, 4201 Wilson Boulevard, Room 875, Arlington, VA 22230, Telephone: (703) 306–1683.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate science and technology infrastructure improvement proposals from states participating in the Experimental Program to Stimulate Competitive Research. Proposals request support for 36 month non-renewable EPSCoR Cooperative Agreements and are submitted in response to NSF solicitation 95–141.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as

salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 12, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–21776 Filed 8–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: September 3–4, 1997; 8:30 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Richard A. Behnke, Section Head, Upper Atmosphere Research Section, Division of Atmospheric Sciences, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, telephone (703) 306–1518.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Foundation in response to the Polar Cap Observatory project solicitation as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 12, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–21778 Filed 8–15–97; 8:45 am]

BILLING CODE 7555–01–M

POSTAL RATE COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., August 21, 1997.

PLACE: Commission Conference Room, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

STATUS. Closed.

MATTERS TO BE CONSIDERED. (1) Docket MC97–3—consideration of proposed settlement, and (2) Docket MC97–4—consideration of proposed settlement.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001, (202) 789–6820.

Dated: August 13, 1997.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 97–21849 Filed 8–13–97; 4:26 pm]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38921; International Series Release No. IS–1096; File No. SR–AMEX–97–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Inc. Relating to Adoption of Foreign Examination Modules

August 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 28, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. proposes to adopt certain foreign examination modules of the General Securities Registered Representative Examination ("Series 7"), which were developed by the New York Stock Exchange ("NYSE"), for use by registered representatives from the United Kingdom ("U.K."), Canada and Japan seeking to qualify as general securities registered representatives in the United States.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Pursuant to Commentary .03 to Exchange Rule 341, natural persons seeking to become registered representatives must pass a qualifying examination. The Exchange currently requires that all such persons, including those qualified in foreign countries, including the U.K., Canada and Japan, pass the Series 7 examination. In order to reduce redundant qualification requirements, the NYSE developed foreign examination modules for the U.K. (Series 17), Canada (Series 37/38) and Japan (Series 47). By successfully completing these modified examinations rather than the full Series 7 examination, persons in good standing with the securities regulators of their respective countries may perform all of the functions permitted of a person who holds a Series 7 registration, with the exception of selling municipal securities. These examination modules are currently in use by the NYSE, National Association of Securities Dealers ("NASD") and the Chicago Board Options Exchange ("CBOE").[3]

The Series 17 version, the Limited Registered Representative Examination, is for U.K. registrants who have successfully completed the basic exam of the U.K. and who are in good standing with securities regulators in the U.K. It deletes those substantive sections of the standard Series 7 which overlap with the U.K. examination. The Series 17 is a ninety question

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 27967 (May 1, 1990), 55 FR 19124 (May 8, 1990) (approving File No. SR–NYSE–89–22, Series 17); Securities Exchange Act Release No. 36629, International Series Release No. 909 (Dec. 21, 1995), 60 FR 67385, corrected, Securities Exchange Act Release No. 36629A, International Series Release No. 909A (Jan. 4, 1996), 61 FR 744 (Jan. 10, 1996) (approving File No. SR–NYSE–95–29, Series 37 and Series 38); Securities Exchange Act Release No. 36708, International Series Release No. 915 (Jan. 11, 1996), 61 FR 1808 (Jan. 23, 1996) (approving File No. SR–NYSE–95–36, Series 47); *see also* Securities Exchange Act Release No. 36825 (Feb. 9, 1996), 61 FR 6052 (approving File No. SR–NASD–96–04, Series 37 and 38); Securities Exchange Act Release No. 37112 (April 12, 1996), 61 FR 17339 (approving File No. SR–NASD–96–13); Securities Exchange Act Release No. 38274 (February 12, 1997), 62 FR 7485 (File No. SR–CBOE–97–04).

examination dealing with U.S. securities laws, regulations, sales practices and special products drawn from the standard Series 7 examination.

The Series 37 version is for Canadian registrants who have successfully completed the basic core module of the Canadian Securities Institute program. The Series 38 version is for Canadian registrants who, in addition to having successfully completed the basic core module of the Canadian Securities Institute program, have also successfully completed the Canadian options and futures program. Although the Canadian exam modules contain some overlap with the Series 7, the Series 37 and Series 38 cover only subject matter that is not covered, or not covered in sufficient detail, on the Canadian qualification examination. The Series 37 has 90 questions and is 150 minutes in duration, while the Series 38, an abbreviated version of the Series 37, has only 45 questions and is 75 minutes in duration.[4]

The Series 47 version is for Japanese registrants in good standing with Japanese securities authorities, and is designed to test a Japanese registered representative's knowledge of U.S. securities laws, markets, investment products and sales practices. It contains 160 questions and is 240 minutes long.

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(3)(B) in particular in that it establishes standards of training, experience and competence for persons associated with Exchange members and member organizations. The foreign examination modules should provide comprehensive coverage of the topics contained in the Series 7 that are not adequately covered by the applicable foreign qualification examination. The proposal is also consistent with Section 6(b)(5) in that it is designed to perfect the mechanism of a free and open market by reducing duplicative qualification requirements while ensuring that foreign representatives seeking to become registered with the Exchange are fully qualified.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

[4] Forty-five questions pertaining to options are included in the Series 37 but omitted from the Series 38.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has asserted, and the Commission agrees, that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing. For the foregoing reasons and because the Exchange provided at least five business days notice to the Commission of its intent to file this proposed rule change, the rule filing will become operative as a "non-controversial" rule change under Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–AMEX–97–26 and should be submitted by September 8, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–21748 Filed 8–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38922; File No. SR–CSE–97–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by The Cincinnati Stock Exchange, Inc. Relating to Minor Rule Plan Violations

August 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice is hereby given that on August 5, 1997, The Cincinnati Stock Exchange, Incorporated ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE hereby proposes to amend Exchange Rule 8.14 to expand its Minor Rule Violation Program. The text of the proposed rule change is below. Additions are italicized.

The Cincinnati Stock Exchange, Incorporated

Rule 8.14 Imposition of Fines for Minor Violation(s) of Rules

No Change.

Interpretations and Policies

.01 List of Exchange Rule Violations and Fines Applicable thereto Pursuant to Rule 8.14:

(a)–(d) No Change.

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1) (1998).

[2] 17 CFR 240.19b–4 (1991).

[3] This proposed rule change was originally filed on June 24, 1997. The CSE subsequently submitted Amendment No. 1 which altered minor technical language in Item II. Letter from Adam W. Gurwitz, Vice President Legal and Secretary, CSE, to Karl J. Varner, Esq., SEC, dated August 4, 1997. This proposed rule change replaces SR–CSE–97–06, which has been withdrawn. Letter from Adam W. Gurwitz, Vice President Legal and Secretary, CSE, to Katherine England, Assistant Director, SEC, dated June 23, 1997.

(e) *Rule 4.2 and Interpretations thereunder related to the requirement to furnish Exchange-related order, market and transaction data, as well as financial or regulatory records and information.*

(f) *Rule 11.9(c) related to the requirement to comply with quotation policies.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CSE has prepared summaries, set forth in sections A, B and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to enhance the Exchange's Minor Rule Violation Program. Exchange Rule 8.14 provides for an alternative disciplinary regime involving violations of Exchange Rules that the Exchange determines are of a minor nature. The Minor Rule Violation Program provides the Exchange with the ability, but not the obligation, to address minor rule violations by imposing a fine, not to exceed $2500, on any member that the Exchange determines has violated such rule. Adding a particular rule violation to the Minor Rule Violation Program in no way circumscribes the Exchange's ability to treat violations of those rules through more formal disciplinary measures. The Minor Rule Violation Program simply provides the Exchange with greater flexibility in addressing rule violations appropriately. Section (e) of Rule 8.14 requires the Exchange from time to time to prepare a list of minor rule violations.

As part of its ongoing effort to improve its regulatory program, the Exchange has determined that certain rule violations should be added to the Minor Rule Violation Program. The Minor Rule Violation Program currently includes the requirements of Exchange Rules 4.1 and 4.2, concerning books and records, to submit trade data to the Exchange. The Exchange intends to clarify that a member must also provide financial and regulatory records in accordance with Rule 4.2 and Interpretation thereunder as well as trade-related information.

Similarly, the proposed rule change will include quotation policies set by the Exchange's Securities and Market Performance Committee and delineated by Regulatory Circular. Exchange Rule 11.9(c) requires Designated Dealers, the Exchange's multiple, competing specialists, to maintain continuous quotations throughout the trading day. Including these quotation requirements in the Minor Rule Violation Program will help the Exchange ensure compliance with its quotation requirements and spread parameters because the Exchange will have adequate regulatory flexibility in dealing with potential violations. This, in turn, will enhance the value of quotations made by the Exchange's multiple, competing specialists.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will augment the Exchange's ability to police its market and will increase the Exchange's flexibility in responding to minor rule violations. The Exchange will be able to address appropriate minor rule violations promptly and efficiently through the minor rule procedures, without the need to initiate formal disciplinary proceedings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments were solicited in connection with the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determined whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the CSE's principal offices. All submissions should refer to File No. SR–CSE–97–07 and should be submitted by September 8, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–21749 Filed 8–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38923; File No. SR–OCC–97–09]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Seeking To Amend the Valuation Rate Applied to Equity Securities and Corporate Debt Deposited as Margin Collateral

August 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 21, 1997, The Options Clearing Corporation ("OCC") filed with the

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–OCC–97–09) as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to increase from 60 percent to 70 percent the valuation rate OCC applies to equity securities and corporate debt deposited as margin collateral.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the valuation rate OCC applies to equity securities and corporate debt deposited with OCC as margin collateral. Under the proposed rule change, the rate will be increased from 60 percent to 70 percent.

Background

In 1975, OCC proposed instituting a program to accept deposits of common stock as margin collateral ("valued securities program") under its Rule 604(d) and sought to value these deposits at 70 percent of their current market value.[3] According to OCC, the valued securities program would reduce OCC's reliance on letters of credit as a form of margin collateral and would reduce the amount of money OCC's clearing members paid to banks for letters of credit. Because margin securities are the major source of collateral for letters of credit, the valued securities program would eliminate the need for OCC's clearing members to deposit margin securities at a bank in order to obtain a letter of credit for the benefit of OCC. Instead, clearing members could pledge margin stock directly to OCC as a form of margin collateral. OCC believed that the 70 percent valuation rate would provide a sufficient cushion against exposure to market and liquidity risk in the event OCC would need to liquidate deposited securities in connection with a clearing member's default.

The novelty of the valued securities program resulted in extensive regulatory review by the staffs of the Commission and the Federal Reserve Board. This review led to several changes to the valued securities program, including a change in the valuation rate to be applied to stock deposited as margin collateral. As the program was approved, the rate was set at no more than the maximum loan value specified in Regulation U (*i.e.*, 50 percent of current market value).[4]

OCC began accepting deposits of stock as margin collateral in 1985 and has gained substantial experience in operating the program as initially approved and as later enhanced. Enhancements to the program include: (i) Expanding the types of common stock eligible for deposit;[5] (ii) permitting the acceptance of deposits of qualified preferred stock, corporate debt, and units of beneficial interests in unit investment trusts;[6] and (iii) increasing the valuation rate to 60 percent.[7] However, even with these enhancements, OCC states that its clearing members continued to request that a valuation rate of 70 percent be applied to securities deposits into the valued securities program.

Seventy Percent Valuation Rate

OCC believes that a 70 percent valuation rate is prudent and will protect OCC in case of a clearing member's default. OCC also asserts that the proposed valuation rate is consistent with the securities haircuts prescribed in the Commission's uniform net capital rule.[8] Under the net capital rule, haircuts are intended to account for market and liquidity risks associated with securities positions in the event of a broker-dealer liquidation.[9] For broker-dealers using the risk-based haircut methodology approved in February 1997,[10] the maximum haircut to be taken for equity or equity options positions is 15 percent. For broker-dealers using the alternative method, the maximum haircut for long proprietary securities positions is 15 percent.[11] For broker-dealers using the basic method, the maximum haircut applicable to non-convertible debt securities, convertible debt securities, preferred stock, and common stock (all of which are forms of valued securities) is 30 percent.[12]

A 70 percent valuation rate for securities deposited in OCC's valued securities program means that a 30 percent haircut will be applied to those positions. Accordingly, the haircut proposed by OCC is two times the maximum deduction required for proprietary and market-maker trading accounts under the risk-based haircut methodology; two times the maximum deduction required for long proprietary positions under the alternative method; and equal to the maximum deduction required under the basic method. In light of the purposes served by securities haircuts and in comparison to the haircut percentages prescribed in the Commission's uniform net capital rule, OCC believes that a 30 percent haircut will adequately cover any

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Securities Exchange Act Release No. 11820 (November 12, 1975), 40 FR 53637 [File No. SR–OCC–75–05] (notice of proposed rule change). The Commission did not approve this proposed rule change. OCC withdrew File No. SR–OCC–75–05 and submitted File No. SR–OCC–82–11 in its place. Securities Exchange Act Release No. 18994 (August 20, 1982), 47 FR 37731 [File No. SR–OCC–82–11] (order approving File No. SR–OCC–82–11 and withdrawing File No. SR–OCC–75–05).

[4] Securities Exchange Act Release No. 18994 (August 20, 1982), 47 FR 37731 [File No. SR–OCC–82–11] (order approving File No. SR–OCC–82–11 and withdrawing File No. SR–OCC–75–05).

[5] Securities Exchange Act Release No 20558 (January 13, 1984), 49 FR 2183 [File No. SR–OCC–83–17] (order granting accelerated approval of proposed rule change).

[6] Securities Exchange Act Release Nos. 29576 (August 16, 1991), 56 FR 41873 [File No. SR–OCC–88–03] (order approving proposed rule change involving the value securities program); 38105 (December 31, 1996), 62 FR 1014 [File No. SR–OCC–96–13] (order approving proposed rule change relating to unit investment trusts as margin).

[7] Securities Exchange Act Release No. 33893 (April 14, 1994), 59 FR 18427 [File No. SR–OCC–92–13] (notice of amendment to filing and order granting accelerated approval to proposed rule change). As originally filed, SR–OCC–92–13 proposed a 70% valuation rate. OCC submitted this proposed rule change upon receipt of advice from the staff of the Federal Reserve Board that it would not object to a 70% valuation rate. OCC and the Commission's staff later concurred on 60% as the valuation rate, and accordingly, OCC amended its filing.

[8] 17 CFR 240.15c3–1.

[9] Generally, haircuts are percentage deductions broker-dealers apply to their securities positions to determine the value of the securities for net capital purposes.

[10] Securities Exchange Act Release No. 38248 (February 12, 1997), 62 FR 6480 [File No. S7–07–94] (effective September 1, 1997) and Letter from Brandon Becker, Division of Market Regulation, Commission, to Mary L. Bender, First Vice President, Chicago Board Options Exchange, and Timothy Hinkas, Vice President, OCC (March 15, 1994).

[11] 17 CFR 240.15c3–1(c)(2)(v)(J).

[12] 17 CFR 240.15c3–1(c)(2)(v) (F), (G), (H), and (J).

market or liquidity risk that it could encounter in liquidating a clearing member's valued securities deposits.

Moreover, in addition to the valuation rate applied to deposits of valued securities, OCC Rule 604(d)(1) specifies other criteria governing OCC's acceptance of deposits. According to OCC, these criteria have been designed to ensure: (i) That a ready and liquid public market exists for deposited securities; (ii) that a diversified portfolio of securities is deposited with respect to each account carried by a clearing member at OCC; (iii) that OCC can prescribe a lower valuation for individual issues; and (iv) that deposits are marked-to-the-market on each business day. Furthermore, as market conditions or other circumstances warrant, OCC has the authority to issue intraday margin calls.[13] Accordingly, OCC believes that it can prudently apply a 70 percent valuation rate to deposits of valued securities. OCC also believes that a 70 percent valuation rate will result in a further diversification of the overall portfolio of margin collateral deposited with OCC and, as such, will lessen the risk of overexposure to any one form of margin collateral.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[14] and the rules and regulations thereunder because it reduces costs to persons facilitating transactions by and acting on behalf of public investors without adversely affecting OCC's ability to safeguard funds and securities in its custody or control or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–97–09 and should be submitted by September 8, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–21751 Filed 8–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38920; File No. SR–PCX–97–22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., Relating FLEX Index Options and LEAPS on the Dow Jones & Co. Taiwan Index

August 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, pursuant to Rule 19b–4 of the Act, proposes to amend its rules to allow the trading of FLEX Index options and LEAPS on the Dow Jones & Co. Taiwan Index.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 23, 1996, the Commission approved an Exchange proposal to list and trade cash-settled, European-style stock index options on the Dow Jones & Co. Taiwan Index ("Index").[3] The Index is comprised of 113 representative stocks traded on the Taiwan Stock Exchange. The Index is deemed to be a broad-based index.

The Exchange is now proposing to amend its rules on Flexible Exchange options ("FLEX Options")[4] to provide that FLEX Options on the Dow Jones & Co. Taiwan Index are approved for trading on the Exchange. In this regard the Exchange is proposing to amend PCX Rules 8.100(a)(1) and 8.102(e)(1).[5]

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[13] OCC Rule 609.

[14] 15 U.S.C. 78q–1.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 38081 (December 23, 1996), 62 FR 138 (January 2, 1997) (order approving File No. SR–PSE–96–40).

[4] *See* Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (order approving File No. SR–PSE–95–24).

[5] These rules currently allow the Exchange to trade FLEX Index options on the Wilshire Small

Continued

The Exchange is also requesting the ability to list and trade long-term index option series ("LEAPS"), pursuant to PCX Rule 6.4(d), on the Index.

2. Statutory Basis

The PCX believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to facilitate transactions in securities as well as to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The self-regulatory organization does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–97–22 and should be submitted by September 8, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–21750 Filed 8–15–97; 8:45 am]

BILLING CODE 8010–01–M

Cap Index and the PSE Technology Index. Pursuant to PSE Rule 8.107, the position and exercise limits for FLEX options on the Index will be set at 200,000 contracts.

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Small Business Regulatory Enforcement and Fairness Act (SBREFA)

The Small Business Regulatory Enforcement and Fairness Act (SBREFA) will hold a public meeting on Thursday, August 21, 1997, at the SBA District Office Business Enterprise Center at 1:30 p.m., at 1200 Sixth Avenue, Suite 1700, Seattle, Washington 98101. To inform the small business community of the existence of a regulatory enforcement oversight process and of SBA's desire to collect information regarding businesses' experience with regulatory enforcement actions and to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, please call Sharon L. Mathison at (206) 553–5676 or Gary P. Peele at (312) 353–0880.

Eugene Carlson,

Associate Administrator, Office of Communications and Public Liaison.

[FR Doc. 97–21800 Filed 8–15–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements, Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 15, 1997 (62 FR 26845–26846).

DATES: Comments must be submitted on or before September 17, 1997.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: FAA Commercial Tour Overflights Study.

OMB Control Number: 2120–0610.

Type of Request: Extension of a currently approved collection.

Affected Public: Individuals (a maximum of 500 visitors at the selected national park).

Abstract: The proposed research is the civilian counterpart of a study, mandated by Pub. L. 100–91, to determine the most appropriate allocation and uses of airspace for commercial tour overflights on National Parks. The FAA seeks to identify and reduce any problems or adverse impacts associated with commercial tour overflights on national parks. The results of this study will further the FAA's understanding of the issue by including the effects attributable to sound produced by commercial tour overflights.

Need: This data is necessary for the FAA to develop a national rule that evaluates noise impacts of commercial tour overflights on national parks.

Estimated Annual Burden Hours: 83 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and

clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on August 12, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–21741 Filed 8–15–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–055]

Towing Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Towing Safety Advisory Committee (TSAC). TSAC provides advice and makes recommendations to the Secretary of Transportation on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

DATES: Applications must reach the Coast Guard on or before October 17, 1997.

ADDRESSES: You may request an application form by writing Commandant (G–MSO–1), U.S. Coast Guard, 2100 Second Street SW, room 1210, Washington, DC 20593–0001; by calling 202–267–1181; or by faxing 202–267–4570. Submit application forms to the same address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Lionel Mew, Assistant Executive Director, telephone 202–267–0218; fax 202–267–4570.

SUPPLEMENTARY INFORMATION: The Towing Safety Advisory Committee (TSAC) is a Federal advisory committee constituted under 5 U.S.C. App. 2. It provides advice and makes recommendations to the Secretary of Transportation on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. The advice and recommendations also assist the Coast Guard in formulating the position of the United States in advance of meetings of the International Maritime Organization.

TSAC meets at least once a year at Coast Guard Headquarters, Washington, DC, or another location selected by the Coast Guard. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific problems as required.

The Coast Guard will consider applications for five positions that expire or become vacant in October 1997, as follows: Two members from the barge and towing industry, reflecting a geographical balance; one member from port districts, authorities, or terminal operators; one member from maritime labor; and one member from the general public. To be eligible, applicants should have experience in towing operations, marine transportation, occupational safety and health, environmental protection, or business operations associated with the towing industry. Each member serves for a term of 3 years. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Applicants selected may be required to complete a Confidential Financial Disclosure Report (OGE Form 450). Neither the report nor the information it contains may be released to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: August 8, 1997.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–21810 Filed 8–15–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–056]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) will conduct two meetings to discuss various issues relating to merchant marine personnel. Both meetings will be open to the public.

DATES: MERPAC will conduct a working group meeting on Thursday, September 25, 1997, from 8 a.m. to 4 p.m. and will conduct a public meeting on Friday, September 26, 1997, from 8 a.m. to 3:30 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before September 15, 1997.

ADDRESSES: MERPAC will meet on both days at the Harry Lundeberg School of Seamanship, Piney Point, MD. Send written material and requests to make oral presentations to Lieutenant Commander Steven J. Boyle, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Steven J. Boyle, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–6890, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of September 26, 1997 Public Meeting

Merchant Marine Personnel Advisory Committee (MERPAC)

The agenda includes the following:

(1) Introduction.

(2) Progress report from the subcommittee on the International Convention on the Standards of Training, Certification and Watchkeeping (STCW).

(3) Progress report from the subcommittee on the National Maritime Center.

(4) Progress report from subcommittee on marine simulation.

(5) Other items to be discussed:

(a) Standing Committee—Prevention Through People (PTP)

(b) Regional Examination Center activities

(c) MERPAC web site on the Coast Guard home page

Procedural

Both meetings are open to the public. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than September 15, 1997. Written material for distribution at a meeting should reach the Coast Guard no later than September 15, 1997. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than September 5, 1997.

Accommodations for the public are available at the Harry Lundeberg School of Seamanship. For further information, contact Mr. David Marquis at 301–994–0010 extension 5457 or Mr. Bill Eglinton at 301–994–0010 extension 5270.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: August 13, 1997.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–21812 Filed 8–15–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–054; Notice 1]

Receipt of Petition for Decision That Nonconforming 1995 Ferrari F50 Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995 Ferrari F50 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1995 Ferrari F50 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 17, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 1995 Ferrari F50 passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1995 Ferrari F50 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1995 Ferrari F50 to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1995 Ferrari F50, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1995 Ferrari F50 is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * * .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 301 *Fuel System Integrity*, 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with the ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies and rear sidemarker lights; (c) installation of a U.S.-model high-mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 208 *Occupant Crash Protection:* Installation of a seat belt warning buzzer, wired to the driver's seat belt latch. The petitioner states that the vehicle is equipped with motorized automatic shoulder belts and manual lap belts in the front designated seating positions and with "rear belts." The petitioner describes these components as being identical to those found on the U.S.-certified 1995 Ferrari F50.

Additionally, the petitioner states that the bumpers on the non-U.S. certified

1995 Ferrari F50 must be modified to comply with the Bumper Standard found in 49 CFR part 581.

The petitioner also states that a vehicle identification number plate that meets the requirements of 49 CFR part 565 must be affixed to the vehicle.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 12, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–21737 Filed 8–15–97; 8:45 am]

BILLING CODE 4910–69–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–497 (Sub-No. 1X)]

Minnesota Northern Railroad, Inc.—Abandonment Exemption—in Red Lake and Polk Counties, MN

On July 29, 1997, Minnesota Northern Railroad, Inc. (MNN), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Red Lake Falls-Strata Line, extending from railroad milepost 59.00 near Strata, MN, to railroad milepost 69.14 near Red Lake Falls, MN, which traverses U.S. Postal Service ZIP Code 56750, a distance of 10.14 miles, in Red Lake and Polk Counties, MN. The line includes the station of Red Lake Falls at railroad milepost 69.14.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 14, 1997.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 8, 1997. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–497 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Gary Laakso, Minnesota Northern Railroad, Inc., 301 Yamato Road, Suite 1190, Boca Raton, FL 33431.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: August 7, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–21823 Filed 8–15–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–497 (Sub-No. 2X)]

Minnesota Northern Railroad, Inc.—Abandonment Exemption—Between Redland Junction and Fertile, in Polk County, MN

On July 29, 1997, Minnesota Northern Railroad, Inc. (MNN) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Redland Junction-Fertile Line, extending from milepost 65.7 near Redland Junction, MN, to milepost 45.1 near Fertile, MN, which traverses U.S. Postal Service Zip Codes 56540 and 56716, a distance of 20.6 miles in Polk County, MN. The line includes the station of Fertile at milepost 45.1.

The line contains one parcel of federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 14, 1997.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 8, 1997. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–497

(Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001, and (2) Gary Laakso, Minnesota Northern Railroad, Inc., 301 Yamato Road, Suite 1190, Boca Raton, FL 33431.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: August 8, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–21824 Filed 8–15–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice.

SUMMARY: In order to comply with the Paperwork Reduction Act of 1995 concerning new information collection requirements, the Financial Crimes Enforcement Network ("FinCEN") is soliciting comments concerning a proposed new Treasury Form TD F 90–22.49, Suspicious Activity Report by Casinos ("SARC"), which will be used by Nevada casinos, effective October 1, 1997, to file with FinCEN reports of potentially suspicious transactions and activities that may occur by, at, or through a Nevada casino.

DATES: Written comments must be received on or before October 17, 1997.

ADDRESSES: Direct all written comments to the Financial Crimes Enforcement Network, Office of Program Development, Attn.: SARC Comments, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182–2536. Comments may also be submitted by Internet e-mail to RegComments@fincen.treas.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or for a copy of the draft form should be directed to Leonard Senia, Senior Financial Enforcement Officer, Office of Program Development, (703) 905–3931, or by inquiry to the Internet e-mail address shown above. A copy of the draft SARC form can be obtained through the Internet at http://www.ustreas.gov/treasury/bureaus/fincen. Once the SARC form is issued as a final form, a copy of it, as well as all forms required by the Bank Secrecy Act, can be obtained through the Internet at http://www.irs.ustreas.gov/prod/forms-pubs/forms.html.

SUPPLEMENTARY INFORMATION: The Currency and Foreign Transactions Reporting Act (commonly known as the Bank Secrecy Act) Titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5326, 5328–5330, specifically authorizes the Secretary of the Treasury, *inter alia*, to issue regulations that require domestic financial institutions to report suspicious transactions. *See* 31 U.S.C. 5318(g). The authority of the Secretary to administer the Bank Secrecy Act ("BSA") regulations has been delegated to the Director of FinCEN.

The BSA defines financial institutions to include casinos. *See* 31 U.S.C. 5312(a)(2)(X) and 31 CFR 103.11(n)(7)(i). Nevada Gaming Commission Regulation 6A, Section 100, requires Nevada casinos to report suspicious transactions to FinCEN as part of its continuing responsibilities pursuant to a May 1985 cooperative agreement between the State of Nevada and the U.S. Department of the Treasury. That agreement obligates Nevada to implement a state casino regulatory system which substantially meets federal regulatory requirements designed to address money laundering and other financial crimes which may occur at casinos.

FinCEN is proposing a new information collection requirement pertaining to the reporting of suspicious transactions to permit a federal form to be used to satisfy Nevada Regulation 6A. Under the new requirement, contained in Section 100 of that Regulation, which will become effective on October 1, 1997, Nevada casinos must file their reports of suspicious transactions with FinCEN, using the SARC form, and its accompanying instructions.

The information collection requirement contained in this notice supports one of the purposes of the Paperwork Reduction Act ("PRA") of 1995 which is to "strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government" (see 44 U.S.C. 3501(6)). This goal is accomplished, in part, through the creation of a single reporting form for suspicious casino transactions and activities—Treasury Form TD F 90–22.49 (SARC).

As previously mentioned, Nevada casino licensees must use the SARC in satisfying the new suspicious activity reporting requirement contained in Nevada State Regulation 6A, Section 100. FinCEN intends to issue a notice of proposed rulemaking, sometime in 1997, that would require non-Nevada casinos or card clubs subject to the requirements of the BSA and its implementing regulations to report suspicious activity. Until such a rule is published as a *final* rule in the **Federal Register** and takes effect, casinos and card clubs in jurisdictions other than Nevada are encouraged to file the SARC form to report suspicious activity. Once FinCEN has issued a notice of proposed rulemaking on suspicious transaction reporting by casinos, it will prepare a subsequent PRA notice to permit persons in other jurisdictions to comment on a SARC. FinCEN anticipates the form will be modified slightly to accommodate the nationwide extension of suspicious activity reporting to casinos and card clubs.

Reports filed by Nevada casinos and any reports filed voluntarily by other casinos and card clubs will be fully subject to the protection from liability contained in 31 U.S.C. 5318(g)(3) and the provision contained in 31 U.S.C. 5318(g)(2) which prohibits notification of any person involved in the transaction that a suspicious activity report has been filed.

Information collected on the SARC will be made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel for use in the official performance of their duties. The information collected is used for regulatory purposes and in investigations and proceedings involving international and domestic

money laundering, tax violations, fraud, and other financial crimes.

FinCEN has requested that a different OMB Control Number be assigned for this collection requirement than the OMB Control Number assigned for Treasury Form TD F 90–22.47, Suspicious Activity Report, which is applicable to banks and other depository institutions. This will facilitate FinCEN's oversight over its BSA information collection requirements by obtaining a unique OMB Control Number for each specific form.

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information on Treasury Form TD F 90–22.49, is presented to assist those persons wishing to comment on the information collection.

Title: Suspicious Activity Report by Casinos ("SARC").

Form Number: Treasury Form TD F 90–22.49.

OMB Number: To be assigned.

Description of Respondents: Initially, all Nevada casinos, with gross annual gaming revenue in excess of $10 million and having an annual table games statistical win in excess of $2 million.

Estimated Number of Respondents: 94.

Estimated Number of Annual Responses: 1,700.

Frequency: As required.

Estimate of Burden: Reporting average of 31 minutes per response; recordkeeping average of 5 minutes per response. No regulatory burden is imposed by federal regulation in this case because state regulation imposes the regulatory burden.

Estimate of Total Annual Burden on Respondents: Reporting burden estimate = 878 hours; recordkeeping burden estimate = 142 hours. Estimated combined total of 1,020 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $20,400.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Request: New information collection.

Request for Comments

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

Responses to the questions posed by this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Dated: August 12, 1997.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 97–21815 Filed 8–15–97; 8:45 am]

BILLING CODE 4820–03–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–56–87 and IA–53–87]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–56–87 and IA–53–87 (TD 8416), Minimum Tax—Tax Benefit Rule (§§ 1.58–9(c)(5)(iii)(B), and 1.58–9(e)(3)).

DATES: Written comments should be received on or before October 17, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Minimum Tax—Tax Benefit Rule.

OMB Number: 1545–1093.

Regulation Project Number: IA–56–87 and IA–53–87.

Abstract: Section 58(h) of the Internal Revenue Code provides that the Secretary of the Treasury shall prescribe regulations that adjust tax preference items where such items provided no tax benefit for any taxable year. This regulation provides guidance for situations where tax preference items did not result in a tax benefit because of available credits and describes how to claim a credit or refund of minimum tax paid on such preferences.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 40.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 12, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–21830 Filed 8–15–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–311–81]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–311–81 (T.D. 7925), Penalties for Underpayment of Deposits and Overstated Deposit Claims, and Time For Filing Information Returns of Owners, Officers and Directors of Foreign Corporations (§§ 1.6046–1, 301.6656–1, and 301.6656–2).

DATES: Written comments should be received on or before October 17, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Penalties for Underpayment of Deposits and Overstated Deposit Claims, and Time For Filing Information Returns of Owners, Officers and Directors of Foreign Corporations.

OMB Number: 1545–0794.

Regulation Project Number: LR–311–81.

Abstract: These regulations relate to the penalty for underpayment of deposits and the penalty for overstated deposit claims, and to the time for filing information returns of owners, officers and directors of foreign corporations. Internal Revenue Code section 6046 requires information returns with respect to certain foreign corporations, and the regulations provide the date by which these returns must be filed. Code section 6656 provides penalties with respect to failure to properly satisfy tax deposit obligations, and the regulations provide the method for applying for relief from these penalties.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 60,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 30,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 12, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–21831 Filed 8–15–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–208165–91; REG–209035–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–208165–91 (formerly INTL–54–91) and REG–209035–86 (formerly INTL–178–86), Transfers of Stock on Securities by U.S. Persons to Foreign Corporations, and Foreign Liquidations and Reorganizations (§§ 1.367(a) and 1.367(b)).

DATES: Written comments should be received on or before October 17, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Transfers of Stock or Securities by U.S. Persons to Foreign Corporations, and Foreign Liquidations and Reorganizations.

OMB Number: 1545–1271.

Regulation Project Number: REG–208165–91 (formerly INTL–54–91) and REG–209035–86 (formerly INTL–178–86).

Abstract: A United States entity must generally file a gain recognition agreement with the IRS in order to defer gain on a Code section 367(a) transfer of stock to a foreign corporation, and must file a notice with the IRS if it realizes any income in a Code section 367(b) exchange. This regulation provides guidance and reporting requirements related to these transactions to ensure compliance with the respective Code sections.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 2,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 12, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–21832 Filed 8–15–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

August 12, 1997.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

Dates: Written comments should be received on or before September 17, 1997 to be assured of consideration.

OMB Number: 1550–.

Form Number: OTS Form Number 1630.

Type of Review: Approval of a new collection.

Title: Electronic Loan Data Request Survey.

Description: OTS is introducing an automated examination process. As part of this, thrift institutions will be asked to provide loan information to examiners electronically. The survey will provide feedback on the difficulty and time required for preparation of the loan information, cost, comparison with the previous paper-based systems, and whether it reduced the burden of the on-site examination process.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: .25 hours.

Frequency of Response: Once.

Estimated Total Reporting Burden: 125 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–21821 Filed 8–15–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–26; OTS Nos. H–2051 and 05109]

First Missouri Financial, M.H.C., St. Louis, Missouri; Approval of Conversion Application

Notice is hereby given that on August 6, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Missouri Financial, M.H.C., St. Louis, Missouri, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039–2010.

Dated: August 13, 1997.

By the Office of Thrift Supervision,

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–21822 Filed 8–15–97; 8:45 am]

BILLING CODE 6720–01–M

Corrections

Federal Register
Vol. 62, No. 159
Monday, August 18, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-813]

Canned Pineapple Fruit from Thailand; Preliminary Results and Partial Termination of Antidumping Duty Administrative Review

Correction

In notice document 97–20733 beginning on page 42487 in the issue of Thursday, August 7, 1997, make the following correction:

On page 42492, in the first column, in the third entry of the table, "6.54" should read "26.54".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-342-003]

Kern River Gas Transmission; Notice of Compliance Filing

Correction

In notice document 97–21306 appearing on page 43322 in the issue of Wednesday, August 13, 1997 make the following correction:

In the second column, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP-97-327-001]

Koch Gateway Pipeline Company; Notice of Compliance Filing

Correction

In notice document 97–21307 appearing on page 43322 in the issue of Wednesday, August 13, 1997 make the following correction:

In the third column, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 90, 98, 125-136, 170, 174, and 175

[CGD 97-042]

Offshore Supply Vessels

Correction

In proposed rule document 97–19449 beginning on page 40035 in the issue of Friday, July 25, 1997 make the following correction:

On page 40035, in the third column, under **SUMMARY**, in the eleventh line "commitments" should read "comments".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

31 CFR Part 27

Departmental Offices; Civil Penalty Assesment for Misuse of Department of the Treasury Names, Symbols, Etc

Correction

In rule document 97–20646 beginning on page 42212 in the issue of Wednesday, August 6, 1997, make the following correction:

On page 42215, in the third column, in the last line, "70" should read "701".

BILLING CODE 1505-01-D

federal register

Monday
August 18, 1997

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.

Hazardous Materials: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service; Revisions and Response to Petitions for Reconsideration; Final Rule

Hazardous Materials: Safety Standards for Unloading Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service; Advance Notice of Proposed Rulemaking; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. RSPA–97–2133 (HM–225)]

RIN 2137–AC97

Hazardous Materials: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service; Revisions and Response to Petitions for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: RSPA is revising and extending requirements issued in an interim final rule (IFR) on February 19, 1997. Revisions are being made to address commenters' concerns particularly in the area of operator attendance requirements and to improve safety. The rule adopts temporary requirements for cargo tank motor vehicles in certain liquefied compressed gas service. It requires a specific marking on affected cargo tank motor vehicles and requires motor carriers to comply with additional operational controls intended to compensate for the inability of passive emergency discharge control systems to function as required by the Hazardous Materials Regulations. The interim operational controls specified in this rule will improve safety while the industry and government continue to work to develop a system that effectively stops the discharge of hazardous materials from a cargo tank if there is a failure of a transfer hose or piping.

These operational controls are necessary because a substantial portion of the industry failed to comply with an important excess flow requirement, which has been in place since 1941, and has failed to comply with the IFR. Because of this widespread non-compliance, RSPA also published in today's **Federal Register** an advance notice of proposed rulemaking (ANPRM) soliciting data to serve as a basis for future rulemaking. This advance notice addresses a number of other issues, including the ability of industry to meet a possible 1-, 2- or 3-year retrofit schedule; standards for the qualification, testing and use of hoses used in unloading; safety procedures for persons performing unloading operations; and, whether the Federal government should continue to regulate in this area.

EFFECTIVE DATE: August 16, 1997.

FOR FURTHER INFORMATION CONTACT: Ronald Kirkpatrick, Office of Hazardous Materials Technology, RSPA, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590–0001, telephone (202) 366–4545, or Nancy Machado, Office of the Chief Counsel, RSPA, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590–0001, telephone (202) 366–4400.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview

Among the liquefied compressed gases most commonly transported throughout the nation in DOT specification cargo tank motor vehicles are petroleum gases, anhydrous ammonia and chlorine. The risk of personal injury due to accidental releases is high for each of these, and, in the case of propane, the additional threat of fire and explosion must be considered. When liquid propane is released into the atmosphere, it quickly vaporizes into the gaseous form which is its normal state at atmospheric pressure. This happens very rapidly, and in the process, the propane combines readily with air to form fuel-air mixtures which are ignitable over a range of 2.2 to 9.5 percent by volume. If an ignition source is present in the vicinity of a highly flammable mixture, the vapor cloud ignites and burns very rapidly (characterized by some experts as "explosively").

Since September 8, 1996, renewed attention was focused on the dangers of propane when more than 35,000 gallons were released during delivery to a bulk storage facility in Sanford, North Carolina. Fortunately, ignition did not occur. This incident led to the issuance of a safety advisory notice on December 13, 1996 (61 FR 65480), and an interim final rule (IFR) on February 19, 1997 (62 FR 7638). However, concerns over controlling the unintended release of hazardous materials have been expressed for decades.

B. Emergency Discharge Controls

Operations involving the transfer of liquid and gaseous hazardous materials to, from, or between bulk packagings, such as cargo tank motor vehicles, are recognized as posing a significant threat to life and property in transportation. For that reason, the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) place special emphasis on emergency discharge controls, including requirements for excess flow valves and internal self-closing stop valves that close automatically upon sensing a line separation. Additionally, the HMR require a mechanical and/or thermal means of activating the internal self-closing stop valve. The effectiveness of these properly installed and maintained safety appliances in safeguarding life and property at the critical moment of an unintentional release of extremely hazardous materials is well demonstrated and has historically been widely recognized by representatives of industry, emergency response organizations, and other affected parties.

In the case of specification MC 330 and MC 331 cargo tank motor vehicles authorized for the transportation of certain liquefied compressed gases, Federal requirements for emergency discharge controls first appeared as regulations issued by the Interstate Commerce Commission (ICC) on November 8, 1941, in Docket 3666. Requirements applicable to specification MC 320 cargo tank motor vehicles and ICC specification MC–7.6–S–1.2 have been modified slightly by RSPA over the years, but essential elements of the regulations pertaining to excess flow valves and internal self-closing stop valves are unchanged. This rule applies also to provisions for secondary remote controls and for fusible links, which cause the internal valve to close automatically in case a cargo tank is involved in a fire. Again, related requirements in the HMR today share the same essential elements as those originally ordered over fifty years ago.

Section 178.337–8(a) states "* * * each opening in a cargo tank intended for use in transporting compressed gas (except carbon dioxide, refrigerated liquid) must be—(i) closed with a plug, cap or bolted flange; (ii) protected with an excess flow valve on product discharge openings or protected with a check valve on product inlet openings; or (iii) fitted with an internal self-closing stop valve as specified in § 178.337–11(a)." Currently, most specification MC 330 and MC 331 cargo tank motor vehicles are fitted with an internal self-closing stop valve which incorporates an excess flow feature. However, the requirement in § 178.337–11(a)(1)(i), that "each self-closing stop valve and excess flow valve must automatically close if any of its attachments are sheared off or if any attached hoses or piping are separated," can be met by manufacturers and operators of specification MC 330 and MC 331 cargo tank motor vehicles using internal self-closing stop valves which have no excess flow feature. The key requirement is that the discharge valve must automatically close if any of its

attachments are sheared off or if any attached hoses or piping are separated. Any other equipment, such as a system which measures a differential in pressure, a pressure drop, or a hose or piping separation, which automatically closes the internal self-closing stop valve on the cargo tank and stops the discharge of product in the event of the separation or rupture of a hose or piping may be used to meet the emergency discharge control system performance requirement specified in § 178.337–11(a)(1)(i).

Unloading With a Liquid Pump System

While it seems that the HMR's longstanding requirements should be well understood and fully complied with by the affected industries, unfortunately that is not the case. Instead, efforts undertaken by the affected industries to achieve increased efficiency in the unloading of hazardous materials by the installation of pumps on specification MC 330 and MC 331 cargo tank motor vehicles prevent emergency discharge control systems from operating properly under all temperatures and pressures routinely encountered during normal conditions of transportation. The installation of pumps on specification MC 330 and MC 331 cargo tank motor vehicles has been accompanied by the industry's installation of internal self-closing stop valves with an emergency feature designed to function at a flow rating well above the discharge capacity of the pump. This assures transfer of product without interruption by inadvertent functioning of the emergency discharge control system. As presently found in most product discharge system configurations, a pump functions as a regulator in the product discharge line so as to eliminate any possibility that the emergency discharge control system will function in event of a line separation. Also, it has been pointed out by Mississippi Tank Company that even on cargo tank discharge systems not fitted with pumps, the emergency discharge control system on most LPG vehicles would fail to properly operate under all temperatures and pressures routinely encountered during normal conditions of transportation. The National Propane Gas Association (NPGA) in 1978 and 1990, issued bulletins NPGA #113–78 and NPGA #113–90, which state:

> Excess flow check valves have been of help in limiting gas loss in *many incidents* involving breakage of hoses and transfer piping. Thus, *they do provide a useful safety function in LP-gas systems.* However, *there have also been transfer system accidents* where excess flow valves have been ineffective in controlling gas loss due to a variety of conditions and to the inherent limitations of these valves * * * *An excess flow valve is not designed to close and thus may not provide protection, if any of the following conditions are present: (1) The piping system restrictions (due to pipe length, branches, reduction in pipe size, or number of other valves) decrease the flow rate to less than the valve's closing flow* * * * (Emphasis added).

This information demonstrates that the industry has been aware, since at least 1978, that excess flow valves are not designed to function where piping system restrictions (e.g., pumps) decrease the flow rate to less than the excess flow valve's closing flow. Also, the industry has information regarding "many" incidents involving hose and transfer separation and other transfer system accidents, but this information has not been shared with RSPA despite numerous requests.

Pressure Unloading

Unloading systems that employ pressure rather than a pump to unload, such as a gas compressor mounted on specification MC 330 and MC 331 cargo tank motor vehicles should not be affected by the problem identified with unloading of liquefied compressed gases by use of pumps, provided the operating pressure of the compressor, the flow rate of product through valves, piping and hose, and the setting of the emergency feature conform to requirements in § 178.337–11(a)(1)(v). Vehicles unloaded by pressure and conforming to the requirements of § 178.337–11(a)(1) are not subject to the temporary regulations specified in § 171.5.

C. History of Major Incidents

The hazards associated with the transportation of liquefied petroleum gas have been demonstrated repeatedly on U.S. highways. Based on information contained in the Hazardous Materials Information System, propane releases are a leading cause of death in hazardous material transportation. A summary of major incidents over the years is presented below. Most of these incidents were the result of collisions rather than due to unintended release of lading during transfer operations. However, each incident demonstrates the potential for grave consequences which result when liquefied petroleum gases are spilled and ignition occurs.

- On July 25, 1962, in Berlin, New York, an MC 330 bulk transport ruptured releasing about 6900 gallons of liquid propane. Ignition occurred. Ten persons were killed and 17 others were injured. Property damage included total destruction of 18 buildings and 11 vehicles.
- On February 9, 1972, in Tewksbury, Massachusetts, while an MC 330 bulk transport was unloading 8500 gallons of propane into two 60,000 gallon storage tanks at a Lowell Gas terminal, a second bulk transport backed into piping at the bulkhead of the unloading terminal causing a propane leak. Ignition occurred. In the ensuing fire, one of the transports exploded. Two persons were killed and 21 others were injured. Property damage included both transports, a large portion of the operating facility and surrounding woodland.
- On March 9, 1972, near Lynchburg, Virginia, an MC 331 bulk transport overturned and slid into a rock embankment. The impact ruptured the tank's shell, releasing about 4000 gallons of liquid propane. Ignition occurred. Two persons were killed and five others were injured. There was property damage to a farmhouse, outbuildings and about 12 acres of woodland.
- On April 29, 1975, near Eagle Pass, Texas, an MC 330 bulk transport struck a concrete headwall and ruptured releasing more than 8000 gallons of liquefied petroleum gas. The ensuing fire and explosion killed 16 persons, injured 51 others and destroyed 51 vehicles.
- On December 23, 1988, in Memphis, Tennessee, an MC 330 bulk transport struck a bridge abutment and ruptured releasing 9388 gallons of liquefied propane gas. The ensuing fire and explosion killed eight persons and injured eight others.
- On November 29, 1989, in Neptune Beach, Florida, while propane was being delivered to storage tanks at the Neptune Beach Elementary School, an unintentional release of propane ignited. In the resulting explosion and fire, the driver was badly burned and subsequently died.
- On July 27, 1994, in White Plains, New York, an MC 331 bulk transport struck a column of an overpass and ruptured, releasing 9200 gallons of propane. Ignition occurred. The driver was killed, 23 persons were injured and an area within a radius of 400 feet was engulfed in fire.
- On September 8, 1996, in Sanford, North Carolina, during delivery of propane to a bulk storage facility by an MC 331 bulk transport, more than 35,000 gallons of propane were released. The discharge hose separated from its hose coupling at the delivery end of the hose. Most of the transport's 9800 gallons of propane and more than 30,000 gallons from the storage tanks were released. If this quantity of released propane ignited, local

authorities estimated that about 125 emergency response personnel could have been injured or killed.

• On June 3, 1997, in Caro, Michigan, while unloading propane into a storage tank at an industrial facility, the delivery hose of an MC 331 transport ruptured. The ensuing fire and a series of explosions seriously burned the driver, destroyed four vehicles and extensively damaged the facility. Initial estimates of property damage are at least $2.0 million.

Two additional examples of serious accidents involving shipments of liquid petroleum gas are noteworthy. In what many consider the world's most serious incident involving a motor vehicle transporting liquid petroleum gas, on July 11, 1978, an overfilled cargo tank passing near a campground in Spain exploded and burned. About 200 persons were killed and 120 were badly burned. And, although no motor vehicles were involved, another major accident occurred on February 22, 1973, in Waverly, Tennessee, when a 30,000 gallon railroad tank car exploded and burned. Sixteen persons were killed, 43 others were injured and $1.8 million of property damage resulted.

The history of major accidents in the transportation of anhydrous ammonia is similar to that involving the transportation of liquefied petroleum gases. Pulmonary injuries are more significant with ammonia while fire damage is more significant with liquefied petroleum gases. An example of a major accident involving the release of ammonia is an incident that occurred May 11, 1976, in Houston, Texas. The driver of an MC 331 transport lost control while negotiating an interstate exit ramp. The cargo tank motor vehicle overturned and fell from the overpass onto a major artery some 15 feet below. The cargo tank ruptured, releasing its entire cargo of 7500 gallons of anhydrous ammonia. The driver was killed in the crash. An additional five persons were killed and 78 others were hospitalized, all due to inhalation of ammonia. Another 100 persons were treated for less severe injuries. Favorable wind conditions prevented the vapor cloud from reaching a nearby elementary school.

D. RSPA Safety Advisory Notice and Federal Highway Administration (FHWA) Safety Alert Bulletin

Based on preliminary information from the Sanford incident, RSPA published an advisory notice in the **Federal Register** on December 13, 1996 (61 FR 65480). That notice alerted persons involved in the design, manufacture, assembly, maintenance or transportation of hazardous materials in MC 330 and MC 331 cargo tank motor vehicles of the problem with emergency discharge control systems and reminded them that these tanks and their components must conform to the HMR. At the same time, FHWA issued and distributed 16,000 copies of a Safety Alert Bulletin on this issue.

E. Emergency Exemption Applications

On December 2, 1996, and December 18, 1996, RSPA received applications for emergency exemptions from the Mississippi Tank Company and the NPGA, respectively, indicating the problem with cargo tank motor vehicle emergency discharge systems was more extensive than originally believed. Additionally, The Fertilizer Institute (TFI) and National Tank Truck Carriers, Inc. (NTTC) submitted applications to become party to these exemptions. In support of its exemption application, the Mississippi Tank Company, a manufacturer of specification MC 331 cargo tank motor vehicles, provided preliminary information that there is reason to suspect the problem is common to nearly all cargo tank motor vehicles used in liquefied compressed gas service within the U.S. This problem is also thought to exist in the non-specification cargo tanks authorized in § 173.315(k).

In their requests for emergency exemption, the applicants asked the agency to issue an exemption to allow the continued use of existing cargo tank motor vehicles and the conditional operation of newly constructed cargo tank motor vehicles while a long-term solution to the problem is developed. NPGA suggested that long-term solutions might include pneumatic or mechanical "deadman" devices, possibly combined with a lanyard for remote activation, or the use of a differential pressure valve.

NPGA proposed that the emergency exemption require: (1) Compliance with applicable provisions of the HMR other than §§ 173.315(n), 178.337–11(a)(1)(i) and 178.337–11(a)(1)(v); (2) an outreach effort by NPGA to notify members of the Sanford, North Carolina incident and related, identified concerns; (3) transfer hose inspection before continued use and new hose inspection as required under the HMR; (4) compliance with applicable provisions of the National Fire Protection Association (NFPA) pamphlet NFPA 58, Storage and Handling of Liquefied Petroleum Gases, 1995 edition; (5) continual driver attendance and control of the loading/unloading operations; and (6) driver training. Mississippi Tank Company proposed that the emergency exemption require a warning statement and/or special operating instructions.

Both applicants stressed the urgent need for an expedited response from RSPA. Mississippi Tank indicated that an emergency exemption was needed "to allow the continued use of existing equipment and to allow badly needed new equipment to continue to be made available to the industry." In the section of its application entitled "Treatment as an Emergency Exemption," NPGA indicated that the propane industry was in the midst of the winter heating season, that over 80 percent of the 7–9 billion gallons of propane delivered annually was to be used as a residential heating fuel, and that all of the existing cargo tanks were needed to deliver the heating fuel for residential and agricultural purposes. In further support of its argument that an emergency existed, NPGA also stated that "the ability to be able to operate propane bobtails and highway transports has so many impacts and is so pervasive as to be almost incalculable from an economic impact viewpoint." NPGA concluded its application by stating that "a true emergency exists for handling this Exemption request in an expedited manner * * *"

After evaluating the facts before it, and the NPGA's and Mississippi Tank Company's emergency exemption applications, RSPA agreed that an emergency existed. However, the agency denied the applications for emergency exemption on January 13, 1997, because they failed to provide for an equivalent level of safety as required by § 5117 of the Federal hazardous materials transportation law, 49 U.S.C. § 5117, and 49 CFR 107.113(f)(2). Also, RSPA found that the issues addressed in the applications have serious safety and economic implications for a broad range of persons, including a significant number of regulated entities facing a possible interruption in transportation services because of widespread non-conformance with the HMR's requirement for a passive emergency discharge control system. Consequently, RSPA believed that the issues raised by the applicants were better addressed through the rulemaking process. See 49 CFR 107.113(i). Thus, RSPA published the IFR because of the emergency situation described by NPGA and Mississippi Tank Company in their applications for emergency exemption, and the applicants' requests for expedited relief.

F. The Interim Final Rule

The IFR was issued to enhance safety of product transfer operations while allowing for the continued

transportation of liquefied compressed gases (principally propane, other liquefied petroleum gases and anhydrous ammonia). The IFR was made effective for a six-month period, until August 15, 1997, to allow industry time to develop at least an interim solution to the problem with emergency discharge control systems. RSPA and the FHWA believed that, without the authorization for continued operation provided by the IFR, persons who depend on propane and other liquefied compressed gases for residential, industrial, and agricultural purposes, as well as cargo tank motor vehicle operators and manufacturers, would be severely impacted by service interruptions in these industries. Because there are no acceptable alternatives for distributing these materials to most residences and facilities served by cargo tank motor vehicles, RSPA and FHWA believed the IFR was necessary to avoid other potentially serious safety and economic consequences that might have resulted from an inability to secure these essential materials.

In order to enhance the level of safety during transfer operations using current equipment, the IFR specified special conditions for continued operations in new § 171.5. These conditions offered an alternate means of compliance with existing emergency discharge controls required by § 178.337–11. Those conditions included:

Paragraph (a)(1). Use provisions under which MC 330, MC 331, and non-specification cargo tank motor vehicles authorized under § 173.315(k) may be operated and unloaded.

Paragraph (a)(1)(i). A requirement to verify the integrity of components making up the cargo tank motor vehicle's discharge system before initiating any transfer.

Paragraph (a)(1)(ii). A requirement that prior to using a new or repaired transfer hose or a modified hose assembly, the hose must be pressure tested at no less than 80 percent of the design pressure or maximum allowable working pressure (MAWP) marked on the cargo tank.

Paragraph (a)(1)(iii). A requirement that a qualified person in attendance of the cargo tank motor vehicle during the unloading operation must have the capability to manually activate the emergency discharge control system to stop the release of the hazardous material from the cargo tank.

Paragraph (a)(1)(iv). A requirement that in event of an unintentional release of lading, the internal self-closing stop valve be activated and all motive and auxiliary power equipment be shut down.

Paragraph (a)(1)(v). A requirement for the development, and maintenance on the cargo tank motor vehicle, of comprehensive emergency operating procedures for all transfer operations.

Paragraph (a)(1)(vi). A requirement that each manufacturer, assembler, retester, motor carrier and other hazmat employer provide training to its hazmat employees so that they may properly perform the new function-specific requirements in § 171.5.

Paragraph (a)(2). Conditions for continued qualification of existing in-service cargo tank motor vehicles.

Paragraph (a)(3). Requirements for new vehicles, including a special entry on the Certificate of Compliance required by § 178.337–18.

Paragraph (b). A requirement for a specific marking to be displayed on each cargo tank motor vehicle operating under § 171.5.

Paragraph (c). An August 15, 1997 expiration date for this temporary regulation.

The IFR, and a subsequent notice in the **Federal Register**, advised of two public meetings and two public workshops scheduled to gather information and allow comment on the IFR requirements. In the IFR, RSPA also solicited comments and data on the costs and effectiveness of alternate means of achieving a level of safety for the long-term comparable to that provided by current requirements. Finally, RSPA solicited comments on the costs and benefits of the interim measures adopted under the IFR.

As the investigation of the Sanford incident proceeded, it became apparent that certain assumptions made both by RSPA and FHWA and by parts of the industry were invalid regarding the emergency discharge control systems. These systems were previously thought to conform to requirements of § 178.337–11(a)(1)(i) established under Docket HM–183 [54 FR 24982; June 12, 1989]. Both the NPGA and TFI quickly set up special task forces to deal with the shortcomings of existing product delivery systems.

Since mid-December 1996, and while maintaining close liaison with RSPA and FHWA, much has been accomplished by industry. For example, off-the-shelf radio remote control and telemetry equipment has been identified which, with relatively simple modifications, may be used to stop the delivery of product from a distance while meeting requirements for "unobstructed view" in § 177.834(i)(3) of the HMR. This equipment has been in use for many years in various industrial applications. Similarly, several manufacturers have developed other promising radio remote control systems aimed at this problem; some of these have been demonstrated and are currently being marketed by equipment suppliers serving the propane industry.

Additionally, some manufacturers have demonstrated systems capable of automatically closing discharge valves in the event of separation of hoses or piping. The range of conditions under which these systems can be counted on to offer reliable operation for liquefied compressed gases has not been determined as yet, and additional field testing is called for, but the accomplishments to date are encouraging.

During the two public meetings and two public workshops, RSPA and industry explored possible long- and short-term solutions to enhance the safety of product transfer operations. RSPA also worked with the Volpe National Transportation Systems Center to identify off-the-shelf technology that might offer possible solutions, and TFI engaged the Pennsylvania Transportation Institute to conduct related research. Also, RSPA and FHWA staff participated in several industry-sponsored meetings and witnessed the demonstration of new technologies being developed to enhance safety during the unloading of hazardous materials from MC 330 and MC 331 cargo tank motor vehicles. As a result of these joint efforts, industry developed and tested at least two passive systems and several remote control systems using radio signals, all of which show great promise. Several operators have installed these devices on a limited number of cargo tank motor vehicles in order to test them in actual operation.

G. Petitions for Reconsideration

On March 21, 1997, RSPA received a petition for reconsideration of the IFR from the NPGA, on behalf of its members, and a petition for reconsideration jointly filed by Ferrellgas, L.P., Suburban Propane, L.P., AmeriGas Propane, L.P., Agway Petroleum Corporation and Cornerstone Propane Partners, L.P. (Those petitions are attached, in their entirety, as Appendices A and B, respectively.) Petitioners specifically requested that RSPA reconsider the additional attendance requirement in § 171.5(a)(1)(iii), which they contend effectively mandates that two or more attendants travel to and be present during the unloading of propane gas from a cargo tank motor vehicle. They assert that the high cost of compliance with the additional requirement is not

supported by the safety record for propane gas delivery, and they provided some cost and safety data to support their views.

A significant number of commenters to the IFR raised issues regarding cost and safety identical to those raised by petitioners. Numerous commenters cited compliance cost estimates that they considered excessive, based on their assertion that they have long operated cargo tank motor vehicles without experiencing problems with the currently installed emergency discharge control systems. These same issues were among the topics raised by participants in the two public meetings and the two public workshops conducted by RSPA.

In its petition, NPGA also asked for an immediate stay of the additional attendance requirement pending a decision on its petition. Ignoring statements made in its emergency exemption application, NPGA's request for a stay was based on its assertion that an emergency did not exist and, therefore, that RSPA was not justified in foregoing notice and comment before immediately imposing new requirements. NPGA further argued that because RSPA should have issued a notice of proposed rulemaking (NPRM) prior to imposing new requirements, the agency should have done a full economic analysis of the effect of the new requirements on small businesses, as required under the Regulatory Flexibility Act, 5 U.S.C. 601–612.

In order not to prejudge the additional attendance requirement issue before all interested parties had an opportunity to comment on the IFR requirements, RSPA did not respond to the petitions for reconsideration prior to the close of the IFR comment period. Also, because of the fast-approaching expiration date of the IFR, the need to take further regulatory action to ensure an acceptable level of safety during the transportation, including unloading, of liquefied compressed gases, and the identical nature of the issues raised by petitioners and commenters alike, RSPA found that it was impractical to make a decision on the petitions for reconsideration prior to issuance of this final rule. On June 9, 1997, RSPA published a notice in the **Federal Register** (62 FR 31363) announcing its intent to defer a decision on the petitions for reconsideration of the IFR and to hold a second public meeting at industry's request. RSPA indicated that it would address the issues raised by petitioners and commenters regarding the IFR requirements in a final rule that it intended to issue prior to the expiration date of the IFR. RSPA also indicated in that notice that after publication of the final rule, it intended to issue an NPRM to address broader issues raised during the course of this rulemaking, including the "unobstructed view" requirement in § 177.834(i) and the need for hose management program requirements.

A significant basis for RSPA's finding that an emergency exists is NPGA's and Mississippi Tank Company's assertions of the urgent need for propane as a fuel for heating homes and agricultural facilities, as well as the potentially serious adverse financial impacts on propane marketers, propane producers, common carriers, vehicle assemblers and equipment manufacturers. As RSPA noted in the IFR, "After evaluating the situation and the NPGA and Mississippi Tank Company emergency exemption applications, RSPA finds that this situation constitutes an emergency with broad applicability to many persons and far reaching safety and economic impacts." (62 FR at 7644). Indeed, NPGA stated that the operation of the affected cargo tank motor vehicles has impacts "almost incalculable from an economic standpoint," and that an interruption of service by the industry would pose safety risks to the large number of people in rural areas who depend on propane as fuel for heating and cooking. The finding by RSPA that an economic and safety emergency exists led the agency to issue the IFR in order to provide industry with an immediate means of compliance with the HMR, thereby avoiding an interruption of service and the resulting economic and safety impacts described by the petitioners.

Because RSPA did not issue an NPRM in this rulemaking, it was not required under the Regulatory Flexibility Act, 5 U.S.C. 601–612, to do a full regulatory flexibility analysis regarding the impact of the IFR on small entities.

As RSPA stated in the IFR:

> The Regulatory Flexibility Act (Act), as amended, 5 U.S.C. 601–612, directs agencies to consider the potential impact of regulations on small business and other small entities. The Act, however, applies only to rules for which an agency is required to publish a notice of proposed rulemaking pursuant to § 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. *See* 5 U.S.C. 603(a) and 604(a). Because of the emergency nature of this rule, RSPA is authorized under § 553(b)(B) and § 553 (d)(3) of the APA to forego notice and comment and to issue this rule as an interim final rule with an immediate effective date. Consequently, RSPA is not required under the Act to do a regulatory flexibility analysis in this rulemaking.
>
> Specifically, § 553(b)(B) and § 553(d)(3) of the APA authorize agencies to dispense with certain procedures for rules, including notice and comment, when they find "good cause" to do so. "Good cause" includes a finding that following notice-and-comment procedures would be "impracticable, unnecessary, or contrary to the public interest." Section 553(d)(3) allows an agency, upon a finding of good cause, to make a rule effective immediately. "Good cause" has been held to include situations where immediate action is necessary to reduce or avoid health hazards or other imminent harm to persons or property, or where inaction would lead to serious dislocation in government programs or the marketplace.
>
> Nevertheless, RSPA is concerned with the effect this rule may have on small business. Consequently, in preparing a preliminary regulatory evaluation under Executive Order 12866, RSPA has analyzed, based on information currently available to the agency, the impact of this rule on all affected parties, including small businesses. The preliminary regulatory evaluation is available for review in the public docket (62 FR 7646).

In the IFR, RSPA also asked a series of questions intended to elicit economic, safety and technical data for use in the preparation of a final regulatory evaluation. A discussion of the economic impacts of this rule appears below and in the final regulatory evaluation that is available in the public docket.

II. Issues and Comments

RSPA received over 90 comments on the provisions specified in the IFR. These comments were from Members of Congress, trade associations, marketers, carriers, and State and local agencies. All comments, including late submissions and comments made at the meetings and workshops, were considered by RSPA to the extent practicable. Most commenters stated that they could comply with the provisions of the IFR, except for those provisions requiring the person attending the unloading to have an unobstructed view of the discharge system, and be within arm's reach of a means for closure of the internal self-closing stop valve or other device that will immediately stop the discharge of product from the cargo tank. (See § 171.5(a)(1)(iii)). While the affected industries expressed their interest in working with RSPA to develop systems and procedures that assure safe unloading of hazardous materials from the MC 330 and MC 331 cargo tank motor vehicles in every circumstance, the propane industry adamantly opposes these particular elements of the IFR which it characterizes as being neither practicable, reasonable, nor in the public interest. Specifically, the NPGA estimated annual costs of $660 million to its member companies in order to comply with the attendance requirement in the IFR. This cost

estimate is attributed largely to the NPGA's understanding that a literal interpretation of the rule effectively requires at least two, and possibly three, operators for each unloading operation. NPGA explained that, in addition to the current operator who attends to the delivery of propane at the receiving tank, a second operator would be required to be under the truck to observe the piping and a third operator would be required at the remote control on the internal valve in order to have all the discharge system in view during the transfer operation. If a third operator were actually required, as hypothesized, the NPGA contends the cost of compliance would double to $1.32 billion.

The $660 million estimate of annual costs calculated by NPGA results from a misreading of the rule. In the preamble to the IFR, RSPA set forth several options for complying with "the unobstructed view" and "arm's reach" requirements. In that discussion, RSPA stated "(u)ntil an automatic flow control system is developed, this may require two operator attendants on a cargo tank motor vehicle or the use of a lanyard, electro-mechanical, or other device or system to remotely stop the flow of product." (62 FR at 7643).

The cost of various alternatives was analyzed by RSPA in the preliminary regulatory evaluation prepared in support of the IFR. Where two operators would be required, RSPA estimated additional annual costs in the amount of $237 million. RSPA recognized the cost estimate as being so great as to effectively eliminate the two-person method of compliance from consideration as a feasible alternative. RSPA subsequently assessed the NPGA's suggested use of a lanyard and that resulted in the significantly lower estimate of costs of compliance of $12.5 million. Therefore, the lanyard system and equally efficient means of achieving compliance with the IFR were determined by RSPA to be among the common-sense approaches that could be taken by industry to permit its continued operation of the non-conforming cargo tank motor vehicles.

The NPGA then contrasted its extremely high estimate of costs to comply with the arm's reach and unobstructed view provisions of the IFR with the comparatively low estimate of $322,192 to $1.5 million in annual benefits to society calculated by RSPA in the preliminary regulatory evaluation. RSPA calculated those benefits on the basis of sixteen actual incidents contained in the Hazardous Materials Information Reporting System database that occurred between 1990–1996. The approach taken by RSPA was an attempt to determine the average cost of each gallon of propane unintentionally released to the environment so it might be used to compare the estimated cost-per-gallon price increase attributed to the IFR that likely would be passed on to the ultimate consumer of propane. The costs to society of each gallon of propane spilled was estimated in a range of $115.98 to $547.41, or $0.00164 per gallon of propane unloaded from cargo tank motor vehicles. When RSPA compared these costs to the calculated additional costs of compliance, the decision to apply temporary operational controls contained in the IFR was fully justified and quite reasonable. When RSPA considered further the potential threats to life and property posed by plausible accident scenarios, such as the possible consequences that may have occurred in Sanford, NC, had the spilled propane ignited, the reasonableness of the temporary rules became even more apparent.

Numerous comments submitted by small propane dealers serving agricultural interests in the midwestern United States cited an estimate of approximately $2,500 per vehicle to replace non-performing (defective) emergency discharge control systems with a fully operational passive shut-off system. They claimed this cost is excessive and unnecessary, especially considering that none of those commenters had ever experienced a failure of the emergency discharge control system to function properly. Related comments suggested that these small businesses accepted in good faith claims made by equipment manufacturers that their cargo tank motor vehicles met all technical requirements of the HMR. Furthermore, those commenters claimed they should not be penalized for equipment deficiencies that they could not reasonably be expected to identify through an independent evaluation. Some conclude by suggesting that RSPA should require persons that completed the certificate of compliance for each cargo tank motor vehicle to bear the cost of a retrofit, following the example of the National Highway Traffic Safety Administration in ordering automobile manufacturers to correct identified safety defects.

RSPA does not agree with the commenters' reasoning that, because it was only recently determined that most of the affected cargo tank motor vehicles do not conform to a long-standing safety requirement, the agency should accept the *status quo* as the officially recognized standard for safety. As indicated earlier in this preamble, the need for and value of fully operational emergency discharge controls is undisputed. Actual threats to life and property posed during the unloading of liquefied compressed gases demand that RSPA require compliance with a performance standard that appears to be reasonably achievable through technological innovations that are now undergoing field tests.

A. Barriers to Compliance

A number of motor carriers noted practical barriers to their full compliance with requirements in the interim final rule. One problem concerns the regulatory requirement that the operator be within arm's reach of a means for closure of the internal self-closing stop valve while operational necessity sometimes calls for the operator to enter the vehicle's cab in order to engage the power take-off for the pump. For large capacity trailers, (*e.g.*, those with a nominal capacity of 10,500 gallons), those controls are normally accessible only from the vehicle operator's position in the truck tractor. A few operators reported that while most bobtail trucks have the controls mounted on the rear deck of the vehicle, unloading controls for some bobtail trucks also are located in the vehicle cab. Thus, these operators claimed the need for two operators.

With respect to retail deliveries of propane to residential and industrial customers, numerous commenters noted that the operator is most frequently located at the delivery end of the hose which may be 100 feet, or farther, from the vehicle. Additionally, these commenters noted that it is not unusual for the receiving tank to be located in a position that prohibits the operator from having an unobstructed view of the cargo tank motor vehicle, as required by § 177.834(i)(3). The commenters state that, in their opinion, because § 177.834(i)(5) specifies that the delivery hose when attached to the cargo tank is considered part of the vehicle, the operator in these circumstances is in compliance with § 177.834(i)(3). Also, where the receiving tank and the cargo tank motor vehicle are in positions which do not allow for a direct line of sight, these carriers believe that compliance is possible by having the operator assume a position within 25 feet of the hose at the corner of the house, or other structure, from which point both cargo tank and receiving tank may be observed. The impediment to compliance in these cases is that, for relatively short periods when the operator is connecting/disconnecting the hose to the receiving tank, it is

impossible to observe the cargo tank. To avoid the high costs of compliance associated with hiring and training a second operator to assist in these frequently occurring situations, the commenters petitioned for relief from the requirements of § 171.5(a)(1)(iii) by requesting the following amendment:

> In addition to the attendance requirements in § 177.834(i) of this subchapter, the person who attends the unloading of a cargo tank vehicle must, except as necessary to facilitate the unloading of product or to enable that person to monitor the receiving tank, remain within arm's reach of a remote means of automatic closure (emergency shut-down device) of the internal self-closing stop valve.

See Ferrellgas *et al.* Petition for Reconsideration of Interim Final Rule (Appendix B).

RSPA rejects the industry's interpretation of the long-standing operator attendance rules in § 177.834(i)(3) that a single operator satisfies requirements for an unobstructed view of the cargo tank, and is within 25 feet of the cargo tank, merely by being in proximity to, and having an unobstructed view of, any part of the delivery hose, which may be 100 feet or more away from the cargo tank motor vehicle, during the unloading (transfer) operation. The rule clearly requires an operator be in a position from which the earliest signs of problems that may occur during the unloading operation are readily detectable, thereby permitting an operator to promptly take corrective measures, including moving the cargo tank, actuating the remote means of automatic closure of the internal self-closing stop valve, or other action, as appropriate. RSPA contends the rule requires that an operator always be within 25 feet of the cargo tank. Simply being within 25 feet of any one of the cargo tank motor vehicle's appurtenances or auxiliary equipment does not constitute compliance.

B. Transports

Compliance with the long-standing attendance requirements is rather easily achieved by a single operator in most instances involving the unloading of "transports" at bulk plants, similarly configured industrial facilities, neighborhood gasoline service stations, and other delivery sites which generally provide for use of transfer hoses that do not exceed 20 feet in length. It is the provision in the IFR, requiring the operator to be within arm's reach of a means for closure of the internal self-closing stop valve or other device that will immediately stop the discharge of product from the cargo tank at all times, that makes compliance by a single operator difficult or impossible.

In order to assure that temporary operational safety controls specified in § 171.5 may be reasonably complied with by the operating motor carriers, RSPA is revising the rule by providing that the person in attendance of the cargo tank may be away from the mechanical means for closure of the internal self-closing stop valve for the short period necessary to engage or disengage the motor vehicle power take-off or other mechanical, electrical, or hydraulic means used to energize the pump and other components of the discharge system. RSPA believes this provision allows for a single operator to perform necessary unloading functions, while also reducing potential threats to safety by requiring the operator to quickly assume a position within arm's reach of the emergency discharge control mechanism. With this revision, RSPA is satisfied that compliance with the temporary rule may be accomplished by one operator and without requiring the additional use of a lanyard, electro-mechanical, or other device or system to remotely stop the flow of product. Thus, under this final rule, operators of transports may avoid the costs associated with equipping the cargo tanks with devices or systems that provide an alternative means of compliance with the HMR. This provision is responsive to concerns raised by petitioners representing the propane industry. *See* Appendices A and B.

C. Bobtails (Local Delivery Trucks)

Issues raised by commenters concerning general applicability of requirements in § 177.834(i) pertaining to operator attendance during the unloading of cargo tank motor vehicles relate to a larger number of motor carriers and specification cargo tanks than those addressed in this final rule. Therefore, the attendance issue is addressed only to the extent it bears on temporary operational controls set-out in this rule. In an ANPRM published in today's **Federal Register** RSPA addresses those broader issues with respect to liquefied compressed gases transported in specification MC 330, MC 331 and certain non-specification cargo tank motor vehicles. That rulemaking proposal specifically solicits participation by emergency responders and other affected persons whose concerns were not made known during the course of this rulemaking action.

RSPA is revising the IFR attendance requirements to address economic concerns raised by petitioners on behalf of operators of bobtail trucks. Peculiarities in the siting of receiving tanks, accessibility of a cargo tank motor vehicle to the vicinity of the receiving tank, permanent structures, including high fences, walls, and the like, create scenarios that need to be addressed separately.

When a bobtail truck is used solely to service receiving tanks that are located within 25 feet of the cargo tank and the operator has a direct line of sight, RSPA is confident that compliance with the temporary rule may be accomplished by one operator and without incurring additional costs for the application of a lanyard, electro-mechanical, or other device or system to remotely stop the flow of product.

Another scenario common to bobtail operations involves the delivery of propane to a receiving tank which provides for an unobstructed view of the cargo tank, but is at a distance greater than 25 feet from the cargo tank. In this situation, a single operator conceivably could comply with the temporary operational controls in the same manner as discussed above for transports. However, the need to closely observe the receiving tank takes the operator more than 25 feet from the cargo tank motor vehicle and effectively mandates installation of a remote control system or other system that allows the operator to promptly activate the emergency discharge controls. Installation of a remote control system allows the motor carrier to avoid high labor costs identified by the industry that would otherwise be incurred when a second operator is employed to achieve compliance with these temporary regulations. Data provided by the industry concerning radio-controlled systems that are capable of stopping the engine and, in turn, shutting-down the operation of the pump, thereby allowing the internal self-closing stop valve to revert to its fail-safe position, indicate that most bobtail cargo tanks could be so equipped at a unit cost of approximately $250 to $500.

Still another frequently reported unloading scenario involves situations where the receiving tank is more than 25 feet from the cargo tank motor vehicle and the operator's view is obstructed by a structure, a natural formation, foliage, or some other barrier. RSPA understands further that many residential deliveries of propane fall into this unloading scenario. This situation is of greatest concern to RSPA because the possibility exists that a failure of a discharge valve, pump seal, hose reel swivel joint, or hose during unloading (transfer) may not be immediately detected. Should that occur, a dangerous quantity of propane

could be released to the environment, possibly ignite, and result in serious injuries, extensive property damage, or both.

In the unloading scenario described above, when a single operator attends to the unloading operation, that person is required by this final rule to take additional safety precautions. Before commencing the transfer of product, (*i.e.*, opening the internal valve), the operator must assume a position near the cargo tank motor vehicle that is within arm's reach of the emergency discharge controls. Alternatively, if the operator has a remote control system, or other device, that has a capability to immediately close the internal valve, the operator must assume a position that assures an unobstructed view of the cargo tank. In either event, a transfer of product may be affected only at such times as the operator has an unobstructed view of the cargo tank.

RSPA believes this final rule clearly provides motor carriers with the ability for a single operator to safely unload liquefied compressed gases transported in specification MC 330 and MC 331 cargo tank motor vehicles in most circumstances and at a minimal cost for installation, maintenance, and training in the use of remote control systems, or other devices, that permit the operator to promptly stop the flow of product in the event of an unintentional release to the environment. The temporary rules permit motor carriers to continue until March 1, 1999, their use of cargo tank motor vehicles that do not conform to § 178.337–11 for the transportation of hazardous materials that are essential to home, agriculture, and industry.

Prior to March 1, 1999, RSPA anticipates the industry will have perfected passive shut-off systems that allow motor carriers to bring their cargo tank motor vehicles into compliance with requirements of § 178.337–11.

D. Need for Passive System Requirements

Several commenters question whether the emergency discharge requirement in § 178.337–11 is necessary. ICI Technology and Barrett Transportation Compliance state that RSPA is placing too much emphasis on a passive automatic shut-down device. They believe that knowing the cause of accidents and focusing on prevention is better than trying to mitigate the incident once it occurs.

TFI believes that a hose management program, along with industry awareness training programs, possible requirements for brake interlock systems, and improvements to the delivery system of cargo tanks in ammonia service, including the emergency-shut-off valve, are sufficient to provide an equivalent level of safety to a fully passive excess flow valve, and may be one possible long-term solution to the problem at hand. NPGA supports TFI's position and believes that enhanced hose testing, training and inspection procedures would provide an equivalent level of safety inasmuch as the majority of product discharges are the result of hose ruptures rather than complete separations which excess flow valves are intended to address.

The HMR address two unintentional release scenarios, specifically: (1) Total hose or piping rupture or separation; and (2) partial hose or piping rupture, separation, or leak. Commenters correctly note that the passive emergency discharge control requirement in § 178.337–11(a)(1)(i) is meant to protect against the unintentional discharge of liquefied compressed gases where there is a total hose or piping rupture or separation. Such events have potentially large consequences and high probability of incapacitating the operator to the extent that person cannot perform emergency procedures. For partial hose or piping rupture, separation, or leak, operator-dependent countermeasures are the primary safety measure. The operator-attendance requirements for unloading operations in § 177.834(i)(2) ensure that the person attending an unloading operation is alert, can see the cargo tank during the unloading operation and is close enough to the cargo tank to reach the emergency shut-off system in the event of an emergency. The training requirements in § 172.700 are intended to ensure that the person attending the unloading operation is aware of safety procedures and is familiar with the HMR in general and the requirements that apply specifically to the functions the employee performs. Where a partial hose or piping rupture, separation, or leak occurs, only the operator-dependent countermeasures come into play.

With issuance of this final rule and the ANPRM, RSPA is reviewing and addressing existing HMR requirements, including the passive system requirement in § 178.337–11. RSPA also is considering the need for a hose management program and other measures that address the problem of hose ruptures. RSPA will review these requirements from a cost/benefit perspective, especially in light of new technologies that are available now or will shortly be available.

E. Decisions on Petitions for Reconsideration

Based on the above information and discussions, NPGA's March 21, 1997 petition for reconsideration of the "arm's reach" requirement contained in the February 19, 1997 IFR is denied. Based on the same information and discussions, the March 21, 1997 petition for reconsideration of the IFR filed by Ferrellgas, *et al* (joint petitioners) is granted in part and denied in part. Specifically, as requested by the joint petitioners, this final rule authorizes the person attending the unloading of a cargo tank motor vehicle to step away from the mechanical means of closure of the internal self-closing stop valve for the short duration necessary to engage or disengage the motor vehicle power take-off or other mechanical, electrical, or hydraulic means used to energize the pump and other components of the discharge system on the cargo tank. It does not, however, authorize that person to step away from the means of immediate closure of the internal self-closing stop valve for any other reason.

III. Provisions of the Final Rule

A. Section 171.5

Paragraph 171.5(a)(1) sets forth use provisions under which MC 330, MC 331 and non-specification cargo tank motor vehicles authorized under § 173.315(k) may be operated and unloaded. Also, this paragraph makes clear that § 171.5 does not apply to cargo tank motor vehicles used to transport carbon dioxide.

Paragraph 171.5(a)(1)(i) requires that, before each transfer of product is initiated from a cargo tank motor vehicle, the person performing the unloading function should verify that each component of the discharge system is of sound quality, is free of leaks, and that all connections are secure. Also, the transfer hose must be subjected to full transfer pressure prior to the first unloading of product each day.

Paragraph 171.5(a)(1)(ii) requires that, before the transfer of product is initiated from a cargo tank motor vehicle using a new or repaired transfer hose, or a modified hose assembly for the first time, the hose assembly must be subjected to a specified pressure test. This paragraph also provides that a hose or associated equipment that shows signs of leakage, significant bulging or other defects may not be used. Where hoses are used to transfer liquefied compressed gases, a procedure must be instituted to ensure that hose assemblies are maintained at a level of integrity suited to each hazardous material. An acceptable procedure for maintenance,

testing and inspection of hoses is outlined in publication RMA/IP–11–2, "Manual for Maintenance, Testing and Inspection of Hose", 1989 edition, published by the Rubber Manufacturers Association.

Paragraph 171.5(a)(1)(iii) requires that, in the event of an unintentional release of lading to the environment during transfer, the person attending the unloading operation must promptly activate the internal self-closing stop valve and shut down all motive and auxiliary power equipment. This paragraph clarifies that prompt activation can be accomplished in at least three ways, specifically: (1) Through compliance with the requirements in § 178.337–11(a)(1)(i); (2) through the use of a qualified person positioned within arm's reach of the mechanical means of closure throughout the unloading operation, except during the short period of time necessary to engage or disengage the motor vehicle power take-off or other mechanical, electrical, or hydraulic means used to energize the pump and other components of a cargo tank's discharge system; or (3) through the use of a fully operational radio-controlled system that is capable of stopping the transfer of lading by use of a transmitter carried by a qualified person unloading the cargo tank.

This paragraph also provides that where a radio-controlled system is used as a means of promptly activating the internal self-closing stop valve, the attendance requirements of § 177.834(i)(3) are satisfied when the qualified person unloading the cargo tank: (1) Carries a radio transmitter that will activate the closure of the internal self-closing stop valve; (2) remains within the operating range of the transmitter; and (3) has an unobstructed view of the cargo tank motor vehicle at all times when its internal stop-valve is open.

Paragraph 171.5(a)(1)(iv) states that cargo tank motor vehicles that meet the emergency discharge system requirements in § 178.337–11(a)(1)(i) may be operated under the provisions of § 171.5(a)(1).

Paragraph 171.5(a)(1)(v) requires that a comprehensive written emergency operating procedure be developed by persons conducting transfer operations, that the written procedures be prominently displayed on or in each affected cargo tank motor vehicle, and that hazmat employees who perform unloading functions be trained in those procedures.

Paragraph 171.5(a)(1)(vi) requires that cargo tank manufacturers, assemblers, retesters, motor carriers, and other hazmat employers subject to § 171.5 train their employees to perform the new function-specific requirements in § 171.5 and maintain records of this training as required under § 172.704(d). As a general provision, this requirement already exists. Section 172.702 of the HMR requires that a hazmat employer ensure that each of its hazmat employees is trained in accordance with Subpart H of Part 172. The training requirements apply to persons who manufacture, maintain, and test cargo tanks, and to persons who operate cargo tanks. Testing, and a "certification that the hazmat employee has been trained and tested," is required by the regulation and Federal hazmat law. RSPA views emergency discharge controls and their operation to be essential to cargo tank safety and to be a significant element in the training program of any involved hazmat employer. Also, there are the driver training requirements in § 177.816 that include special requirements for operators of cargo tanks with a specific reference to training on the operation of emergency control features.

Paragraph 171.5(a)(2), regarding the continuing qualification of a cargo tank motor vehicle, allows existing in-service cargo tank motor vehicles that do not meet the requirements of § 178.337–11(a)(1)(i) to continue in operation if the Certificate of Compliance and inspection report required under § 180.417(b) contain the following statement: "Emergency excess flow control performance not established for this unit."

Paragraph 171.5(a)(3), regarding new cargo tank motor vehicles manufactured, marked and certified prior to March 1, 1999, states that those vehicles may be marked and certified as conforming to specification MC 331 if they meet all of the specification requirements, with the exception of the emergency excess flow control function, and the following statement appears on the certification document, "Emergency excess flow control performance not established for this unit."

Paragraph 171.5(b) specifies the marking that must be displayed on a cargo tank used or represented for use under § 171.5.

Paragraph 171.5(c) states that requirements specified in § 171.5 are applicable from August 16, 1997, through March 1, 1999.

B. Immediate Compliance

This final rule is an alternative to existing requirements. Industry may choose to comply with the requirements in § 178.337–11, tracing back to 1941, or with provisions in § 171.5. However, because segments of industry are in non-compliance with requirements in § 178.337.11(a)(1)(v) and the attendance requirements in § 177.834(i)(3), a serious threat to the public safety continues to exist and must be addressed without delay. Furthermore, continued non-compliance with the above-stated requirements poses a serious economic threat to industry in that MC 330 and MC 331 cargo tank motor vehicles that do not conform to the HMR may not be used to transport hazardous materials. As stated by NPGA in its application for exemption, the impacts of continued operation of these vehicles are "so many" and "so pervasive as to be almost incalculable from an economic impact viewpoint." Based on the above, and the fact that the final rule requirements are refinements of the IFR requirements that have been in effect since February 19, 1997, good cause exists for making this rule immediately effective upon expiration of the IFR.

IV. Rulemaking Analyses and Notice

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget. The rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The preliminary regulatory evaluation prepared in support of the interim final rule published on February 19, 1997, was reexamined and modified to remove certain incidents that were not appropriate to issues considered in this rulemaking, and to consider economic cost data submitted to the docket by commenters. The final regulatory evaluation is available for review in the public docket.

Most of the compliance cost burden of this rule is expected to fall on propane dealers, and RSPA expects these costs to be passed on to customers. A total one-time expenditure of $4.7 million to $9.2 million is estimated as being required of these dealers. This expenditure is very small in relation to the revenue from sales of liquefied petroleum gas by dealers to final users, without even counting those sales that may be made directly to industrial, agricultural or commercial customers by merchant wholesalers or gas producers. The latest available (1992) *Census of Retail Trade* showed annual sales of liquefied petroleum gas by retail dealers alone to amount to $4.87 billion. The $4.7

million to $9.2 million estimated above is relatively small when compared only to the margin between operating expenses and revenues net of the cost of such purchases and appears to add relatively little to a year's worth of outlays made by these dealers for capital equipment.

The U.S. Bureau of the Census has provided RSPA with 1992 sample-survey-based estimates of these quantities that are normally not published in such industry-specific detail since they have been subjected to only limited review. They were only available combined with those for fewer than 300 miscellaneous types of fuel dealers that could not be classified as "fuel oil" vendors, but this minor category accounted for only 1.3% of combined sales according to the 1992 *Census of Retail Trade*. 98.7% of the estimated operating margin and of the estimated annual capital expenditure (other than for land) amounted to $499 million and $191 million, respectively, for retail liquefied petroleum gas dealers.

Another way of putting these estimated compliance costs in perspective is to express their major component, the equipping of bobtails with radio frequency devices, as an average expenditure per retail liquefied petroleum gas business location. Using the 5393 such locations in existence during an entire year that were shown in the 1992 *Census of Retail Trade*, yields an average of under $800 per location.

These essentially one-time-only costs of $4.7 million to $9.2 million (or annualized costs of $3.13 million to $6.14 million, when amortized over the 18 months this temporary regulation will be in effect) compare favorably with estimated annual benefits to society, in terms of reduced injuries, evacuations, and property damages, ranging from a low of $322,071 to a high of $3 million. The low end of this range is based upon data contained in fourteen unloading incidents reported to RSPA during the past seven years. The high end of the range considers those same incidents but then adjusts for a ten-fold estimate of under reporting of economic losses and a two-fold estimate of under reporting of the actual number of incidents, based upon the Office of Technology Assessment report "Transportation of Hazardous Materials" (July 1986). In event the requirements specified in this revised final rule were to prevent a major release of propane potentially threatening the life of four or more persons, the rule would yield a net benefit to society.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This interim final rule addresses covered subject item (5) above and preempts State, local, and Indian tribe requirements not meeting the "substantively the same" standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be November 17, 1997. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (Act), as amended, 5 U.S.C. 601–612, directs agencies to consider the potential impact of regulations on small business and other small entities. The Act, however, applies only to rules for which an agency is required to publish a notice of proposed rulemaking pursuant to section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. *See* 5 U.S.C. 603(a) and 604(a). Because of the emergency nature of this rule, RSPA is authorized under sections 553(b)(B) and 553(d)(3) of the APA to forego notice and comment and to issue this final rule with an immediate effective date. Consequently, RSPA is not required under the Act to do a regulatory flexibility analysis in this rulemaking.

Specifically, under sections 553(b)(B) and 553(d)(3), APA authorizes agencies to dispense with certain procedures for rules, including notice and comment, when they find "good cause" to do so. "Good cause" includes a finding that following notice-and-comment procedures would be "impracticable, unnecessary, or contrary to the public interest." Section 553(d)(3) allows an agency, upon a finding of good cause, to make a rule effective immediately. "Good cause" has been held to include situations where immediate action is necessary to reduce or avoid health hazards or other imminent harm to persons or property, or where inaction would lead to serious dislocation in government programs or the marketplace.

Nevertheless, RSPA is concerned with the effect this rule may have on small business. Consequently, in preparing a regulatory evaluation under Executive Order 12866, RSPA analyzed, based on information currently available to the agency, the impact of this rule on all affected parties, including small businesses. The regulatory evaluation is available for review in the public docket.

The Regulatory Flexibility Act is concerned with identifying the economic impact of regulatory actions on small businesses and other small entities. It requires a final rule to be accompanied by a final regulatory flexibility analysis, consisting of a statement of the need for the rule, a summary of public comments received on regulatory flexibility issues and agency responses to them, a description of alternatives to the rule consistent with the regulatory statutes but imposing less economic burden on small entities, and a statement of why such alternatives were not chosen. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration, the definition of "small business" has the same meaning as under the Small Business Act. Because no special definition has been established, RSPA employs the thresholds published (in 13 *CFR* 121.201) of 100 employees for wholesale trade in general and $5,000,000 annual sales for retail trade in general. As noted above, liquefied petroleum gas dealers constitute the principal type of business

on which significant compliance costs will be imposed by this rule, in particular for equipment on retail-type delivery vehicles. Using the Small Business Administration definitions and the latest (1992) available *Census of Retail Trade*, it appears that over 95% of retail liquefied petroleum gas dealers must be considered small businesses for purposes of the Regulatory Flexibility Act. They accounted in the 1992 Census for over 50% of business locations and almost 43% of annual sales. Unpublished 1992 *Census of Wholesale Trade* figures provided to RSPA by the U.S. Bureau of the Census indicate that over 95% of merchant wholesalers of liquefied petroleum gas also must be considered small businesses; they accounted for approximately 40% of business locations and over 50% of annual sales.

The Regulatory Flexibility Act suggests that it may be possible to establish exceptions and differing compliance standards for small business and still meet the objectives of the applicable regulatory statutes. However, given the importance of small business in liquefied petroleum gas distribution, especially in its retail sector where improved emergency shut-off equipment is necessary to assure adequate safety during delivery operations, RSPA believes that it would not be possible to establish differing standards and still accomplish the objectives of Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*). RSPA further believes that the discussion in the regulatory evaluation and in the February 19, 1997 **Federal Register** publication of the interim final rule, as to the need for regulatory action, issues raised by the public and the consideration of alternatives open to the government, apply to small as well as large businesses in the affected industries.

While certain regulatory actions may affect the competitive situation of an industry by imposing relatively greater burdens on small-scale than on large-scale enterprises, RSPA does not believe that this will be the case with this rule. The principal types of compliance expenditure effectively required by the rule, radio frequency emergency shut-off system installation, is imposed on each vehicle, whether operated within a large or a small fleet. While there is undoubtedly some administrative efficiency advantage to a large firm in being able to make a single set of arrangements for such installations on a large number of vehicles at a time, imposition of the requirement contemplates use of commercially-available equipment, without any need for extensive custom development work that only a large firm could afford. While the only other compliance expenditure that is believed to be significant in the aggregate, that for documentation of emergency procedures, has been projected here on a per-firm rather than a per-vehicle or per-location basis, the average of $62 estimated for each preparation does not appear high enough to significantly affect the economics of small-scale as contrasted with large-scale distribution of the affected commodities.

D. Unfunded Mandates Reform Act

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

E. Paperwork Reduction Act

The information collection and recordkeeping requirements contained in this final rule have been submitted for renewal to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995. The requirement is currently approved under OMB Control Number 2137–0595. Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. RSPA estimates that the total information collection and recordkeeping burden in this final rule is 18,573 hours, at a cost of $422,660, for the development and maintenance of the comprehensive emergency operating procedure. These figures are based in RSPA's belief that standardized emergency operating procedures can be developed for use by a majority of industry members, thus reducing substantially the burden hours and cost to individual industry members of compliance with the emergency operating procedures requirement. Requests for a copy of this information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001. Telephone (202) 366–8553. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

F. Regulation Identifier Number (RIN)

A regulation identifier 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 number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 171 is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. Section 171.5 is added to read as follows:

§ 171.5 Temporary regulation; liquefied compressed gases in cargo tank motor vehicles.

(a) *Operation of new and existing cargo tank motor vehicles.* For a cargo tank motor vehicle used to transport liquefied compressed gases, other than carbon dioxide, § 178.337–11(a)(1)(i) of this subchapter requires that each internal self-closing stop valve and excess flow valve must automatically close if any of its attachments are sheared off or if any attached hoses or piping are ruptured or separated. Other regulations in Parts 173 and 180 of this subchapter reference this requirement or similar requirements in effect at the time of manufacture of a cargo tank motor vehicle. Notwithstanding this requirement, a DOT MC 330 or MC 331 specification cargo tank motor vehicle, or a non-specification cargo tank motor vehicle conforming to the requirements of § 173.315(k) of this subchapter, may, without certification and demonstrated performance of the internal self-closing stop valve or the excess flow feature or self-closing stop valve of its emergency discharge control system, be represented for use and used to transport certain liquefied compressed gases under the following conditions:

(1) *Use.* The cargo tank motor vehicle must otherwise be operated, unloaded and attended in full conformance with all applicable requirements of this subchapter and the following additional requirements:

(i) Before initiating each transfer from the cargo tank motor vehicle, the person performing the function shall verify that each component of the discharge system is of sound quality, is free of leaks, and that connections are secure. In addition, prior to commencing the first transfer of each day, the transfer hose shall be subjected to full transfer pressure.

(ii) Prior to commencing transfer using a new or repaired transfer hose or a modified hose assembly for the first time, the hose assembly must be subjected to a pressure test. The pressure test must be performed at no less than 120 percent of the design pressure or maximum allowable working pressure (MAWP) marked on the cargo tank motor vehicle, or the pressure the hose is expected to be subjected to during product transfer, whichever is greater. This test must include all hose and hose fittings and equipment arranged in the configuration to be employed during transfer operations. A hose or associated equipment that shows signs of leakage, significant bulging, or other defects, may not be used. Where hoses are used to transfer liquefied compressed gases, a procedure must be instituted to ensure that hose assemblies are maintained at a level of integrity suited to each hazardous material. An acceptable procedure for maintenance, testing and inspection of hoses is outlined in publication RMA/IP–11–2, "Manual for Maintenance, Testing and Inspection of Hose", 1989 edition, published by the Rubber Manufacturers Association, 1400 K Street, N.W., Washington, DC 20005.

(iii) If there is an unintentional release of lading to the environment during transfer, the internal self-closing stop valve shall be promptly activated, and the qualified person unloading the cargo tank motor vehicle shall promptly shut down all motive and auxiliary power equipment. Prompt activation of the internal self-closing stop valve may be accomplished through:

(A) Compliance with § 178.337–11(a)(1)(i) of this subchapter; or

(B) A qualified person positioned within arm's reach of the mechanical means of closure for the internal self-closing stop valve throughout the unloading operation; except, that person may be away from the mechanical means only for the short duration necessary to engage or disengage the motor vehicle power take-off or other mechanical, electrical, or hydraulic means used to energize the pump and other components of the cargo tank motor vehicle's discharge system; or

(C) A fully operational remote-controlled system capable of stopping the transfer of lading by operation of a transmitter carried by a qualified person attending unloading of the cargo tank motor vehicle. Where the means for closure of the internal self-closing stop valve includes a remote-controlled system, the attendance requirements of § 177.834(i)(3) of this subchapter are satisfied when a qualified person:

(*1*) Is carrying a radio transmitter that can activate the closure of the internal self-closing stop valve;

(*2*) Remains within the operating range of the transmitter; and

(*3*) Has an unobstructed view of the cargo tank motor vehicle at all times that the internal stop-valve is open.

(iv) A cargo tank motor vehicle that has an emergency discharge system conforming to the requirements in § 178.337–11(a)(1)(i) of this subchapter may be operated under the provisions of this paragraph (a)(1).

(v) A comprehensive written emergency operating procedure must be developed for all transfer operations and hazmat employees who perform unloading functions must be trained in its provisions. The emergency operating procedure must be prominently displayed in or on the cargo tank motor vehicle.

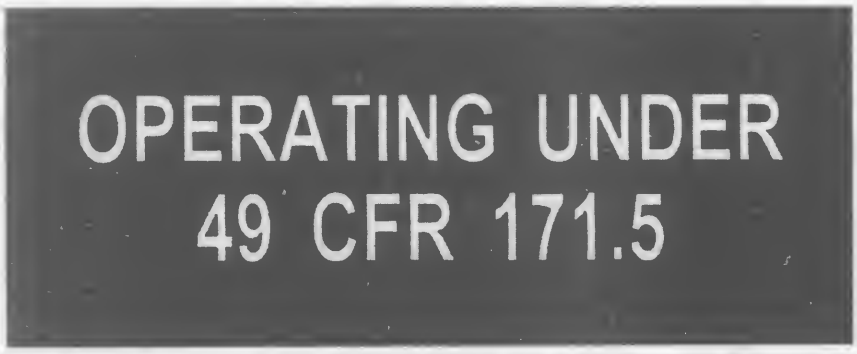
(vi) As required by § 172.704 of this subchapter, each manufacturer, assembler, retester, motor carrier and other hazmat employer subject to the requirements of this section shall ensure that its hazmat employees are trained to properly perform these new function-specific requirements including the meaning of the marking specified in paragraph (b) of this section. The hazmat employer shall ensure that a record of the training is created, certified, and maintained as specified in § 172.704(d) of this subchapter.

(2) *Continuing qualification.* An existing in-service cargo tank motor vehicle may continue to be marked and documented as required by Part 180 of this subchapter if the following statement is added to the Certificate of Compliance by the owner or operating motor carrier: "Emergency excess flow control performance not established for this unit."

(3) *New cargo tank motor vehicles.* A new (unused) cargo tank motor vehicle manufactured, marked and certified prior to March 1, 1999, may be marked and certified as conforming to specification MC 331 if it otherwise meets all requirements of the specification and the following statement is added to the certification document required by § 178.337–18 of this subchapter: "Emergency excess flow control performance not established for this unit."

(b) *Marking.* The following marking must be displayed on a cargo tank motor vehicle used or represented for use under this section:

BILLING CODE 4910–60–P



BILLING CODE 4910–60–C

(1) The letters must be white and the background black.

(2) The letters must be at least 1.5cm in height.

(3) The marking must be 6cm×15cm.

(c) Requirements of this section are applicable to a cargo tank motor vehicle used to transport liquefied compressed gases, other than carbon dioxide, from August 16, 1997 through March 1, 1999.

Issued in Washington, DC on August 13, 1997, under authority delegated in 49 CFR part 1.

Kelley Coyner,

Acting Administrator, Research and Special Programs Administration.

Appendices

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

Appendix A—National Propane Gas Association Petition for Reconsideration of Interim Final Rule

March 21, 1997

By First Class Mail

The Honorable Dharmendra K. Sharma,
Administrator, Research & Special Programs Administration, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590–0001.

Re: Amendment to NPGA's Petition for Reconsideration

Dear Administrator Sharma: On behalf of the National Propane Gas Association ("NPGA" or the "Petitioner") and its members, we hereby amend our Petition for Reconsideration of the Emergency Interim Final Rule on Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service ("Interim Final Rule"), Docket No. RSPA–97–2133 (HM–225), filed on March 21, 1997, to correct a typographical error.

On the bottom of page eight (8) of our Petition for Reconsideration, we inadvertently stated that the $660 million in additional costs would represent "a potential increase of .07 cents per gallon to the consumer." The costs would reflect a potential increase of 7 cents per gallon to the consumer. Therefore, the sentence containing this statement should read as follows: "This figure represents a potential increase of $.07 per gallon to the consumer."

We apologize for any confusion this error may have caused.

Respectfully submitted,

Eric A. Kuwana,

Counsel for the National Propane Gas Association.

March 21, 1997

By Hand Delivery

202–457–6420

Dr. Dharmendra K. Sharma,
Administrator, Research & Special Programs Administration, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590–0001.

Re: Petition for Reconsideration of Interim Final Rule, Pursuant to 49 CFR § 106.35; and Petition for Rulemaking Pursuant to 49 CFR § 106.31

Dear Administrator Sharma: On behalf of the National Propane Gas Association ("NPGA" or the "Petitioner") and its members, we hereby petition the Research and Special Programs Administration ("RSPA") of the U.S. Department of Transportation ("DOT") for reconsideration of a single requirement imposed in the Emergency Interim Final Rule on Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service ("Interim Final Rule"), Docket No. RSPA–97–2133 (HM–225), which was published on February 19, 1997 (62 FR 7638). By this petition, NPGA and its members do not seek or otherwise request reconsideration of the entire Interim Final Rule. Instead, NPGA seeks reconsideration of the single requirement addressed herein. At the same time, we remain committed to work with RSPA to ensure the safe loading and unloading of LP-gas (or propane gas) from cargo tank motor vehicles.

The Petitions

Pursuant to the procedural provisions in 49 CFR § 106.35(a), we specifically petition RSPA for reconsideration of the additional attendance requirement in 49 CFR § 171.5(a)(1)(iii), which states, in relevant part, that "[t]he person who attends the unloading of a cargo tank motor vehicle must have an unobstructed view of the discharge system and be within arm's reach of a means for closure (emergency shut-down device) of the internal self-closing stop valve or other device that will immediately stop the discharge of product from the cargo tank." This language effectively mandates that two or more attendants travel to and be present during the unloading of propane gas from a cargo tank motor vehicle. The additional attendance requirement is not justified by the exceptional safety record of the propane gas industry, is not necessary to ensure the safe unloading of propane gas from a cargo tank motor vehicle, and will result in enormous costs and devastating impacts to the propane gas industry.

This Petition for Reconsideration satisfies the standard set forth in 49 CFR § 106.35(a) for such petitions in that compliance with the additional attendance requirement in § 171.5(a)(1)(iii) is neither practicable, reasonable, nor in the public interest. The provision, which was effective immediately upon publication of the Interim Final Rule on February 19, is extremely costly and will have an immediate and severe financial impact on the industry. Because the additional attendance requirement in the Interim Final Rule has no demonstrated nexus to the reported accidents or incidents cited by RSPA in that rule, RSPA cannot justify the approximately $660 million cost of compliance. NPGA and its members strongly believe that, based on the clear weight of the evidence and the other reasons set forth herein, this Petition for Reconsideration of the additional attendance requirement in the Interim Final Rule warrants the removal of that burdensome requirement by RSPA.[1] Especially because the requirement was imposed without any opportunity for notice and comment, we further request that the effectiveness of the additional attendance requirement be stayed pending consideration of this petition.

As discussed further below, NPGA believes the magnitude of the impact on the propane gas industry justifies RSPA's acting on its Petition for Reconsideration immediately without delay, an opportunity for notice and comment, or any other proceedings. Such expedited treatment is expressly contemplated in the procedural provisions of § 106.35. Nonetheless, pursuant to the provisions in 49 CFR § 106.31, we additionally petition RSPA for rulemaking to amend 49 CFR § 171.5(a)(1)(iii) in the event RSPA denies the NPGA's Petition for Reconsideration of the Interim Final Rule.

NPGA's Efforts

Initially, we need to emphasize that NPGA and its members have an absolute commitment to the safe unloading of propane gas from cargo tank motor vehicles. Simply stated, the propane gas industry must maintain a record of safety in order to keep its customers, to receive insurance, to maintain a favorable perception in the community and, at the bottom line, to remain in business. The propane industry has achieved an admirable record of safety.

Consistent with this absolute commitment to safety, members of the propane gas industry undertook an immediate investigation after the September 1996 incident at Sanford, North Carolina, and voluntarily evaluated and disclosed the specific issue relating to emergency discharge control systems that triggered the Interim Final Rule. Further, NPGA voluntarily formed a task force to identify viable alternatives to the current emergency discharge control systems and to ensure the safe unloading of propane gas under all conditions.[2] Consistent with this process, NPGA and its members continue to embrace the opportunity to participate with RSPA to identify and fashion measures to ensure the safe unloading of propane gas from cargo tank motor vehicles in every circumstance.

NPGA Membership

NPGA is the national trade association representing the LP-gas (principally propane) industry and has about 3,500 member entities and companies in all 50 states, including 37 affiliated state and regional associations. Propane gas is vital to the economic well-

[1] NPGA proposes instead that RSPA adopt the less burdensome, but equally safe, requirement that "[t]he vehicle driver be continually in attendance and control of the loading and unloading operations."

[2] A brief discussion of NPGA's efforts, including those related to the Special Presidential Task Force, can be found in NPGA's prepared Statement submitted to Docket No. RSPA–97–2133 (HM–225) during the public meeting on March 20, 1997. The Statement is incorporated herein by reference.

being of this nation and is distributed for critical industrial, commercial and residential uses every single day of the year. While the single largest group of NPGA members are retail marketers of propane gas, the membership also includes propane producers, transporters and wholesalers, as well as manufacturers and distributors of associated equipment, containers and appliances. Propane gas is used in over 18 million installations nationwide for home and commercial heating and cooking, in agriculture, in industrial processing, and as a clean air alternative engine fuel for both over-the-road vehicles and industrial lift trucks.

The majority of NPGA's members are small businesses, which bear a disproportionate burden of the Interim Final Rule. According to its own analysis, RSPA acknowledges that at least 90 percent of the businesses affected by the Interim Final Rule are small businesses (62 FR 7646). It is NPGA's position that the additional attendance requirements will have an immediate and devastating financial impact on these small businesses.[3] A more detailed analysis of the economic impact of the additional attendance requirement is provided below.

Industry Safety Record

The propane gas industry has achieved an extraordinary safety record. From 1986 to 1995, there were almost 10 million tank transport truck deliveries and almost 300 million bobtail deliveries of propane. (Attachment A).

Those deliveries carried almost 90 billion gallons of propane to residential, commercial, agricultural and industrial consumers throughout every state and county in the United States. (Attachment B).[4] Except for the incident in Sanford, North Carolina described below, NPGA is unaware of any other serious reported incident during this 10 year period relating to a failure of the emergency discharge control system during the unloading of a tank transport truck. There have been no fatalities, injuries, fires or explosions caused by a failure of the emergency discharge control system during the unloading of a tank transport truck in more than 10 million deliveries of propane. As to the smaller bobtail cargo tanks, RSPA acknowledges in the Interim Final Rule that only 9 incidents of propane release have been reported during the past 10 years involving any allegation of a failure of the emergency discharge control system on a bobtail cargo tank.[5] None of the 9 incidents of propane release cited by RSPA resulted in any fatalities. This represents approximately one release per 30 million bobtail deliveries. Based on these numbers, this also represents one release per almost 10 billion gallons of propane delivered in the past ten years.

The Sanford Event

Notwithstanding these statistics, RSPA promulgated the Interim Final Rule without providing for notice and comment after an accidental release of propane that involved no fire, no explosion and no injuries or fatalities in Sanford, North Carolina on September 8, 1996. The release involved a large cargo tank semi-trailer pulled by a highway truck tractor unloading a cargo of propane into permanent storage tanks at a propane marketing facility. Shortly after the transfer operation began, the transfer hose separated from the transfer connection at its juncture with the plant piping and began discharging liquid propane into the atmosphere. The vehicle driver heard sounds unusual for a transfer operation and shut off the vehicle engine. According to the report of the Federal Highway Administration ("FHWA") inspector, the driver was not able to get to the remote controls to close the internal stop flow valve. Nonetheless, apparently as a result of the failure of the excess flow protection in the cargo tank motor vehicle, the entire propane cargo of approximately 9,700 gallons was discharged into the atmosphere. There was no ignition of the propane, and thus no fire, explosion, loss of life or loss of property.

More importantly, the emergency flow protection built into the permanent storage tanks at the propane marketing facility apparently did not activate automatically as designed and, as a result, the approximately 35,000 gallons of propane in the storage facility were also discharged into the atmosphere. The failure of the flow protection built into the permanent storage tanks contributed the vast majority of the released propane, not the cargo tank motor vehicle. Because RSPA apparently does not have jurisdiction over the permanent storage tanks, the Interim Final Rule does not seek to address the most significant failure connected with the release at Sanford, North Carolina.

There is absolutely no evidence that the event at Sanford could not have been prevented by the improved training, hose testing and system inspection requirements proposed by NPGA in its Application for an Emergency Exemption and subsequently adopted by RSPA in its Interim Final Rule.

The Other Incidents Cited By RSPA

In addition to the Sanford incident, RSPA cites to six other unrelated incidents involving propane ignition and tragic fatalities. Based in large part on these six unrelated incidents, RSPA promulgated the Interim Final Rule without notice and comment to prevent the "grave consequences" of an accidental release of propane. Significantly, RSPA failed to cite a single instance of a documented failure of an emergency discharge control system on a cargo tank motor vehicle resulting in an explosion, fire, injury or loss of life in the Interim Final Rule. The unrelated six incidents, as listed by RSPA in the Interim Final Rule, are as follows:

- On July 25, 1962 in Berlin, NY, an MC 330 bulk transport ruptured releasing about 6,900 gallons of liquid propane. Ignition occurred. Ten persons were killed, and 17 others were injured. Property damage included total destruction of 18 buildings and 11 vehicles.
- On March 9, 1972 near Lynchburg, VA, an MC 331 bulk transport overturned and slid into a rock embankment. The impact ruptured the tank's shell releasing about 4,000 gallons of liquid propane. Ignition occurred. Two persons were killed and five others were injured. Property damage included a farmhouse, outbuildings and about 12 acres of woodland.
- On April 29, 1975, near Eagle Pass, Texas, an MC 330 bulk transport struck a concrete headwall and ruptured releasing more than 8,000 gallons of liquefied petroleum gas. The ensuing fire and explosion killed 16 persons, injured 51, and destroyed 51 vehicles.
- On February 22, 1978, 23 tank cars derailed in Waverly, Tennessee. During wreck-clearing operations, a 30,000 gallon tank car containing liquefied petroleum gas ruptured. The ensuing fire and explosion killed 16 persons, injured 43, and caused $1.8 million in property damage.
- On December 23, 1988, in Memphis, Tennessee, an MC 330 bulk transport struck a bridge abutment and ruptured releasing 9,388 gallons of liquefied petroleum gas. The ensuing fire and explosion killed eight persons and injured eight.
- On July 27, 1994, in White Plains, New York, an MC 331 bulk transport struck a column of an overpass and ruptured releasing 9,200 gallons of propane. Ignition occurred. The driver was killed, 23 people were injured, and an area within a radius of approximately 400 feet was engulfed in fire. (62 FR 7639.)

In five of the above listed incidents, a cargo tank motor vehicle was involved in a serious accident resulting in a ruptured tank and subsequent ignition of the propane gas. While tragic examples of highway accidents, none of these incidents would have been avoided or minimized in any manner by the new requirements of the Interim Final Rule or an improved emergency discharge control

[3] RSPA asserts that this rulemaking is exempt from the Regulatory Flexibility Act, as amended, 5 U.S.C. §§ 601 et seq., because the Act is not applicable when a Notice of Proposed Rulemaking is not required (62 FR 7646). RSPA's argument relies on the validity of its "good cause" finding that it was impracticable, unnecessary or contrary to the public interest to provide for notice and comment. Because the Interim Final Rule was not tailored carefully or otherwise necessary to avoid any imminent harm, RSPA's finding of good cause is deficient and cannot justify an exemption from the Act.

[4] Based on current data compiled by NPGA, there were 9,891,403 tank transport deliveries and 296,742,077 bobtail deliveries for a total of 306,633,479 deliveries of propane during the 10 year period. These deliveries carried 89,022,623,000 gallons of propane. Indeed, this estimate is conservative because in actuality, these quantities of propane are transported twice: first by transport truck from the terminal to the bulk storage retail facility, and then by bobtail to the residential, commercial or industrial users. And, each instance of transportation itself involves two transfers: loading and unloading.

[5] NPGA notes that the exact causes of the 9 incidents of propane release cited by RSPA in the Interim Final Rule are not clear. There is absolutely no evidence in the Interim Final Rule that the additional attendance requirement in § 171.5(a)(1)(iii) would have prevented those 9 incidents or is tailored to address the causes of those incidents. NPGA strongly believes that improved training, hose testing and system inspections are more likely to prevent accidental releases of propane than the burdensome and unnecessary additional attendance requirement.

system. More specifically, the additional attendance requirement in § 171.5(a)(1)(iii) could not have prevented or helped to prevent these tragic accidents.[6]

Finally, the sixth incident listed by RSPA, the February 22, 1973, accident in Waverly, Tennessee, involved rail tank cars, not cargo tank motor vehicles, and thus is completely unrelated to the Interim Final Rule. In fact, the rupture in this particular case did not even occur until wreck-clearing operations had commenced. Again, there is absolutely no evidence that this rail accident, or the five other above listed accidents, could have been prevented to any extent by the wholly unrelated requirements in the Interim Final Rule.

This Petition for Reconsideration Meets the Standard Set Forth in 49 CFR 106.35(a)

The petition for reconsideration meets the standard set forth in 49 CFR 106.35(a) in that the challenged provision is not reasonable, practicable, nor consistent with the public interest.

The Additional Attendance Requirement Is Not Reasonable

The Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A) provides that an agency's actions in promulgating rules may be set aside if "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law."[7] In order to withstand a challenge that one of its rules is arbitrary or capricious, an agency "must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"[8] Thus, courts will scrutinize whether relevant data was taken into consideration by the agency when it fashioned its regulatory requirements.[9] Additionally, reviewing courts will give increased deference (1) to an agency depending on its degree of persuasiveness of the agency's rationale for a rule and (2) to a long-standing rule.[10]

The new requirement added to Section 171.5(a)(1)(iii) by the Interim Final Rule is not reasonable in that the economic burdens it will place on the industry are not justified by the industry's safety record and are not reasonably tailored to remedy the problems identified by RSPA in its preamble to the Interim Final Rule, and the explanantion provided by the agency does not provide a rational connection between the facts found and the choices made. The six incidents other than Sanford cited by RSPA in the Interim Final Rule still would have occurred if the additional attendance requirement was in effect. Conversely, there is no evidence to suggest that the Sanford incident would not have been prevented by a combination of the improved training, hose testing, system inspection and qualification requirements contained in the Interim Final Rule and a requirement that the vehicle driver be continually in attendance and control of the loading and unloading operations. Thus, RSPA has "offered an explanation for its decision which runs counter to the evidence before the agency."[11] There is simply no evidence that having additional service personnel at each unloading would have prevented any of the incidents identified and cited by RSPA in its Interim Final Rule.[12] In sum, the severe economic consequences of the challenged requirement are not reasonably related to the goals cited by RSPA.

The Cost/Benefit Analysis Defies Common Sense

An agency's rulemaking must be tailored to address the problem at hand, and the economic burden to the regulated industry must bear some reasonable relationship to the goal of the regulation. In this case, it is obvious that RSPA either did not consider or determined to disregard the unjustified and unnecessary economic burden on the propane industry. While the propane industry is working diligently to develop, manufacture and retrofit a new emergency discharge control system for cargo tank motor vehicles, operators of all tank transport trucks and bobtails will need to recruit, hire, train and pay new employees to meet the additional attendance requirement in the Interim Final Rule if it is allowed to stand.

The economic impacts of the additional attendant requirement are extremely onerous for the propane industry and its customers. Based on a representative survey of its members, NPGA estimates the cost of compliance with the additional attendance requirement to be $660 million, taking into account costs associated with employee recruitment, function specific training, salary, and employee benefits.[13] This figure represents a potential increase of .07 cents per gallon to the consumer. Even according to the conservative estimates in the Government's Preliminary Regulatory Evalution for the Interim Final Rule filed in Docket No. HM–225 on March 19, 1997, the aggregate cost to the propane industry for a second operator to comply with the additional attendance requirement in § 171.5(a)(1)(iii) is $237,017,143 annually.[14]

The extraordinary compliance costs estimated by both NPGA ($660 million) and RSPA (almost $240 million) as a result of the additional attendant requirement in the Interim Final Rule stand in sharp contrast to the proven safety record of the propane industry over many years. In the Interim Final Rule, RSPA cites to only 9 incidents of releases relating to the emergency discharge control systems on cargo tank motor vehicles, none of which resulted in any fatalities. RSPA also cites to 6 tragic incidents that are wholly unrelated to emergency discharge control systems on cargo tank motor vehicles. Even in the Government's Preliminary Regulatory Evaluation, RSPA's search of the DOT's Hazardous Materials Incident Reporting System ("HMIS") found only 16 reports of propane releases, which may or may not be related in any way to emergency discharge control systems, from 1990 to 1996. Those 16 releases averaged 3,109 gallons of propane[15]—and there were no fatalities and only 2 serious and 2 minor injuries resulting in total damages of $932,166.

Most significantly, the Government's own analysis of the aggregate total costs to society from releases of propane as a result of a

[6] Indeed, if the Interim Final Rule had been in effect at the time of these five accidents, a second person likely would have been riding along with the driver of the cargo tank motor vehicle at the time of the accident because of the additional attendance requirement for the unloading of propane. Simply stated, the Interim Final Rule would have increased, not decreased, the loss of life in each incident cited by RSPA.

[7] See also *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402, 414 (1971); *Bowmon Transportation, Inc.* v. *Arkansas Best Freight System, Inc.*, 419 U.S. 281 (1974).

[8] *Motor Vehicle Manufocturers Association of the United States, Inc. et al.* v. *State Farm Mutuol Automobile Insurance Co., et al.*, 463 U.S. 29, 43 (1983) citing *Burlington Truck Lines, Inc.* v. *United Stotes*, 371 U.S. 156, 168 (1962).

[9] The Court in Motor Vehicle Mfgr. Assoc. noted "[n]ormally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." 463 U.S. at 43.

[10] *Visiting Nurse Association of North Shore, Inc.* v. *Bullen, et al.*, 93 F.3d 997, 1007 (1st Cir. 1996); *Bowen* v. *American Hosp. Ass'n.*, 476 U.S. 610, 64 n. 34; *Mayburg* v. *Sec. Of Health and Human Services*, 740 F.2d 100, 106 (1st Cir. 1984).

[11] Motor Vehicle Mfgr. Assoc., supra., at 43.

[12] See *Americon Horse Protection Assoc.* v. *Lyng*, 812 F.2d 1 (D.C. Cir. 1987) (agency's decision set aside where agency failed to consider evidence which demonstrated that the factual presumptions upon which the agency's decision was based were inaccurate).

[13] Based on 1995 retail sales volume of 9,429,570 gallons multiplied by $.07 per gallon.

[14] The estimate on its face is faulty. On page 16 of the Preliminary Regulatory Evaluation, RSPA concludes that only bobtails will be required to hire a second attendant to remain with the bobtail throughout the entire day of deliveries. RSPA apparently hypothesizes that the only increased costs for the larger tank transport trucks will be the use a second attendant during the two hours of actual unloading at a total hourly rate of $13.38. RSPA apparently makes the unsupported assumption that the larger tank transports will be able to hire a qualified and trained individual at the point for unloading and be able to compensate that individual for only two hours work. This assumption is further undermined by the fact that it is common practice in the industry for deliveries to be made in the evenings and on weekends so as not to disturb the operations of the recipient. As there would not ordinarily be anyone else on site at these times, there would necessarily have to be a second person riding in the truck, or someone would have to be hired at overtime wages to attend the transfer during the evening or on the weekend period.

[15] The chart containing this information on page 4 of the Preliminary Regulatory Evaluation acknowledges that the estimated high amount of any single release was 40,000 gallons, which included the 30,000 gallons released from the two storage tanks during the Sanford event. Discounting the 30,000 gallons from that event, which was completely unrelated to any failing of an emergency control system on the cargo tank motor vehicle, the average per release decreases from 3,109 (49,744/16) gallons to 1,234 (19,744/16) gallons. This reduction would reduce greatly the annual cost calculation for Alternative 1 ("do nothing") and Alternative 2 ("temporarily withdraw the requirement for emergency discharge system") in the Government's Preliminary Regulatory Evaluation.

decision not to implement any changes or new regulatory requirements is between $322,192 to $1,520,705 annually.[16] Simply stated, according to the Government's own estimates, complete Government inaction (e.g., no Interim Final Rule) on the issue of emergency discharge control systems on cargo tank motor vehicles would result in an annual total cost below $1.5 million. Moreover, the Government's analysis demonstrates that a total suspension of the regulatory requirement for an emergency discharge control system on cargo tank motor vehicles would result in essentially the same relatively low range of cost to society—between $322,192 to $1.5 million. Because the additional attendance requirement has not been demonstrated to rectify any specific safety problem and its imposition is wholly unsupported by the incidents cited by RSPA in its Interim Final Rule, the requirement cannot be justified in light of the incredible increase in costs to the industry ($240 to $660 million) compared to costs to society from Government inaction ($322,192 to $1.5 million).

Finally, NPGA submits that the additional attendance requirement in § 171.5(a)(1)(iii) will result in additional deaths and increased costs to society based on the incidents cited by RSPA in its Interim Final Rule. Of the five cargo tank motor vehicle accidents cited by RSPA, an attendant passenger could not have prevented the accidents and likely would have died in each case. Using the Government's own estimates of $2.7 million for the value of a single life from the Preliminary Regulatory Evaluation, those five additional deaths would have resulted in $13.5 million increased aggregate costs to society from that requirement. These additional deaths and increased costs are certainly not warranted by the wholly undocumented and questionable benefits.

The overwhelming economic evidence cited above should not be construed in any manner to indicate a lack of concern by NPGA about safety in the propane industry. NPGA and its members are committed to the safe loading and unloading of propane gas from cargo tank motor vehicles under all conditions. Moreover, we are not arguing that regulations that increase safety cannot increase costs for the regulated industry and its customers. But in this particular case, the additional attendance requirement is not based on any evidence that the requirement is reasonable, necessary, practicable and consistent with the public interest. Simply stated, the additional attendance requirement is regulatory overkill and an enormous burden on the propane industry and its customers without any demonstrated benefits to society.

The Additional Attendance Requirement Is Not Practicable

NPGA and its members additionally seek reconsideration of Section 171.5(a)(1)(iii) of the Interim Final Rule in that compliance with this requirement is not practicable.[17]

First, in addition to the costs of adding a second attendant described above, two attendants may be insufficient to meet the letter of the provisions for the majority of bobtail deliveries. Approximately half of the piping on a bobtail delivery truck is underneath the cargo tank between the vehicle chassis frame rails. The piping therefore may not be in view of someone standing beside the vehicle. Thus, to comply literally with the provisions of the Rule, one attendant must be under the truck and a second attendant must be at the remote control on the internal valve, in order to have all the discharge system in view during the transfer operation. These two attendants are, of course, in addition to the third, principal delivery person, who would attend the transfer of product. The economic impact outlined above therefore would be doubled.

Second, the recruiting, hiring and training of the additional attendants required by this new requirement makes the rule not practicable. The Interim Final Rule, by its very terms, is temporary in nature. Nonetheless, the rule mandates a lengthy process of recruiting, hiring and training, some of which may not be completed by the end of the temporary period on August 15, 1997. Moreover, the extremely high fixed costs for such a process in light of the temporary nature of the rule magnifies that the rule is not practicable. Finally, NPGA submits that the arm's reach requirement now contained in Section 171.5(a)(1)(iii) violates the National Fire Prevention Association ("NFPA") 58's requirement for separation of the receiving tank and source, further rendering the provision impracticable in that compliance with the Interim Rule may cause violation of applicable fire code provisions.

The Additional Attendance Requirement Is Contrary to the Public Interest

An agency is to consider the important aspects of a problem in fashioning a rule.[18] Here, RSPA has failed to address several key aspects of the issue presented and, as a result, has promulgated a rule that is contrary to the public interest. Although RSPA may promulgate rules for the safe transport of hazardous materials, such rules cannot properly be issued where the burden and impact on the public is not warranted or has not been considered in light of its tangible benefits.

The public interest will not be served by enforcement of the additional attendance requirement in that the economic burden of compliance will disproportionately impact small business. As noted above, RSPA estimates that at least 90 percent of the businesses impacted by the Interim Final Rule are small businesses under the Small Business Administration's size standard definitions (62 FR 7646). Thus, the largest percentage by far of the estimated $660 million in compliance costs will be borne by small businesses. Because the cost of an additional attendant will be a huge fixed cost and small businesses will have less revenue to absorb this new fixed cost, it is likely that many of these small businesses will cease to exist. The loss of these small businesses will result in higher unemployment and will have a very real and direct impact on their communities. Moreover, to the extent that small businesses are able to survive, they will pass these costs on to the consumer. Unnecessary higher costs for all consumers of propane gas is also contrary to the public interest.

The preamble to the Interim Final Rule specifically seeks comment as to whether there are alternatives to the Final Rule that accomplish RSPA's objectives, while at the same time imposing less of an impact on small businesses. NPGA strongly believes that the Interim Rule's testing, training, and qualification requirements, together with the requirement that the vehicle driver be continually in attendance and control of the loading and unloading operations, meet RSPA's objectives, while at the same time preserving the continued economic viability of the small businesses comprising the majority of this industry.

Request for Relief

NPGA seeks expedited reconsideration of the additional attendance requirement added by the new provisions of § 171.5(a)(1)(iii) to existing part 171 of Title 49, Code of Federal Regulations, by the Interim Final Rule. The additional attendance requirement, which effectively mandates the physical presence of a second attendant during the unloading of a cargo tank motor vehicle, imposes unreasonable and unnecessary financial burdens on the affected industry, and is not in the public interest in that it is not reasonably tailored to achieve the safety results at which it is aimed. NPGA further submits that the requirement will have a disproportionate and irreparable adverse effect on small businesses nationwide. As a result, the NPGA respectfully requests that the Administrator stay the effectiveness of the additional attendance requirement in § 171.5(a)(1)(iii) pending a decision on this Petition.

For the reasons cited above, NPGA petitions RSPA to reconsider the additional attendance requirement in the Interim Final Rule. As an alternative, NPGA recommends the language from our Application for Emergency Exemption requiring that "[t]he driver will be continually in attendance and control of the loading and unloading operations."

Conclusion

For the foregoing reasons, NPGA, on behalf of its members, petitions RSPA to reconsider Section 171.5(a)(1)(iii) of its Interim Final Rule, and to stay the effectiveness of this

[16] As stated above, this calculation would decrease due to the Government's overestimate of the average number of gallons released in the 16 reported incidents.

[17] At the March 20, 1997 Public Meeting, the issue was raised as to the requirements now contained in 49 CFR § 177.834(i)(3) that an attendant have an unobstructed view of the cargo tank and be within 7.62 meters (25 feet) of the cargo tank. Paragraph 177.834(i)(5) provides that the delivery hose, when attached to the cargo tank, is considered part of the vehicle. Under this definition, an attendant monitoring the delivery within 25 feet of the delivery hose would be in compliance with the previous section of the regulations.

[18] Motor Vehicle Manufacturers Association, 463 U.S. at 43.

provision during its consideration of our petition. In the event RSPA denies this petition, we request that it be converted to a petition for rulemaking to amend this provision under 49 C.F.R. § 106.31.

Please do not hesitate to contact us in the event RSPA requires further information to process this petition.

Respectfully submitted,
Mary Beth Bosco, Eric A. Kuwana,
Counsel for the National Propane Gas Association.

Attachments

ATTACHMENT A.—Propane Tank Truck Deliveries

[1986–1995]

Year	Propane fuel sales 1,000 gallons	Number of bobtail deliveries represented	Number of transport deliveries represented	Scheduled commercial airline departures
1986	7,999,283	26,664,277	888,809	.....
1987	8,299,830	27,666,100	922,203	.....
1988	8,484,351	28,281,170	942,706	.....
1989	9,763,059	32,543,530	1,084,784	.....
1990	8,281,606	27,605,353	920,178	.....
1991	8,611,571	28,705,237	956,841	.....
1992	9,217,256	30,724,187	1,024,140	.....
1993	9,483,509	31,611,697	1,053,723	.....
1994	9,452,588	31,508,627	1,050,288	.....
1995	9,429,570	31,431,900	1,047,730	7,700,000
Total	89,022,623	296,742,077	9,891,403	7,700,000
		Total Deliveries—306,633,479		

ATTACHMENT B.—SALES OF PROPANE BY PRINCIPAL FUEL USES, 1986–1995

[1,000 Gallons]

Year	Residential and commercial	Industrial[1]	Engine fuel	Farm	Other[2]	Total
1986	4,368,591	1,614,711	654,168	1,131,905	229,908	7,999,283
1987	4,837,271	1,387,696	629,848	1,075,463	369,552	8,299,830
1988	4,806,779	1,695,978	582,749	1,063,537	335,308	8,484,351
1989	5,388,742	1,709,440	581,155	1,172,811	910,911	9,763,059
1990	4,974,632	1,340,196	531,325	1,135,712	299,741	8,281,606
1991	5,324,740	1,287,077	542,064	1,133,539	324,151	8,611,571
1992	5,213,548	1,918,169	500,092	1,363,327	222,120	9,217,256
1993	5,460,571	1,914,762	500,278	1,383,022	224,876	9,483,509
1994	5,375,245	2,032,765	507,193	1,405,033	132,352	9,452,588
1995	5,513,207	1,994,819	466,636	1,322,556	132,352	9,429,570
Total	.....	.....	.....	.....	.....	89,022,623

[1] Includes refinery fuel use, synthetic rubber manufacture, and gas utility.
[2] Includes secondary recovery of petroleum and SNG feedstock.
Source: American Petroleum Institute.

Appendix B—Ferrellgas et al. Petition for Reconsideration of Interim Final Rule

April 21, 1997

The Honorable Dharmendra K. Sharma,
Administrator, Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW, Room 8410, Washington, DC 20590.

Dear Administrator Sharma: On March 21, 1997, Ferrellgas, LP., Suburban Propane, L.P., AmeriGas Propane L.P., Agway Petroleum Corporation, and Cornerstone Propane Partners, L.P., (collectively "Petitioners") filed a Petition for Reconsideration pursuant to 49 CFR 106.35 seeking modification of an emergency interim final rule published at 62 FR 7638 (February 19, 1997). By this letter, National Propane, L.P., seeks to join in that Petition as a party. With the addition of National Propane, L.P., Petitioners include six of the eight largest propane service companies in the Nation. In addition to adding National Propane as a party, Petitioners seek to supplement their pending petition with the following supplemental cost benefit information to assist you in the evaluation of their Petition.

As discussed in their pending Petition, Petitioners' specific concern is with an operator attendance requirement imposed as an element of an interim compliance option provided under the emergency rule. The operator attendance requirement in question was designed specifically to address the risk that the automatic excess flow feature on an MC 330, MC 331 or non-specification cargo tank vehicle in liquefied compressed gas service may fail to operate as required under 49 CFR 178.337–11(a) during product unloading. Under 49 CFR 178.337–11(a), the automatic shut-off systems in question are required to function only "in the event of a complete failure (separation) of any attached hoses or piping," not "in response to leaks or partial failure of a pipe, fitting, or hose." 62 FR 7638 at 7643 col. 2 (February 19, 1997). The risk addressed by this operator attendance requirement is thus the risk that: (1) A complete separation of attached hoses or piping will occur; (2) that such separation will occur during product unloading (when the attendance requirement applies); and (3) that the automatic excess flow feature will not actually function as required. Because Petitioners are concerned principally with the operator attendance requirement as it applies to bulk tank vehicles (bobtails), Petitioners have attempted to quantify the magnitude of this risk in the bobtail context.

Based on RSPA's suggestion that nine events involving the failure of automatic excess flow features have occurred in bobtail service over the last seven years,[1] the likelihood of such an event occurring during a bobtail delivery is extremely remote: on the order of one in 35,000,000 based on calculations presented in Petitioners' Petition for Reconsideration. Nevertheless, RSPA Officials have expressed concern that its own data may be underinclusive, and that the actual risk of such an event might therefore be higher.

In an effort to address this concern, Petitioners have attempted to identify any incidents in the course of their own operations in which an excess flow feature failed (or may have failed) to operate after a complete separation of attached hoses or piping occurred during the unloading of a bobtail vehicle. In this effort, Petitioners have examined their safety and insurance records, and have consulted with employees who would be expected to be aware of any such instances that may have occurred. In most cases, documentary information was found to be available going back at least three years, and employees were identified who could be expected to be aware of any incidents that may have occurred within the last decade (in several cases, the employees consulted had a knowledge base going back several decades). As a result of these efforts, Petitioners collectively have been able to identify a total of only three such instances.[2] Although Petitioners cannot positively establish that they have identified every such incident that has occurred in their operations over the last seven years, they are very confident—based upon the nature and extent of the inquiries undertaken—that their tally of incidents is not substantially in error.

Because Petitioners collectively operate slightly over one third of the estimated population of 18,000 bobtails in service nationwide, their incident rate of three incidents over seven years could reasonably be extrapolated to a rate of nine incidents over the same period for the industry as a whole. This is the same number of incidents that Petitioners assumed in calculating a one in 35,000,0000 incident rate in their Petition for Reconsideration. Even if it is assumed that the industry-wide incident rate is higher than the incident rate Petitioners have experienced, the overall incident rate at issue would still be extraordinarily low.[3] In fact, as discussed in Petitioners' Petition for Reconsideration, the estimated incident rate suggested by the available data would have to be assumed to be *five times higher* before it would even approach the incident rate of passenger deaths per enplanement for the U.S. commercial aviation transportation system. Petitioners do not believe that this incremental risk is of sufficient magnitude to justify the high costs that compliance with the operator attendance requirement of the emergency rule would entail. Petitioners accordingly urge RSPA to take prompt and favorable action on their pending Petition by modifying the operator attendance requirement of the emergency rule appropriately.

Please let me know if you have any questions or if additional information would be helpful.

Sincerely,

Walter B. McCormick, Jr.

cc: Alan I. Roberts
Docket No. RSPA–97–2133 (HM–225)

March 31, 1997

Mr. Alan I. Roberts,
Associate Administrator for Hazardous Materials Safety, Department of Transportation, 400 7th Street, SW, Mail Code: DHM–1, Washington, DC 20590.

Dear Mr. Roberts: This letter responds to your request for specific suggested regulatory language designed to address the concerns raised in the Petition of Ferrellgas, L.P., Suburban Propane, L.P., AmeriGas Propane L.P., Agway Petroleum Corporation, and Cornerstone Propane Partners, L.P., (collectively "Petitioners") for reconsideration of RSPA's emergency interim final rule published at 62 FR 7638 (February 19, 1997).

We did not suggest specific regulatory language in our Petition for Reconsideration because we believe that our concerns could appropriately be addressed through a variety of different changes in regulatory language. For example, Petitioners would fully support adoption of the regulatory language suggested on page 2, footnote 1 of the Petition for Reconsideration filed with respect to the same emergency rule by the National Propane Gas Association. Alternatively, Petitioners would be satisfied if new Section 171.5(a)(1)(iii) were amended to read as follows:

"In addition to the attendance requirements in § 177.834(i) of this subchapter, the person who attends the unloading of a cargo tank vehicle must, except as necessary to facilitate the unloading of product or to enable that person to monitor the receiving tank, remain within an arm's reach of a remote means of automatic closure (emergency shut-down device) of the internal self-closing stop valve."

If neither of these suggested regulatory amendments is acceptable to the Agency, Petitioners would be satisfied with any alternative regulatory amendment that would reasonably meet their needs as articulated in their Petition for Reconsideration. It should be emphasized, however, that Petitioners' need for relief is most urgent. As the attached documents demonstrate, local authorities are already beginning to enforce the requirements of the emergency rule at issue, a factor that is exacerbating the already impossible problems Petitioners face under that rule. Accordingly, we urge RSPA to provide appropriate relief in some form as quickly as possible.

As we have discussed, Petitioners would appreciate the opportunity to meet with the Agency to discuss their Petition, to provide supplementary information, and to discuss any questions or concerns you or your staff may have. In the interim, we hope that this clarification of the relief we seek is useful.

Thank you for the personal attention you have paid to this important matter.

Sincerely,

Barton Day,

Counsel for Petitioners Ferrellgas, L.P., Suburban Propane, L.P., AmeriGas Propane L.P., Agway Petroleum Corporation, and Cornerstone Propane Partners, L.P.

Attachment

March 21, 1997

The Honorable Dharmendra K. Sharma,
Administrator, Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, S.W., Room 8410, Washington, DC 20590.

Dear Administrator Sharma: Enclosed pursuant to 49 CFR 106.35 is a Petition for Reconsideration of the emergency interim final rule published at 62 FR 7638 (February 19, 1997). This petition is being filed on behalf of Ferrellgas, L.P., Suburban Propane, L.P., AmeriGas Propane L.P., Agway Petroleum Corporation, and Cornerstone Propane Partners, L.P., (collectively "Petitioners"). Petitioners are five of the eight largest propane service companies in the United States, and together they serve over 3,000,000 customers across all fifty states.

The emergency rule that is the subject of this Petition was promulgated in response to information suggesting that the excess flow control valve designs currently in use on specification MC 330, MC 331, and certain non-specification cargo tank vehicles used to transport propane may not satisfy the requirements of 49 CFR 178.337–11(a). As Petitioners understand it, the purpose of this emergency rule was to provide a safe alternative means of compliance that would allow continued operation of such vehicles on an interim basis while a long-term solution to this problem is identified and implemented. Unfortunately, it appears that modification of certain operator attendance provisions included in the emergency rule, is necessary in order for the rule to achieve its intended purpose. The basic problem is that immediate compliance with the operator attendance requirement of the emergency rule, as currently written, does not appear to be possible. In fact, it is reasonable to question whether full compliance with these interim requirements could realistically be expected much before the interim compliance period is scheduled to end, on August 15th 1997. In addition, it appears that these requirements would not be reasonable interim compliance measures even if they could be implemented relatively quickly.

[1] It should be noted that Petitioners are not aware of any documented basis for this suggestion.

[2] In one of these instances, ignition did not occur and no injuries or property damage resulted. Petitioners also identified one instance in which the automatic excess flow feature functioned immediately upon separation of a hose during a bobtail delivery (no ignition, injuries, or damage occurred). This latter instance was not included in Petitioners' incident tally, because the operator attendance requirement at issue would provide a benefit only in an instance in which the automatic excess flow feature fails to function as intended.

[3] It should further be noted that this low risk reflects the risk that a release will occur, whether or not there is any ignition of the gas released. *See* Footnote 2.

Petitioners believe that prompt modification of these requirements is necessary to ensure that the requirements of the interim compliance option provided are reasonably achievable on an interim basis.

Petitioners appreciate the constructive manner in which RSPA has responded to the issues underlying the emergency rule, and look forward to working with your staff cooperatively in order to resolve the concerns raised in the Petition.

Sincerely,

Walter B. McCormick, Jr.

Enclosure

cc: Judith S. Kaleta, Chief Counsel, Alan I. Roberts, Associate Administrator for Hazardous Materials Safety, Docket No. RSPA–97–2133 (HM–225)

United States Department of Transportation Research and Special Programs Administration Before the Administrator

In Re: Hazardous Materials: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service; Interim Final Rule

62 FR 7638 (February 19, 1997)

[Docket No. RSPA–97–2133 (HM–225)]

Petition of Ferrellgas, L.P., Suburban Propane, L.P., Amerigas Propane, L.P., Agway Petroleum Corporation and Cornerstone Propane Partners, L.P. for Reconsideration of RSPA's February 19, 1997 Interim Final Rule

Pursuant to 49 CFR 106.35, Ferrellgas, L.P., Suburban Propane, L.P., AmeriGas Propane L.P., Agway Petroleum Corporation, and Cornerstone Propane Partners, L.P., (collectively "Petitioners") hereby petition for reconsideration of the emergency interim final rule published at 62 FR 7638 (February 19, 1997). The emergency rule was promulgated in response to information suggesting that the excess flow control valve designs currently in use on specification MC 330, MC 331, and certain non-specification cargo tank vehicles used to transport propane may not satisfy the requirements of 49 CFR 178.337–11(a). The purpose of the emergency rule, as explained at RSPA's March 4, 1997 Workshop concerning the rule, was to provide a safe alternative means of compliance that would allow continued operation of such vehicles on an interim basis while a long-term solution to this problem is identified and implemented. Petitioners appreciate the Agency's prompt efforts to achieve this critical objective, and support most of the requirements of the interim compliance option provided under the emergency rule. Unfortunately, however, the interim compliance option RSPA has provided includes new operator attendance requirements that are unreasonable, impracticable, and are not in the public interest. In fact, it appears that immediate compliance with these requirements is impossible, and that there is some basis to question whether efforts to comply might do more to increase than to decrease the overall risks associated with propane delivery, especially in the short term.

To adequately protect the public interest, Petitioners urge RSPA to take immediate action to modify the new operator attendance requirements of its interim final rule so as to provide a reasonable and practicable interim means of compliance for operators of the cargo tank vehicles at issue. Such action is necessary because, although automatic systems that should satisfy RSPA's expectations under 49 CFR 178.337–11(a) are already under development, there appears to be no immediate way for the propane industry to comply either with the requirements of the interim final rule or with the requirements of 49 CFR 178.337–11 as RSPA interprets them. As RSPA itself has recognized, unachievable regulatory requirements for propane delivery are unacceptable because any interruptions in propane service would expose members of the public to "unacceptable threats to their safety and economic interests."[4] Such requirements are particularly inappropriate in this case, because there is no evidence of any safety crisis that would justify them. To the contrary, the conditions of concern to RSPA have existed continuously over many years—and over the course of hundreds of millions of propane deliveries—apparently without any significant pattern of problems having occurred. In fact, based on the information cited by the Agency itself, it seems clear that the incremental risk at issue is extraordinarily low. It is therefore imperative that some reasonably practicable interim means of compliance be provided for the propane industry. It is also important to ensure that this interim means of compliance will provide positive safety benefits.

Introduction

Petitioners are the first, second, third, fifth, and eighth largest propane service companies in the United States. Together they provide service to some 3,039,000 customers in all fifty states. Petitioners operate approximately 690 transports and 5,950 bulk trucks (bobtails) of the type that are the subject of the emergency rule at issue.

Petitioners understand RSPA's concern over the suggestion that the excess flow control valves currently in use on such vehicles may not satisfy the requirements of 49 CFR 178.337–11. Petitioners are committed to the highest level of safety in the conduct of their business, and would like to work in partnership with RSPA to address this concern. As announced at RSPA's March 4th Workshop, it appears that at least one automatic system that should satisfy RSPA's expectations has already been devised,[5] and Petitioners are aware that other such systems are also currently under development. The problem is that it will take a significant amount of time to more fully test such systems, to get them into commercial production, and to retrofit existing vehicles. Until this process can be completed, a reasonable option for interim compliance must be available.

Since the emergency rule was published, Petitioners have made diligent efforts to understand and implement the requirements of the interim compliance option RSPA provided.

Specifically, Petitioners have augmented their safety procedures and operator training, and are in the process of testing potential engineering options both for interim and long-term compliance. Unfortunately, it appears that immediate compliance with the new vehicle attendance requirements of this option is not possible, and that longer-term compliance would not be reasonable. Because the emergency rule provides neither a grace period for compliance nor any reasonable means by which Petitioners can achieve compliance in the near future, it leaves Petitioners in an impossible position from which they require immediate relief. Accordingly, Petitioners urge RSPA to act immediately to modify the vehicle attendance requirements of its emergency rule as necessary to provide a reasonably practicable interim compliance option that will, if implemented, provide positive safety benefits.

Discussion

I. It Is Imperative That RSPA Provide a Reasonable and Practicable Compliance Option for the Propane Industry

A. Continued Propane Service Is Vital to the Public

Millions of Americans are dependent on propane for their basic energy needs. Consequently, as RSPA has acknowledged, any interruptions in propane service would expose the public to "unacceptable threats to their safety and economic interests."[6] To protect the public interest, it is therefore vital to ensure that propane service companies such as Petitioners have some practicable and lawful means of continuing their operations.

B. The Risks at Issue Do Not Justify Stringent Interim Regulation

RSPA's concern is essentially that excess flow control features on specification MC 330, MC 331 and certain non-specification cargo tank vehicles used to transport propane or other liquid compressed gases may not function effectively under all operating conditions. This concern is based primarily upon one confirmed incident (the Sanford incident), although the Agency does suggest that nine other incidents (all involving bobtails) may have occurred over the past seven years.[7] At the March 4th Workshop, RSPA officials indicated that it does not receive reports of all incidents that occur, and suggested that additional incidents involving the failure of excess flow control devices may in fact have occurred.

Although this information is troubling, it is important to recognize that it is indicative of only an extremely low risk. In fact, if the suggestion that nine bobtail incidents occurred over a seven year period is accepted at face value, this would suggest that the risk

[4] Preliminary Regulatory Evaluation, Docket HM–225, Cargo Tank Motor Vehicles in Liquified Compressed Gas Service (February 1997) at p. 6.

[5] A copy of the announcement issued by A–B Products, Inc. on March 3, 1997 is provided as an attachment to this Petition.

[6] Preliminary Regulatory Evaluation, Docket HM–225, Cargo Tank Motor Vehicles in Liquified Compressed Gas Service (February 1997) at p. 6.

[7] *See* Preliminary Regulatory Evaluation at 1. Petitioners note that no documentation concerning these alleged incidents is included in the administrative record.

of an incident involving failure of an excess flow control device during a bobtail delivery is in the range of one in 35 million.[8] Even if five times this number of incidents had actually occurred, the risk of any such incident during a residential propane delivery would still be significantly lower than the risk of a commercial airline passenger being killed in an air crash on any single flight.[9] While even one accident is too many, these are, by any reasonable assessment, very low risks indeed.

Certainly these risks are too low to justify interim regulatory controls that will impose harsh compliance burdens on the propane industry.

II. The Emergency Rule Fails To Provide Any Reasonable and Practicable Compliance Option for the Propane Industry

A. Immediate Compliance With the Alternative Compliance Option Provided in the Emergency Rule Is Impossible

The alternative compliance option provided in the emergency rule imposes a number of specific requirements. Several of these—including certain inspection and testing requirements—are practicable requirements that provide concrete safety benefits. Petitioners concern is with a new operator attendance requirement that effectively requires that the operator "have an unobstructed view of the cargo delivery lines, and be within an arm's reach of a means for closure of the internal self-closing stop valve or other device that will stop the discharge of product from the cargo tank." 62 FR at 7643 col. 3. RSPA acknowledges that "this may require two operator attendants on a cargo tank motor vehicle or the use of a lanyard, electro-mechanical, or other device or system to remotely stop the flow of product." *Id.* In fact, it appears that compliance with this requirement would always require such measures. One of the principal practical problems is that, in almost all cases, at least some of the controls that must be activated in the unloading of product are located out of reach of the controls for the emergency shut-off system.[10] Another is that operators must at least periodically step away from their vehicles during unloading operations to ensure, for safety purposes, that the receiving tank is not being overfilled or overpressurized. Immediate compliance with this new attendance requirement is impossible because none of the options for compliance—multiple attendants, a lanyard, or some other remote shut-off system—can be implemented in less than a matter of months.

The problem with the multiple attendant option is that Petitioners do not have enough qualified personnel to send multiple attendants out on deliveries. To the contrary, Petitioners—being well-run businesses—do not have substantially more operators than they need to serve their customers. Nor can Petitioners substantially increase the workload of the operators they do have; indeed, regulations limiting hours of service for drivers would prohibit them from doing so. To provide additional operators, Petitioners would therefore have to hire them. If Petitioners were to hire one new employee for each of their approximately 6,600 vehicles, this would amount to more than a 40% increase in the total work force of these companies.[11] Hiring programs of this magnitude would obviously take months to complete, even under the best of circumstances. Applicants would need to be solicited and appropriately screened. Once new operators are hired, they would then need to be appropriately trained before they could be put into the field. In short, this option is completely unworkable as a near-term, interim compliance option.

Putting aside the question of whether lanyards would function effectively—which Petitioners contend they would not—the inescapable problem is that they cannot be deployed quickly. All of the propane cargo vehicles Petitioners operate are already equipped with emergency shut-off (ESO) systems. However, Petitioners believe that substantially all of their ESO controls would have to be modified or repositioned before lanyard systems could be used effectively. In most cases the necessary work would need to be performed by a truck fabricator, and it is estimated that the work would take a number of months to complete. The specific mechanical problems are as follows.

Although propane cargo vehicles have ESOs of various different designs, their basic function is to trip the integral closing mechanism for an internal stop valve. The manually-controlled actuating device for the ESO system is normally positioned towards the front of the vehicle where it is more accessible to the operator in the event that a release of product occurs towards the rear of the vehicle where most of the pumping controls and operating valves are located. These ESO systems are normally operated by a lever or push-button controller mounted to the truck frame behind the driver side of the cab. Where levers are used, they are relatively small, and may be mounted in either a vertical or horizontal position. Attachment of a lanyard to this type of controller would require a series of pulleys so as to direct the force of the pull in the proper direction to actuate the system. On a great many vehicles, however, the controllers are of a push-button design that cannot readily be operated by the tug of a lanyard. These systems would need to be jerry-rigged in some manner or replaced with a lever type controller before a lanyard system could be attached at all.

Petitioners are actively testing electro-mechanical remote emergency shut-off systems, but are not aware of any remote control system that has yet been demonstrated to be fully effective for use in propane cargo vehicles. The principal engineering challenges are to ensure that such a device could reliably transmit signals through metal structures, that it would not itself provide a source of ignition in the event of a propane release, and that it would be compatible with the variety of ESO configurations currently in bobtail service. Even if such devices prove effective, however, it would clearly take a considerable amount of time to install them in all of the propane cargo vehicles. In the end, it could potentially take as long to develop, test, and implement this "interim" solution as it would to implement an appropriate final solution. In any event, it does not appear that immediate compliance with the alternative compliance option provided in the emergency rule is possible on any basis at all.

B. Multiple Operator and Remote Activation Options Are Not Reasonable as Interim Compliance Measures

Even if the multiple operator or remote activation options could be implemented substantially before the end of the interim compliance period, Petitioners do not believe that they would represent reasonable interim compliance measures. The basic problem is that either option would impose high costs without providing any commensurate safety benefit.

The multiple employee option would effectively require a very large but temporary expansion in the work force of propane service companies. The costs of recruiting, screening, training, compensating, and then ultimately discharging this large number of excess employees would be very high. Petitioners estimate that these costs could exceed $165,000,000.00 just for Petitioners alone, assuming one new employee for each of Petitioners' 6,600 vehicles.[12] At the same time, for several reasons, the safety benefits of this approach can be expected to be limited at best. First, as already indicated, the risk to be addressed under this approach is extraordinarily low in the first place, and that risk would be reduced even further by implementation of the other requirements of the interim rule, which Petitioners believe would be highly effective in addressing the risk of uncontrolled propane releases during

[8] Assuming nine billion gallons of propane delivered by bobtail annually, with an average of 200 gallons per delivery, it is estimated that there were 315 million bobtail deliveries during the seven year period at issue. If nine incidents are assumed to have occurred in the course of these 315 million deliveries, the corresponding incident rate is approximately 0.029 incidents per million deliveries, for an average of less than one incident in 35 million deliveries.

[9] Even if the kind of bobtail incidents at issue occurred at five times the rate of the reported incidents RSPA has referred to, the incident rate would amount to only about 0.14 incidents per million bobtail deliveries. By contrast, although commercial aviation accident rates fluctuate from year to year, the passenger fatality rate for the "extremely safe" U.S. commercial aviation transportation system has ranged from 0.18 to approximately 0.4 fatalities per million enplanements. National Transportation Safety Board, A Review of Flightcrew-Involved Major Accidents of U.S. Carriers, 1978 Through 1990 (NTSB/SS–94/01) (January 1994) at 1–2.

[10] In the case of bobtails, the flow of gas is initiated from a control located on the end of the product delivery hose. Because bobtails, for safety purposes, are typically located more than 10 feet from the point of product transfer, this control must always be activated from a position that is out of reach of the controls located on the truck. In the case of transports, the clutch and power take off controls necessary for operation of the unloading pumps are located in the vehicle cab, generally out of reach of the emergency shut-off system controls, out of sight of the loading lines, or both.

[11] Together, Petitioners have a total of approximately 15,100 employees.

[12] Conservatively assuming a total cost of $25,000.00 per employee for recruiting costs, salary, training, and benefits.

lading. Second, it would take considerable time to implement this compliance option. As a result, the window of time during which this interim compliance option could effectively provide any safety benefit would be limited. Finally, it should be recognized that it will be difficult to recruit high-quality employees for interim jobs, and that the job itself—standing ready to respond to an event that is extraordinarily unlikely to occur—is not one that should be expected to induce a high level of performance. Accordingly, it appears that interim employees might for practical purposes provide very little safety benefit at all.

As already discussed, the remote activation option would require physical modification of transport vehicles. Assuming that an appropriate remote activation system can indeed be made available at all, significant costs would need to be incurred to purchase and install the necessary equipment. Petitioners estimate that even a relatively low-cost system of the garage-door-opener variety, if available, could not be put to use in Petitioners' 6,600 existing vehicles for less than about $2,300,000.00. Again, however, for several reasons, this substantial cost might provide little practical safety benefit. As already indicated, the risk addressed would be extremely small, particularly in view of the other requirements of the emergency rule. This option would also take considerable time to implement—perhaps nearly as long as an ultimate solution—and might therefore provide interim protection for only a very limited period. In addition, it is not clear that such devices would be capable of operating reliably under real-world conditions, particularly in cold weather and where obstructions—especially metallic obstructions such as sheds, vehicles, or fences—might interfere with signal transmission. Accordingly, it is not clear that such devices, if put to use, would provide substantial safety benefits.

C. Requirements To Employ Multiple Operators or Remote Activation Options Could Potentially Do More To Increase Than To Decrease the Overall Risks Associated With Propane Delivery

In imposing safety regulation, it is important at a minimum to ensure that the rules adopted will do no harm. In particular, it is important to ensure that efforts to address one risk do not effectively increase other risks. Petitioners believe that there is legitimate basis to question whether efforts to comply with the operator attendance requirements of the emergency rule might actually do more to increase than to decrease the overall risks associated with propane delivery, particularly in the short term. Indeed, it appears that those requirements—in attempting to minimize the risks in the event that an uncontrolled release of product occurs during unloading—could potentially increase the overall likelihood that product releases will occur. The basis for this concern is as follows.

Based on their operational experience, Petitioners believe that human error—particularly human error in the overfilling of a customer tank during a bobtail delivery—represents the greatest risk of a product release associated with unloading operations.[13] For two reasons, the new operator attendance requirements of the emergency rule could potentially increase these risks.

The first concern arises with respect to operators that attempt to achieve compliance through the use of interim employees. As already indicated, this option would essentially require that large numbers of new operators be hired, trained, and put into service as quickly as possible. Petitioners have thorough training programs, and believe that these programs are effective in minimizing the risk of human error in the field. Nevertheless, if there is a way to increase the risk of human error, the compulsion to immediately hire and deploy large numbers of new interim employees—on what amounts to an emergency basis—would appear to be it. Petitioners do not believe that this incremental risk would be substantial, and would obviously work as hard as possible to ensure that it is not. Nevertheless, Petitioners believe that the magnitude of this small incremental risk could very well exceed the magnitude of any incremental risk reduction the interim employee option would provide, particularly over the short term.

The second concern arises with respect to propane marketers that attempt to comply without interim employees. The basic concern is that the operator attendance requirement of the emergency rule would frequently have the effect of anchoring operators in positions from which they will be unable to effectively monitor the tank they are filling during bobtail deliveries. This is a critical concern, because monitoring of the customer tank through use of a manual fixed liquid level valve located on the tank is by far the most effective way to ensure that uncontrolled product releases will not occur due to the overfilling of customer tanks. To the extent that operators are inhibited from monitoring the customer tank by the need to keep a lanyard taut, to avoid signal interference from a shed, or for any other reason, the risks associated with the overfilling of customer tanks is incrementally increased. Again, Petitioners believe that the magnitude of even a very small incremental increase in this risk could well exceed the magnitude of the safety benefit provided by the new operator attendance requirements.

III. Modified Attendance Requirements Would Provide A Practicable Basis for Interim Compliance That Would Provide at Least Equivalent Safety Benefits

As already indicated, Petitioners generally support the interim requirements of the emergency rule, specifically the interim requirements for pressure testing of new or modified hose assemblies and for visual inspection of hoses and hose fittings prior to unloading. These interim requirements directly address the risk of catastrophic hose failure—which is the principal risk at issue—and should provide positive safety benefits.

Petitioners believe that all its concerns regarding the operator attendance requirements of the emergency rule can be addressed—without any real sacrifice in safety—if they are modified to provide additional flexibility for two purposes. First, the operator should be given the flexibility to step away from the ESO system as necessary to conduct the unloading operations.[14] Second, the operator should be allowed the flexibility to step away from the ESO system in order to monitor the customer tank. This approach would effectively ensure that the operator will remain within arms' reach of the ESO system to the extent it is reasonable to do so, but would eliminate the need to attempt to deploy multiple operators or remote activation systems on an interim basis. As modified, the provision would provide a practicable interim means of compliance that provides a level of safety that—for practical purposes—is likely to be at least equivalent to the level of safety the rule now provides.

Conclusion

For the reasons set forth herein, Petitioners urge RSPA to take immediate action to modify the vehicle attendance requirements of its emergency rule as proposed in this Petition to provide a reasonably practicable interim compliance option that will, if implemented, provide actual safety benefits.

Respectfully submitted,

Walter B. McCormick, Jr.

Barton Day

Bryan Cave, LLP,

Counsel for Petitioners.

[FR Doc. 97–21865 Filed 8–14–97; 11:58 am]

BILLING CODE 4910–60–P

[13] Overfilling is an issue of concern because propane tanks are pressure vessels containing fluid that expands and contracts in response to ambient temperature variations. In order to ensure that propane is not released as a result of fluid expansion, it is necessary to maintain an adequate vapor space within the tank. For this reason, propane tanks are ordinarily filled only to 80 percent of their full volume. In the event a tank is filled beyond the allowable limit, there is a risk that propane may subsequently be released at some point (often after the operator has left the customer site). If the tank is filled to its full volumetric capacity, a resulting release of product will occur during the unloading process itself. In either case, the safety concerns involved are serious.

[14] This modification would by itself be sufficient to address Petitioners' concerns with respect to propane transports.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 173, 177, 178, 180

[Docket No. RSPA–97–2718 (HM–225A)]

RIN 2137–AD07

Hazardous Materials: Safety Standards for Unloading Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service; Advance Notice of Proposed Rulemaking

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advance notice of proposed rulemaking and notice of public meeting.

SUMMARY: In this advance notice of proposed rulemaking, RSPA requests comments concerning the need, if any, for amending the Hazardous Materials Regulations with regard to emergency discharge control features required on cargo tank motor vehicles in liquefied compressed gas service; the ability of industry to meet a possible 1-, 2- or 3-year retrofit schedule; standards for the qualification, testing and use of hoses used in unloading; safety procedures for persons performing unloading operations; and, whether the Federal government should continue to regulate in this area. This advance notice of proposed rulemaking addresses specification MC 330, MC 331, and certain non-specification cargo tank motor vehicles which are used to deliver propane, anhydrous ammonia, and other liquefied compressed gases. It responds to recently discovered deficiencies which affect the safety of unloading liquefied compressed gases from many of these cargo tank motor vehicles. The intended effect of this action is to obtain information concerning the need for regulatory changes to ensure an acceptable level of safety for delivery of liquefied compressed gases, the costs and benefits associated with such changes, and ways to minimize impacts on small entities affected by them.

RSPA also is announcing a public meeting to solicit comments on issues identified in this docket.

DATES: *Written comments.* Comments must be received by October 17, 1997.

Public meeting. A public meeting will be held from 9:00 a.m. to 4:00 p.m. on Tuesday, September 30, 1997, in Washington, DC.

ADDRESSES: *Comments.* Address comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590–0001. Comments should identify the docket number and be submitted in two copies. Persons wishing to receive confirmation of receipt of their written comments should include a self-addressed, stamped postcard. Comments may also be submitted by e-mail to the following address: "rules@rspa.dot.gov". The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. Public dockets may be reviewed there between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Public meeting. The public meeting will be held at room 2230 of the Department of Transportation Headquarters building, 400 Seventh Street, SW, Washington, DC. Any person wishing to attend and/or participate at the public meeting should notify Jennifer Karim, by telephone or in writing at the phone number and address shown below, by September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Karim, Office of Hazardous Materials Standards, Research and Special Programs Administration, telephone (202) 366–8553, or Nancy Machado, Office of the Chief Counsel, Research and Special Programs Administration, telephone (202) 366–4400, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in today's **Federal Register**, RSPA published a final rule which revises and extends requirements published in an interim final rule (IFR) on February 19, 1997, in docket RSPA–97–2133. The rule adopts temporary requirements for cargo tank motor vehicles in certain liquefied compressed gas service. It requires a specific marking on affected cargo tank motor vehicles and requires motor carriers to comply with additional operational controls intended to compensate for the inability of passive emergency discharge control systems to function as required by the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). The interim operational controls specified in that rule are intended to ensure an acceptable level of safety while the industry and government continue to work to develop a system that effectively stops the discharge of hazardous materials from a cargo tank if there is a failure of piping or a transfer hose. Interested persons should read the preamble to the final rule in RSPA–97–2133 for background information on the problems RSPA is addressing in this rulemaking.

II. Request for Comments

RSPA intends to publish a notice of proposed rulemaking addressing the need, if any, for changes to the HMR which go beyond the scope of today's final rule under docket RSPA–97–2133, including new or revised provisions for operator attendance, hose management, and emergency discharge controls. RSPA requests comments responding to the questions listed below to facilitate decisions on the potential need for additional changes to the HMR with regard to emergency discharge control features required on cargo tank motor vehicles in liquefied compressed gas service; standards for the manufacture, testing and continuing qualification of hoses used in unloading; safety procedures for persons performing unloading operations; and the need for continued Federal regulation in this area. Note that some of these questions were asked in the February 19, 1997 IFR in docket RSPA–97–2133 (62 FR 7638). RSPA also invites comments on any aspect of this rulemaking action not specifically addressed by the questions.

A. Jurisdiction

OSHA has worker health and safety standards, e.g., Storage and Handling of Liquefied Petroleum Gases at 29 CFR 1910.110; Process Safety Management of Highly Hazardous Chemicals, at 29 CFR 1910.119, and EPA has environmental protection standards, e.g., EPA's Risk Management Program, at 40 CFR part 68, which, respectively, provide more protection for worker health and safety, and the environment, than RSPA's limited cargo tank motor vehicle unloading requirements.

A1. Are there any Federal rules that duplicate, overlap or conflict with the HMR requirements?

A2. Should RSPA continue to regulate highway carrier unloading of liquefied compressed gases in cargo tank motor vehicles or should RSPA relinquish regulatory control of this area to other Federal, state, local and Indian tribe authorities?

A3. Do fire service personnel and other emergency responders agree with comments from representatives of the propane and anhydrous ammonia transportation sector that suggest emergency discharge control features are overrated and, therefore, should be eliminated from the HMR? What data, if any, are there to support or rebut those claims made by some members of the affected industries (e.g., information

regarding interstate and intrastate incidents where emergency control systems on cargo tanks authorized to transport liquefied compressed gases functioned or failed to function as required)?

B. Emergency Discharge Controls

The seriousness of the problem with emergency discharge controls currently installed on most specification MC–330 and MC–331 cargo tank motor vehicles has been well recognized since the Sanford, NC, incident of nearly one year ago. Since then, the industry has studied the problem and developed new systems that may conform to the performance standards specified in § 178.337–11. Given the progress made thus far, RSPA believes it is not unreasonable to expect the industry to install new, or re-engineered, passive emergency discharge controls on the affected cargo tank motor vehicles by September 1, 2000, at the latest.

B1. Is it feasible to remove pumps and compensate for decreased discharge flow by either enlarging piping, fittings and hose downstream of existing internal valves, retaining their excess flow features, or by increasing pressure in the vapor space of the cargo tank, e.g., with a nitrogen pad?

B2. Historically, excess flow valves have been used to meet the emergency discharge system requirements in § 178.337–11(a)(1)(i). What other types of devices can provide the passive automatic shutdown function required by that section of the HMR?

B3. Can a passive emergency discharge control system be developed to function in the event of only partial failure of piping and hoses? What criteria should be used to establish a minimum amount of leakage for detection and control of lower level leaks?

B4. Automobiles are commonly equipped with remote transmitter devices that fit on key rings to unlock doors or open trunk lids from 50 feet away. What role can these devices play in the safe unloading of cargo tanks? Should this type of device be required in addition to passive system requirements? Describe the most promising of features of such a system (e.g., a deadman feature) and the advantages and disadvantages of each feature.

B5. Do system designers, parts manufacturers, cargo tank manufacturers and assemblers have the capacity to develop, produce, and install improved emergency discharge control equipment necessary to bring the nationwide fleet of 25,000 cargo tank motor vehicles into compliance with this critical safety regulation over a 12-, 24- or 36-month period? Should retrofit priorities be based on the type of vehicle, i.e., highway transport vs. bobtail cargo tank motor vehicles used in local delivery operations, or on the basis of the material normally transported?

B6. What is an acceptable level of system reliability? Has a statistical design been established for determining reliability?

B7. What in-service field tests are needed to validate the serviceability of new passive emergency discharge control systems? How much time is necessary to conduct those tests?

B8. At what rate would effective passive discharge control systems likely be made available by particular developers (e.g., numbers of installations per month, starting date) under the hypothetical circumstance that for a fixed introductory period all devices produced could be sold? If the developer is a cargo tank operator in this industry, distinguish between the availability of equipment for the operator's own vehicles versus availability to other affected operators. Also, of interest is the size of the operator's fleet and how long it would take to acquire enough new devices to equip this fleet in its entirety.

B9. Preliminary assessments of the cost to install improved emergency discharge controls are nominally estimated at $2,500 per cargo tank motor vehicle. This relatively low cost tends to support RSPA's belief that a retrofit of affected cargo tank motor vehicles may be economically feasible in as little as 12 to 36 months. Are there other cost factors that RSPA should consider before requiring carriers to quickly achieve an acceptable level of safety in emergency discharge controls?

B10. A 12-month period for motor carriers to bring all cargo tank motor vehicles into compliance with the rule pertaining to emergency discharge controls allows for the retrofit or installation of new equipment on approximately 20% of the fleet to take place during their scheduled pressure retest once each five years—a 24-month period allows for approximately 40% and a 36-month period allows for approximately 60%. Is RSPA correct to assume that the cost to retrofit these cargo tank motor vehicles may be substantially less than that for the rest of the fleet, since these tanks are already required to undergo heavy testing and repairs at a maintenance facility that should also be qualified to perform the required retrofit? What is the difference in cost if cargo tanks are taken out of service for retrofit outside of the five-year retest cycle versus being taken out of service as scheduled within the five-year cycle?

B11. How would these costs differ between bobtails and transporters, between installation on new tanks and retrofits?

B12. What is the maximum rate of retrofit that could be effected without a substantial reduction in the capacity of the overall fleet to deliver the expected volumes of propane and anhydrous ammonia in the near future?

B13. What test procedures are appropriate at the time of manufacture or assembly and at the time of requalification to ensure that the product discharge system will close as required by § 178.337–11(a)(1)(i)?

B14. RSPA is concerned that the problem with cargo tank emergency discharge control systems may highlight a deficiency in the training programs for Design Certifying Engineers and those persons certifying cargo tanks as meeting the requirements of the HMR. In addition, carrier function-specific training programs also may not be providing sufficient training in the specification requirements for these cargo tanks. Should RSPA adopt additional training requirements in these areas?

C. Qualification and Use of Delivery Hoses

Some commenters to docket RSPA–97–2133 believe that a hose management program, along with other procedures, is sufficient to provide an equivalent level of safety to a fully passive emergency discharge control system. They propose a hose management program that assures that delivery lines and hoses meet high standards for quality, strength, and durability, and that requires periodic examination and testing to ensure continued suitability for use in the transfer of high risk hazardous materials. The HMR do not currently contain hose management requirements.

C1. RSPA is aware that some facilities require cargo tank motor vehicle operators to use facility hose during loading and unloading operations rather than the hose carried onboard the cargo tank motor vehicle. What hose management standard do these facilities apply to their hoses and should those standards be incorporated into the HMR?

C2. In the final rule published today in docket RSPA–97–2133, RSPA makes reference to the "Manual for Maintenance, Testing and Inspection of Hose" published by the Rubber Manufacturers Association. However, that standard is written specifically to

address hoses used for the transfer of anhydrous ammonia. Are there other standards published by industry, government, or independent safety organizations that RSPA may find acceptable for other liquefied compressed gases?

C3. If there are no other written standards, should RSPA develop specific hose qualification, testing and use requirements for adoption in the HMR? If not, should industry and RSPA work together to develop a standard through one of the existing consensus standards setting organizations, e.g., American Society for Testing and Materials?

C4. Considering that the development of Federal regulations or a consensus standard may take a long period, should RSPA adopt an interim measure that prohibits use of a transfer hose that has been in service for more than one or two years?

C5. In hose assembly testing, should the procedure include a "pull" test? Describe the procedure and the formula for determining the amount of "pull"?

C6. What are the advantages and disadvantages of using stainless steel reinforced hose for product delivery? What would be the cost? Do the advantages—or disadvantages—outweigh the cost?

D. Attendance Requirements

Section 177.834(i)(2)of the HMR states that "a motor carrier who transports hazardous materials by cargo tank must ensure that the cargo tank is attended by a qualified person at all times during unloading." Section 177.834(i)(3) states that "a person 'attends' the loading or unloading of a cargo tank if, throughout the process, he is awake, has an unobstructed view of the cargo tank, and is within 7.62 meters (25 feet) of the cargo tank." In the final rule in docket RSPA–97–2133, RSPA rejected an industry interpretation of this long-standing operator attendance requirement—specifically, that a single operator satisfies requirements for an unobstructed view of the cargo tank, and is within 25 feet of the cargo tank, merely by being in proximity to, and having an unobstructed view of, any part of the delivery hose, which may be 100 feet or more away from the cargo tank motor vehicle, during the unloading (transfer) operation.

The rule clearly requires an operator be in a position from which the earliest signs of problems that may occur during the unloading operation are readily detectable, thereby permitting an operator to promptly take corrective measures, including actuating the remote means of automatic closure of the internal self-closing stop valve, shutting down the motor vehicle engine and other sources of ignition, or other action, as appropriate. The rule requires that an operator always be within 25 feet of the cargo tank. Simply being within 25 feet of any one of the cargo tank motor vehicle's appurtenances or auxiliary equipment does not constitute compliance.

D1. What percentage of bobtail deliveries occur in locations where a single attendant cannot maintain an unobstructed view of the cargo tank motor vehicle during unloading?

D2. In the docket RSPA–97–2133 final rule, RSPA states that where a remote control system is used as a means to stop the transfer of lading, the 25-foot requirement in § 177.834(i)(3) is satisfied when a qualified person is carrying a radio transmitter that can activate the closure of the internal self-closing stop valve, remains within the operating range of the transmitter, and has an unobstructed view of the cargo tank motor vehicle at anytime its internal stop-valve is open. Should RSPA extend this provision beyond the 18-month life of the docket RSPA–97–2133 final rule? Should the provision be amended in any way?

D3. Is it feasible for bobtail operators to organize delivery routes based on whether they can maintain an unobstructed view of the cargo tank motor vehicle at each unloading location during the unloading process?

E. Impacts on Small Businesses

The Regulatory Flexibility Act (Act), as amended, 5 U.S.C. 601–612, directs agencies to consider the potential impact of regulations on small business and other small entities. A small entity includes a small business, small organization or small governmental jurisdiction. For purposes of this discussion, a small business is deemed to be one which is independently owned and operated and which is not dominant in its field of operation. RSPA believes that the impacts of any further rule change would be primarily addressed to businesses involving the distribution of liquefied petroleum gas and anhydrous ammonia, and to manufacturers and assemblers of cargo tanks used for the distribution of these products. Under the Small Business Administration's size standard definitions (13 CFR Part 121), liquefied petroleum gas distributors with $5 million or less in annual receipts, and manufacturers of truck or bus bodies or truck trailers that employ 500 or less individuals are small businesses. Based on available information, RSPA estimates that at least 90% of the businesses impacted by today's final rule in docket RSPA–97–2133 are small businesses. RSPA further estimates there are at least 6,800 businesses affected by this rule.

In order for RSPA to determine the potential impacts on small entities of any additional changes to the HMR, commenters are requested to submit comments addressed to the following questions. In considering potential economic impacts of any changes in the regulations under study here, RSPA is using a rough estimate of some 25,000 existing cargo-tank vehicles in the U.S. as a whole being subject to these regulations, 18,000 of which being bobtails in retail propane delivery service (except for fewer than 50 used to deliver anhydrous ammonia at restricted customer locations), an additional 6,000 transports principally in propane service and the final 1,000 transports operated by for-hire carriers. It is understood that the same transports are often used for both propane and anhydrous ammonia during the complementary delivery seasons for those commodities.

E1. How many new cargo tanks are being produced or reassembled annually?

E2. Is it reasonable to assume that the originally-installed excess flow valve on a cargo tank would not normally be replaced during the tank's lifetime?

E3. Are RSPA's estimates as to number of businesses affected by its rules for unloading liquefied compressed gases from cargo tank motor vehicles, and the percentage of these which are small businesses, consistent with industry estimates?

E4. In what manner could differing compliance or reporting requirements be implemented for small businesses to take into account the resources available to small businesses?

E5. In what manner could compliance or reporting requirements be clarified, consolidated or simplified for such small businesses?

E6. What is the effect of the final rule in docket RSPA–97–2133, if any, on the competitive position of small entities in relation to larger entities?

E7. What is the availability and cost to the small entity for professional assistance to meet regulatory requirements?

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This advance notice of proposed rulemaking is considered a significant regulatory action under section 3(f) of Executive Order 12866 and was

reviewed by the Office of Management and Budget. The rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (Act), as amended, 5 U.S.C. 601–612, directs agencies to consider the potential impact of regulations on small business and other small entities. RSPA will evaluate any proposed rule to determine whether it would have a significant economic impact on a substantial number of small entities.

C. Executive Order 12612

RSPA will evaluate any proposed rule in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism").

D. Paperwork Reduction Act

There are no information collection requirements in this advance notice of proposed rulemaking.

E. Regulation Identifier Number (RIN)

A regulation identifier 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 number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Issued in Washington, DC, on August 13, 1997, under authority delegated in 49 CFR part 1.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–21866 Filed 8–14–97; 11:58 am]

BILLING CODE 4910–60–P

federal register

Monday
August 18, 1997

Part III

The President

Presidential Determination No. 97–30—Creation of a Middle East Peace and Stability Fund Using Current- and Prior-Year Economic Support Funds Appropriated for Egypt

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Monday, August 18, 1997

Presidential Documents

Title 3—

The President

Presidential Determination No. 97–30 of August 7, 1997

Creation of a Middle East Peace and Stability Fund Using Current- and Prior-Year Economic Support Funds Appropriated for Egypt

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2364(a)(1) (the "Act"), I hereby determine that it is important to the security interests of the United States to furnish up to $50 million in current- and prior-year funds to Jordan under chapter 4 of part II of the Act without regard to any provision of the law within the scope of section 614(a)(1). I hereby authorize the furnishing of such assistance.

You are hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

The White House,
Washington, August 7, 1997.

[FR Doc. 97–22001
Filed 8–15–97; 8:45 am]
Billing Code 4710–10–M

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

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