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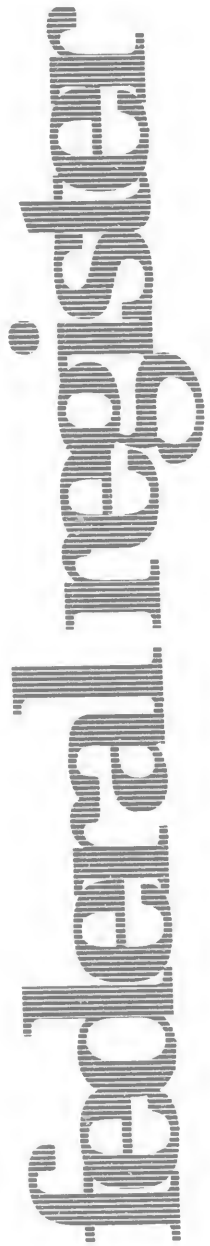

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–41–AD; Amendment 39–10080; AD 97–08–06 R1]

RIN 2120–AA64

Airworthiness Directives; Louis L'Hotellier, S.A., Ball and Swivel Joint Quick Connectors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document clarifies information in Airworthiness Directive (AD) 97–08–06 that applies to Louis L'Hotellier S.A. (L'Hotellier) ball and swivel joint quick connectors installed on gliders and sailplanes that are not equipped with a "Uerling" sleeve or an LS-safety sleeve. These connectors allow the operator of the gliders and sailplanes to quickly connect and disconnect the control systems during assembly and disassembly for storage purposes. AD 97–08–06 currently requires enlarging the safety pin guide hole diameter, and fabricating and installing a placard that specifies the requirement of securing the control system connectors with safety wire, pins, or safety sleeves prior to each flight. The actions specified in that AD are intended to prevent the connectors from becoming inadvertently disconnected, which could result in loss of control of the sailplane or glider. This document clarifies the applicability and modification instructions of AD 97–08–06 by including additional instructions to accomplish the same actions. This correction of the AD results from several operators expressing uncertainty about the applicability and modification instructions.

DATES: Effective August 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: On April 2, 1997, the Federal Aviation Administration (FAA) issued AD 97–08–06, Amendment 39–9994 (62 FR 17537, April 10, 1997), which applies to gliders and sailplanes utilizing the L'Hotellier ball and swivel joint quick connectors, and that are not equipped with a "Uerling" sleeve or an LS-Safety sleeve. That AD requires the following:

—Enlarging the safety pin guide hole diameter to a minimum of 1.2 mm (0.05 in.) to accommodate a safety wire or pin, as applicable.

—Fabricating a placard (using 1/8 inch letters) with the following words:

"All L'Hotellier control system connectors must be secured with safety wire, pins, or safety sleeves, as applicable, prior to operation."; and

—Installing this placard in the glider or sailplane within the pilot's clear view.

The AD resulted from several in-flight accidents involving inadvertent disconnection of these connectors that are installed on certain gliders and sailplanes. The actions required by AD 97–08–06 are intended to prevent the connectors from becoming inadvertently disconnected, which could result in loss of control of the sailplane or glider.

Need for the Correction

Since the issuance of AD 97–08–06, the FAA received several reports from operators stating that they are not clear as to whether the AD applies to their sailplane or glider.

The FAA also did not distinguish that there are two styles of ball and swivel joint quick connectors (locking plates and locking cams), which has led to confusion for affected sailplane and glider operators in complying with the AD.

In addition, paragraph (a) of AD 97–08–06 requires the operator to enlarge the safety pin guide hole of the quick connectors to accomodate a safety wire or pin for those sailplanes or gliders equipped with the affected quick connectors that have a safety pin guide hole. Paragraph (b) of this AD requires fabricating and installing a placard that specifies the requirement of securing the control system connectors with safety wire, pins, or safety sleeves, as applicable, prior to each flight. If a sailplane or glider is equipped with a quick connector that does not have a safety pin guide hole, it would be impossible for the owner /operator to comply with paragraph (b) of AD 97–08–06 without drilling guide holes.

Consequently, the FAA saw a need to clarify the applicability of AD 97–08–06, to more fully explain the intent of the modification requirements of AD 97–08–06, and to add the requirement of drilling safety pin guide holes if not already equipped.

Correction of Publication

This document clarifies the applicability and modification instructions of AD 97–08–06, and adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

Since this action only clarifies the applicability and modifications instructions, it has no adverse economic impact and imposes no additional burden on any person than would have been necessary to comply with paragraph (b) of AD 97–08–06. Therefore, the FAA has determined that prior notice and opportunity for public comment are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Correction

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 Airworthiness Directive (AD) 97–07–10, Amendment 39–97–08–06, Amendment 39–9994 (62 FR 17537,

April 10, 1997), and by adding a new AD to read as follows:

97–08–06 R1 Louis L' Hotellier, S.A. Amendment 39–10080; Docket No. 92–CE–41–AD. Revises AD 97–08–06, Amendment 39–9994.

Applicability: All ball and swivel joint quick connectors installed in, but not limited to, the following gliders and sailplanes that are not equipped with a "Uerling" sleeve or an LS–Safety sleeve:

Manufacturer	Models
Alexander Schleicher	ASK21, ASK23, ASW 12, ASW15, ASW15B, ASW17, ASW19, ASW19B, S 12, AS–K13.
Centrair, S.N	101, 101A, 101P, 101AP, and 201B.
Eiravion	PIK 20, PIK 20B, and PIK 20D.
Glaser Dirks	DG100, DG400, and DG–500M.
Burkhart Grob	G102 Astir CS, G102, G103 Twin Astir, G103 Twin II, G103A Twin II Acro, G103C Twin III SL, G109, and G109B.
Intreprinderea ICA (Lark).	IS–28B2 and IS–29D2.
Rolladen Schneider	LS1–f and LS3–a.
Schempp-Hirth	Cirrus, Std. Cirrus, Nimbus 2, Nimbus 2B, Janus, Discus a, Ventus a/16.6.

Note 1: This AD applies to the L'Hotellier ball and swivel joint quick connectors. This AD only applies to U.S.type-certificated gliders and sailplanes that have the affected connectors installed. If the L'Hotellier connectors are not installed on a glider or sailplane, no action is required by the owner/operator. This AD does not apply to gliders and sailplanes that do not have a U.S. type certificate (i.e., experimental category); however, the FAA strongly recommends compliance with the intent of this AD for airplanes involved in U.S. operation where a U.S. type certificate is not necessary.

Note 2: This AD applies to sailplanes and gliders equipped with the quick connectors identified in the preceding applicability provision, regardless of whether sailplane or glider has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes and gliders 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 within the next 30 calendar days after the effective date of this AD or upon installation of the affected quick connectors, whichever occurs later, unless already accomplished (compliance with AD 97–08–06).

To prevent the quick connectors from becoming inadvertently disconnected, which could result in loss of control of the sailplane or glider, accomplish the following:

Note 3: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.
Level 4: (A), (B), (C), etc.

Level 2, Level 3, and Level 4 structures are designations of the Level 1 paragraph they immediately follow.

(a) For all sailplanes and gliders equipped with the affected quick connectors, accomplish the following:

(1) For ball and swivel joint connectors with lock plates, accomplish the following:

(i) If the quick connectors have a safety pin guide hole, utilize the existing hole and install an aviation locking device (safety wire or safety pin). If the hole cannot accommodate the locking device, enlarge the hole to a diameter not to exceed 1.2 mm (0.05 inch), and install the locking device.

(A) If the locking device already fits the guide hole, then enlarging the hole is not necessary.

(B) The type of aviation locking device used is at the discretion of the certificated mechanic based on the installation accessibility of the locking devices and fittings.

(ii) If the quick connectors do not have a safety pin guide hole, drill a guide hole not to exceed 1.2 mm (0.05 inch) to accommodate the aviation locking device and install the locking device (Reference Figure 1). The type of aviation locking device used is at the discretion of the certificated mechanic based on the installation accessibility of the locking devices and fittings.

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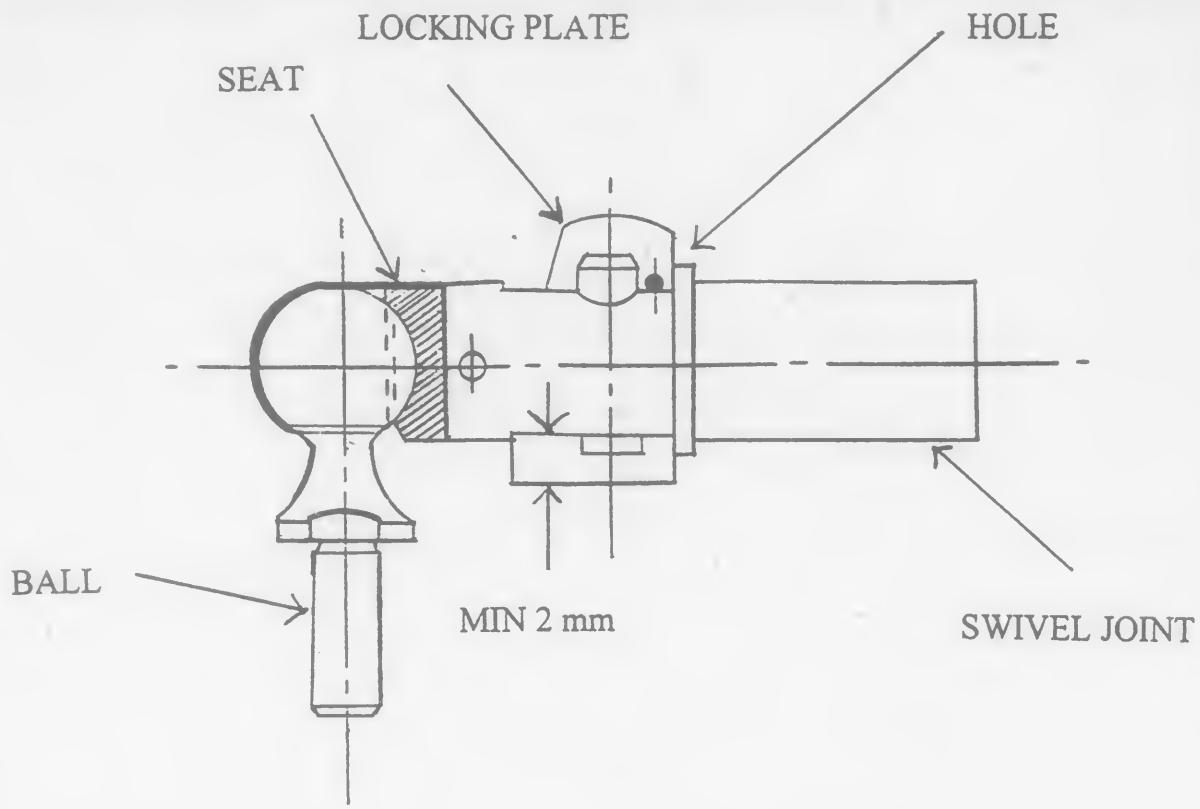

FIGURE 1

(2) For ball and swivel joint quick connectors with locking cams, accomplish the following:

(i) If the locking cam does not have a safety pin guide hole, drill the hole not to exceed 1.3 mm (0.055 inch) to accommodate the aviation locking device and install the locking device.

(A) When drilling the hole, assure that the ball is correctly inserted so that one edge of the hole is level with the main body of the joint and at least 1.5mm (0.0625 inch) of material is left on the other side.

(B) When the ball is seated correctly, the hole is located aft of the centerline of the cam pivot point. (See the dashed line in Figure 2 of this AD).

(C) The type of aviation locking device used is at the discretion of the certificated mechanic based on the installation accessibility of the locking devices and fittings.

(ii) If the locking cam has a safety pin guide hole, either utilize the existing hole and install an aviation locking device or enlarge the hole to a diameter not to exceed 1.3mm (0.055 inch) to accommodate the appropriate aviation locking device and install the locking device.

(A) When enlarging the hole, assure that the ball is correctly inserted so that one edge of the hole is level with the main body of the joint and at least 1.5mm (0.0625 inch) of material is left on the other side. It is recommended to have the ball and swivel joint connected when the hole is drilled.

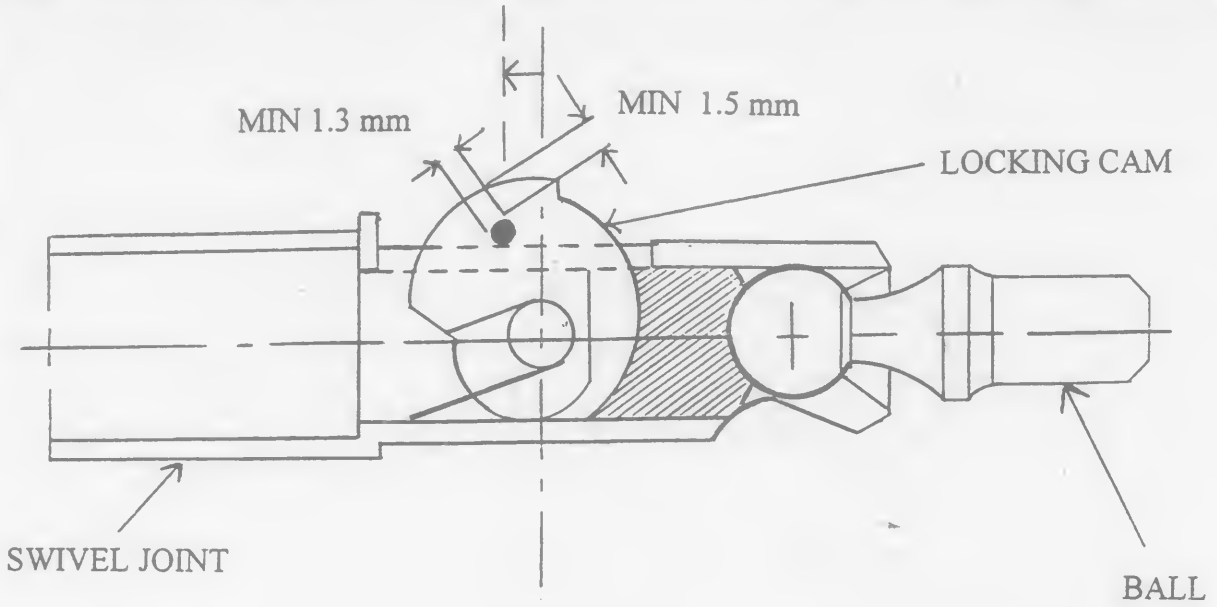

FIGURE 2

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(B) When the ball is seated correctly, the hole is located aft of the centerline of the cam pivot point. (See the dashed line in Figure 2 of this AD).

(C) The type of aviation locking device used is at the discretion of the certificated mechanic based on the installation accessibility of the locking devices and fittings.

Note 4: The applicable aircraft manufacturer has identified suitable locking devices based on the aircraft's specific type design features. The operator may contact the U.S. aircraft company representative or manufacturer for any technical information related to this matter.

Note 5: It is recommended, but not required by this AD, that the owner/operator inspect these connectors per L'Hotellier's "Instructions for the Maintenance L'Hotellier Ball and Swivel Joints." This technical data may be obtained from your U.S. sailplane dealer or from: L'Hotellier S.A., 93 Avenue Charles De Gaulle, 92270 Bois Colombes, France.

(b) Fabricate and install a placard (using 1/8 inch letters) in the glider or sailplane, within the pilot's clear view, with the following words:

"All L'Hotellier control system connectors must be secured with safety wire, pins, or safety sleeves, as applicable, prior to operation."

(c) Fabricating and installing the placard as required by paragraph (b) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the sailplane's or glider's records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations.

(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, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate. Alternative methods of compliance approved in accordance with AD 97–08–06 are considered approved as alternative methods of compliance for this AD.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) Copies of this AD may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(g) This amendment (39–10080) becomes effective on August 1, 1997.

Issued in Kansas City, Missouri, on July 9, 1997.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–18497 Filed 7–21–97; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors for Delivery of Disclosure Documents and Other Materials

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Interpretation; Final Rules.

SUMMARY: The Commodity Futures Trading Commission (the "Commission" or "CFTC") is modifying in part the interpretation set forth in its August 14, 1996 release (61 FR 42146) to clarify the Commission's views concerning electronic delivery of required Disclosure Documents and other materials by commodity pool operators ("CPOs") and commodity trading advisors ("CTAs"). The Commission also is adopting technical amendments to its rules governing the form of documents distributed by CPOs and CTAs and the requirement that a CPO or CTA obtain a signed acknowledgment when a Disclosure Document is delivered. The rule amendments were proposed in the Commission's August 27, 1996 release (61 FR 44009) and are intended to facilitate the use of electronic media by CPOs and CTAs.

EFFECTIVE DATE: August 21, 1997.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Deputy Director/Chief Counsel, or Christopher W. Cummings, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone Number: (202) 418–5450. Facsimile Number: (202) 418–5536. Electronic Mail: tm@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 8, 1996, the Commission issued a proposed interpretation regarding the use of electronic media [1] by commodity pool operators ("CPOs"), commodity trading advisors ("CTAs") and their associated persons ("Initial Release"). The Initial Release provided guidance to CPOs and CTAs concerning the application of the Commodity Exchange Act ("CEA") and the Commission's regulations thereunder to activities involving electronic media. The original effective date of the Initial Release, which was published in the **Federal Register** on August 14, 1996, was October 15, 1996, with a sixty day period for the submission of public comments. On October 15, 1996, the Commission postponed the effective date for sixty days and extended the comment period on the Initial Release for thirty days to provide additional time for the public to submit comments. On December 11, 1996, the Commission indefinitely postponed the effective date of the Initial Release to enable a full review and consideration of the comments received and issues presented.[2]

On August 19, 1996, the Commission proposed a series of technical changes to Part 4 of its rules (the "Proposed Rules") to clarify application of paper-based formatting, filing and acknowledgment requirements in light of the interpretations set forth in the Initial Release. The Proposed Rules were published for public comment in the **Federal Register** on August 27, 1996.[3] The Commission did not receive any comments specifically addressed to the Proposed Rules. However, because the proposed changes to Rules 4.1, 4.21 and 4.31 codified portions of the Initial Release, the Commission is considering the comments received in response to the Initial Release as applicable also to those proposed rule amendments.

The Initial Release discussed the application of the existing statutory and regulatory regime to the use of electronic media, including in Section II a discussion of the registration implications of using electronic media and in Section III specific guidance for the use of electronic media for delivery of Disclosure Documents. In Section IV the Commission announced an optional, six month pilot program for the electronic filing of Disclosure Documents (the "Pilot Program").

Based upon its review of the comments received and its experience with the Pilot Program, on April 9, 1997, the Commission determined to convert the electronic filing program to a permanent, voluntary filing program.[4] On April 9, 1997, the Commission adopted the proposed changes to Rules 4.2(a), 4.26(d) and 4.36(d) substantially as proposed to implement the electronic filing program.[5] This Release addresses the issues relating to the electronic delivery of Disclosure Documents and other documents by CPOs and CTAs discussed in Section III of the Initial Release. This Release does not affect the status of Section II of the Initial Release, which principally addressed registration issues, the effectiveness of which was indefinitely postponed by the Commission's **Federal Register** release of December 16, 1996.[6]

The Commission received comment letters from seventy-seven sources: twenty-six from persons registered as CTAs, nineteen from CPOs/CTAs, two from CTAs/introducing brokers ("IBs"), one from a CTA/futures commission merchant, one from a CTA/CPO/IB, one from a contract market, one from a futures industry trade association, one from a self-regulatory organization, one from a public interest legal center, one from a publishers' trade association and the remainder from various unregistered persons or entities. The comments received expressed broad support for the Commission's initiative to provide guidance regarding the use of electronic media but raised issues concerning a number of specific applications of the requirements for delivery of Disclosure Documents.[7] Based upon the Commission's consideration of the comments received and its own reconsideration of the Initial Release, the Commission has determined to modify the interpretation as discussed below. The Commission also has determined to adopt the remaining technical amendments to Part 4 in substantially the form in which they were proposed.

As the Commission stated in the Initial Release, "electronic media can provide an effective alternative to traditional paper-based media." [8] Thus, as a general proposition, the Commission supports consistency in the application of regulatory requirements to electronic and non-electronic media to ensure that information is conveyed in a manner that achieves the relevant regulatory objectives, regardless of the medium selected. The following guidance is designed to aid in the application of the rules to delivery of Disclosure Documents and other documents by means of electronic media in a manner that achieves the same objectives as delivery of hardcopy documents.

II. Delivery of Disclosure Documents to Prospective Investors—Compliance With Rules 4.21(a) and 4.31(a)

Commission rules require that CPOs and CTAs deliver a Disclosure Document at or prior to the time of solicitation of customers. Commission Rule 4.21(a) provides that "no CPO

[1] The term "electronic media" refers to such media as audiotapes, videotapes, facsimiles, CD–ROM, electronic mail, bulletin boards, Internet World Wide Web sites and computer networks (*e.g.*, local area networks and commercial on-line services) used to provide documents and information required by or otherwise affected by the Commodity Exchange Act and the regulations promulgated thereunder.

[2] The pilot program for electronic filing of Disclosure Documents announced in the Initial Release was implemented October 15, 1996 and was not affected by postponement of the Initial Release's effective date.

[3] 61 FR 44009 (August 27, 1996).

[4] 62 FR 18265 (April 15, 1997).

[5] 62 FR 18265 (April 15, 1997). Rule 4.2(a) was changed to provide for electronic filing at an e-mail address to be designated by the Commission. Rules 4.26(d) and 4.36(d) were changed to provide that, when a Disclosure Document is filed electronically, only one copy need be submitted.

[6] 61 FR 65940 (December 16, 1996).

[7] Because final action on Section II of the Initial Release is not being taken at this time, the Commission is not addressing in this release the comments received concerning registration-related issues.

[8] 61 FR at 42150.

* * * may, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective pool participant in a pool that it operates or that it intends to operate unless, on or before the date it engages in that activity, the CPO delivers or causes to be delivered to the prospective participant a Disclosure Document for the pool * * *."[9] Similarly, Rule 4.31(a) provides that "no CTA * * * may solicit a prospective client, or enter into an agreement with a prospective client to direct the client's commodity interest account or to guide the client's commodity interest trading by means of a systematic program that recommends specific transactions, unless the commodity trading advisor, at or before the time it engages in the solicitation or enters into the agreement (whichever is earlier), delivers or causes to be delivered to the prospective client a Disclosure Document for the trading program * * *."[10]

The Initial Release provided guidance to CPOs and CTAs concerning the use of electronic media to comply with the requirements of Part 4 of the Commission's regulations for the delivery of Disclosure Documents by CPOs and CTAs and distribution of monthly or quarterly statements and annual reports by CPOs. The requirement to deliver Disclosure Documents to prospective customers is an essential component of the Commission's regulatory regime for CPOs and CTAs. The Commission reaffirms the view expressed in the Initial Release that "the requirements that CTAs and CPOs deliver Disclosure Documents to prospective clients and pool participants, respectively, may be satisfied by the use of electronic media, provided appropriate measures are taken to assure that the purposes of the delivery requirements are achieved."[11] In the Initial Release, the Commission identified criteria to guide CPOs and CTAs in making use of electronic media to effect delivery of Disclosure Documents and other required communications in a manner that assures that the purposes of the delivery requirements are achieved. The Commission invited comment concerning the criteria highlighted in the Initial Release and any additional criteria that commenters believed to be relevant. The Commission has reviewed the Initial Release in light of the comments received and has determined to make several modifications of the guidance provided, as discussed more fully below.

Consent. In the past, compliance with Part 4 of the Commission's rules has required delivery of Disclosure Documents in paper form. While the Commission supports the use of electronic media as an alternative medium for delivery of Disclosure Documents, it recognizes that some persons may prefer to receive disclosure in paper form. Paper disclosures generally have a greater degree of permanence and portability than electronic disclosures and in some contexts may be easier to review, *e.g.*, if one wishes to review several pages "side by side." Accordingly, CPOs and CTAs may use electronic delivery in lieu of delivery of a hardcopy Disclosure Document only where the intended recipient has provided informed consent to receipt of the document by means of electronic delivery.

In the Initial Release, the Commission set forth six generic factors that must be disclosed by a CPO or CTA to obtain informed consent to delivery of required documents electronically: (1) the regulatory requirement to deliver the relevant document, such as a Disclosure Document, to prospective commodity pool participants or managed account customers, as applicable; (2) the right to elect to receive such document in hardcopy form or by means of electronic delivery; (3) the specific media and method by which electronic delivery will be made;[12] (4) the potential costs associated with receiving or accessing electronically delivered documents; (5) the types of documents that will be delivered through electronic media, if documents in addition to the Disclosure Document are to be delivered electronically; and (6) the prospective customer's right to revoke his consent to receive documents by electronic means at any time.

Two commenters, the National Futures Association ("NFA") and the Managed Futures Association ("MFA"), contended that the Commission's procedures for obtaining informed consent were complicated and required unnecessary information. For example, NFA questioned whether in an electronic environment a CPO should be required to obtain informed consent concerning delivery of pool account statements at the time of initial solicitation. NFA was also concerned as to how registrants could provide estimates concerning the cost of receiving electronic disclosures when such costs are likely to vary substantially from user to user. Similarly, MFA's comment letter asked that the Commission clarify what is required for obtaining informed consent and contended that the requirement of informed consent could amount to a "penalty" for using electronic media. MFA urged that both informed consent and acknowledgment of delivery be required only at the point of sale, rather than at initial solicitation.

The Commission does not believe that obtaining informed consent need require complex or burdensome procedures and is providing further clarification to address concerns expressed by various commenters. With respect to NFA's concern that a CPO might be required to obtain informed consent concerning delivery of other required pool reports such as pool account statements at the time of initial solicitation, the Commission notes that the Initial Release was only intended to set forth the consent criteria that would apply to *all* potentially required communications without addressing when each relevant consent need be obtained. It did not require that such consents be obtained at the time of initial solicitation, except consent to delivery of the Disclosure Document electronically, since such delivery is required to occur at or prior to solicitation.[13] With respect to explaining the potential costs of electronic delivery, the Commission did not intend that CPOs or CTAs provide the actual amount of attendant costs other than costs added by the deliverer for the electronic delivery of required documents. This means that if charges specific to access and receipt of the Disclosure Document, in addition to basic Internet or electronic media access fees, will be incurred, CPOs and CTAs must so specify. Consequently, for materials posted on the World Wide Web and accessible without charge, as is the case with materials presented on the vast majority of Internet sites, there would be no duty to disclose potential costs. In many, if not most, cases the consent requirements should be satisfiable with a single sentence identifying the document to be delivered electronically, the prospective customer's right to receive a hardcopy, and the prospective customer's right to

[9] 17 CFR 4.21(a). CPOs and CTAs are reminded of their obligations, regardless of the medium used, to disclose all material information to existing or prospective clients (*see* Rules 4.24(w) and 4.34(o)) and not to mislead (*see* Sections 4b and 4*o* of the Act, 7 U.S.C. 6b and 6*o*).

[10] 17 CFR 4.31(a).

[11] 61 FR at 42158.

[12] This information should include, for example, identification of software (other than that which the customer/user is using to view the disclosures given to obtain informed consent) needed to download the Disclosure Document and, as appropriate, an indication that download times may be lengthy.

[13] See discussion below as to how such delivery (*i.e.*, presubscription delivery) may be accomplished in an electronic environment.

revoke consent to electronic delivery. As discussed more fully below, the disclosures requisite to obtaining informed consent may be included in the disclosure statement presented in lieu of the full Disclosure Document at the beginning of the solicitation material to permit access to a CPO or CTA Internet site.

Delivery. Commission Rules 4.21(a) and 4.31(a) require that, at or before the time at which a CPO or CTA solicits a prospective pool participant or client, respectively, he must deliver the applicable Disclosure Document. In the Initial Release, the Commission construed the requirements of Rules 4.21(a) and 4.31(a) (which, by reference to Rules 4.24 and 4.34, impose both specific presentation and order of disclosure requirements) in the context of electronic media to require that the full Disclosure Document be delivered electronically to a prospective investor prior to providing access to any solicitation materials concerning the offered pool or managed account services other than *de minimis* introductory material. In order not to constrain unduly the ability to provide a menu of available information, the Commission indicated that a general description of the contents of a website, through presentation of an outline or table of contents for the website in which the Disclosure Document is listed as the first item, would satisfy Rules 4.21(a) and 4.31(a) provided that the prospective pool participant or client would be unable to review other sections of the site before accessing and scrolling through the Disclosure Document and affirming that he or she had received it.

This "click and scroll" requirement addressed both the Commission's concern that prospective investors actually have the Disclosure Document brought to their attention with a comparable degree of directness and immediacy as would normally be attained by postal mail or personal delivery, and the "order" of disclosure requirements of Commission rules. Postal mail or personal delivery assures actual notice to the recipient of receipt of a document as well as actual receipt of the document. By contrast, electronic media have the capability of making vast inventories of documents passively available through indices or hyperlinks, which provide a computer connection to documents often too numerous for any viewer to access or, in many cases, even to identify as being of particular relevance to that viewer. Consequently, announcing the availability of a document by means of electronic media may have far less significance to, and impact upon, a prospective customer than actual delivery of a hardcopy Disclosure Document. Thus, in the Initial Release, the Commission endeavored to give guidance designed to balance the regulatory interest in the prospective pool participant's or managed account customer's actually having notice and immediate receipt of the Disclosure Document with the CPO's and CTA's interest in the efficiencies obtainable through the use of electronic media.

However, a number of commenters argued that application of the delivery requirement in the manner suggested in the Initial Release was unduly burdensome. They objected to the requirement that investors access and scroll to the end of a Disclosure Document prior to receiving promotional material on the ground that hardcopy documents, while provided before other material, may not be read completely. These commenters believed that such a requirement might discourage persons from obtaining information concerning managed futures on the Internet. Although the "click and scroll" procedure permits a viewer to scroll through a document in a matter of seconds, some commenters viewed the requirement that the viewer scroll through the Disclosure Document as excessive and analogous to "requir[ing] registrants to ensure that prospective customers review each page of the hardcopy document before proceeding with a solicitation."[14] NFA's comment letter proposed that, in lieu of requiring that viewers actually proceed through the full text of the Disclosure Document before receiving any additional solicitation material, CPOs and CTAs instead provide a concise risk disclosure statement, which viewers would be required to scroll through, together with immediate electronic (or hardcopy) access to the full electronic (or hardcopy) Disclosure Document. NFA's comment letter also proposed that the Disclosure Document be deemed to have been delivered if: (1) the Disclosure Document is prominently available and in close proximity to the solicitation information requiring delivery of a Disclosure Document; (2) the Disclosure Document and all supplements are made accessible electronically for the time period for which the Disclosure Document is effective; and (3) the Disclosure Document is available upon request in paper form or able to be downloaded by the recipient.[15] Further, some commenters contended that the Commission's interpretation of delivery differed from that of the Securities and Exchange Commission ("SEC"), which permits the use of hyperlinks to effectuate delivery in certain circumstances.[16]

Based upon further consideration of the issues and the comments received, the Commission believes that the delivery requirements of Rules 4.21 and 4.31 may be satisfied in the context of electronic media by methods that do not require the prospective customer to scroll through the *entire* Disclosure Document prior to receiving other solicitation material, provided that the requirements on prominence of presentation and comparable availability discussed herein are followed. One such method acceptable to the Commission would be providing a simple, concise statement highlighting the nature of the risks relevant to the pool or managed account program being offered and directing the viewer to the Disclosure Document for a fuller explanation of the nature of the proposed investment and its attendant risks and costs. The same explanatory statement could be used to satisfy the requirement to obtain the informed consent of prospective customers who elect to receive the Disclosure Document electronically rather than through delivery of a hardcopy document. This risk disclosure statement would be filed with the Commission together with the registrant's Disclosure Document. In this scenario, the prospective investor is using electronic media to consent to electronic receipt of the Disclosure Document and is also receiving on that medium a summary risk statement highlighting the availability of the Disclosure Document and a hyperlink or other similarly immediate connection to the Disclosure Document. In this context, the CPO or CTA has delivered the relevant Disclosure Document at the

[14] NFA comment letter at 2.

[15] NFA also referenced the interpretations of the SEC concerning electronic delivery of required disclosures. NFA's tripartite test is consistent with that of the SEC.

[16] For example, the SEC stated that during the "post-effective" period of a public securities offering, a company could place its sales literature on the World Wide Web provided that the sales literature contains a hyperlink to the Company's final prospectus where an individual may click on a box marked "final prospectus" and almost instantly the final prospectus appears on the individual's computer screen. The SEC noted that "[s]ales literature, whether in paper or electronic form, is required to be preceded or accompanied by a final prospectus. The hyperlink function enables the final prospectus to be viewed directly as if it were packaged in the same envelope as the sales literature. Therefore, the final prospectus would be considered to have accompanied the sales literature." 60FR 53458, 53463 (October 13, 1995).

time of or prior to solicitation of the prospective customer.[17]

For purposes of providing this concise risk disclosure and highlighting the contents and availability of the Disclosure Document, the Commission believes that the "risk disclosure statement" set forth in Rules 4.24 and 4.34 and required to be presented at the beginning of the Disclosure Document for commodity pools and commodity trading advisors, respectively, may provide a useful template, with minor adjustments. A sample "short form" risk disclosure statement for a commodity pool might read as follows:

YOU SHOULD CAREFULLY CONSIDER WHETHER YOUR FINANCIAL CONDITION PERMITS YOU TO PARTICIPATE IN A COMMODITY POOL. IN SO DOING, YOU SHOULD BE AWARE THAT FUTURES AND OPTION TRADING CAN QUICKLY LEAD TO LARGE LOSSES AS WELL AS GAINS. SUCH TRADING LOSSES CAN SHARPLY REDUCE THE NET ASSET VALUE OF THE POOL AND CONSEQUENTLY THE VALUE OF YOUR INTEREST IN THE POOL. IN ADDITION, RESTRICTIONS ON REDEMPTIONS MAY AFFECT YOUR ABILITY TO WITHDRAW YOUR PARTICIPATION IN THE POOL.

FURTHER, COMMODITY POOLS MAY BE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT AND ADVISORY AND BROKERAGE FEES. IT MAY BE NECESSARY FOR THOSE POOLS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THE DISCLOSURE DOCUMENT CONTAINS A COMPLETE DESCRIPTION OF THE PRINCIPAL RISK FACTORS, EACH EXPENSE TO BE CHARGED THIS POOL AND A STATEMENT OF THE AMOUNT, AS A PERCENTAGE RETURN AND DOLLAR AMOUNT, NECESSARY TO BREAK EVEN, THAT IS, TO RECOVER THE AMOUNT OF YOUR INITIAL INVESTMENT.[18]

THE REGULATIONS OF THE COMMODITY FUTURES TRADING COMMISSION ("CFTC") REQUIRE THAT PROSPECTIVE INVESTORS RECEIVE A DISCLOSURE DOCUMENT WHEN THEY ARE SOLICITED TO INVEST FUNDS IN A COMMODITY POOL AND THAT CERTAIN RISK FACTORS BE HIGHLIGHTED. THIS DOCUMENT IS READILY ACCESSIBLE AT THIS SITE. THIS BRIEF STATEMENT CANNOT DISCLOSE ALL OF THE RISKS AND OTHER FACTORS NECESSARY TO EVALUATE YOUR PARTICIPATION IN THIS COMMODITY POOL. THEREFORE, YOU SHOULD PROCEED DIRECTLY TO THE DISCLOSURE DOCUMENT AND STUDY IT CAREFULLY TO DETERMINE WHETHER SUCH TRADING IS APPROPRIATE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION. YOU ARE ENCOURAGED TO ACCESS THE DISCLOSURE DOCUMENT BY CLICKING BELOW. YOU WILL NOT INCUR ANY ADDITIONAL CHARGES BY ACCESSING THE DISCLOSURE DOCUMENT. YOU MAY ALSO REQUEST DELIVERY OF A HARDCOPY OF THE DISCLOSURE DOCUMENT, WHICH ALSO WILL BE PROVIDED TO YOU AT NO COST. THE CFTC HAS NOT PASSED UPON THE MERITS OF PARTICIPATING IN THIS POOL NOR ON THE ADEQUACY OR ACCURACY OF THE DISCLOSURE DOCUMENT.

PLEASE ACKNOWLEDGE YOUR UNDERSTANDING OF THIS IMPORTANT STATEMENT.

Similarly, a CTA's "short form" risk disclosure statement might read as follows:

THE RISK OF LOSS IN TRADING COMMODITIES CAN BE SUBSTANTIAL. YOU SHOULD THEREFORE CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION.

THE HIGH DEGREE OF LEVERAGE THAT IS OFTEN OBTAINABLE IN COMMODITY TRADING CAN WORK AGAINST YOU AS WELL AS FOR YOU. THE USE OF LEVERAGE CAN LEAD TO LARGE LOSSES AS WELL AS GAINS.

IN SOME CASES, MANAGED COMMODITY ACCOUNTS ARE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT AND ADVISORY FEES. IT MAY BE NECESSARY FOR THOSE ACCOUNTS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THE DISCLOSURE DOCUMENT CONTAINS A COMPLETE DESCRIPTION OF THE PRINCIPAL RISK FACTORS AND EACH FEE TO BE CHARGED TO YOUR ACCOUNT BY THE COMMODITY TRADING ADVISOR ("CTA").

THE REGULATIONS OF THE COMMODITY FUTURES TRADING COMMISSION ("CFTC") REQUIRE THAT PROSPECTIVE CLIENTS OF A CTA RECEIVE A DISCLOSURE DOCUMENT WHEN THEY ARE SOLICITED TO ENTER INTO AN AGREEMENT WHEREBY THE CTA WILL DIRECT OR GUIDE THE CLIENT'S COMMODITY INTEREST TRADING AND THAT CERTAIN RISK FACTORS BE HIGHLIGHTED. THIS DOCUMENT IS READILY ACCESSIBLE AT THIS SITE. THIS BRIEF STATEMENT CANNOT DISCLOSE ALL OF THE RISKS AND OTHER SIGNIFICANT ASPECTS OF THE COMMODITY MARKETS. THEREFORE, YOU SHOULD PROCEED DIRECTLY TO THE DISCLOSURE DOCUMENT AND STUDY IT CAREFULLY TO DETERMINE WHETHER SUCH TRADING IS APPROPRIATE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION. YOU ARE ENCOURAGED TO ACCESS THE DISCLOSURE DOCUMENT BY CLICKING BELOW. YOU WILL NOT INCUR ANY ADDITIONAL CHARGES BY ACCESSING THE DISCLOSURE DOCUMENT. YOU MAY ALSO REQUEST DELIVERY OF A HARD COPY OF THE DISCLOSURE DOCUMENT, WHICH ALSO WILL BE PROVIDED TO YOU AT NO COST. THE CFTC HAS NOT PASSED UPON THE MERITS OF PARTICIPATING IN THIS TRADING PROGRAM NOR ON THE ADEQUACY OR ACCURACY OF THE DISCLOSURE DOCUMENT.

OTHER DISCLOSURE STATEMENTS ARE REQUIRED TO BE PROVIDED YOU BEFORE A COMMODITY ACCOUNT MAY BE OPENED FOR YOU.

PLEASE ACKNOWLEDGE YOUR UNDERSTANDING OF THIS IMPORTANT STATEMENT.

At a minimum, such a risk disclosure statement should state: (1) that the risk of loss in trading futures contracts or commodity options can be substantial; (2) that Commission rules require delivery at or prior to the time of solicitation of a Disclosure Document, which explains, among other things, the principal risk factors and costs of the proposed participation in the commodity pool or managed account program including the potential impact of fees and expenses, the "break even" point in dollars and the percentage return necessary to recover one's initial investment, and restrictions on redeeming or withdrawing one's initial investment; (3) that a hardcopy Disclosure Document may be obtained from the CPO or CTA at no cost at any time;[19] and (4) that the Commission has not passed upon the merits of participating in a particular investment or on the adequacy or accuracy of the Disclosure Document. At the end of the risk disclosure statement, the prospective investor would be required to acknowledge that he or she understands the statement. CPOs and CTAs may tailor the risk disclosure statement to the particular facts of their situation.[20]

This summary risk disclosure statement should be accompanied by the Disclosure Document, made accessible by means of a hyperlink or similarly immediate connection and presented in a form that is readily accessible to the recipient. In stating that the Disclosure Document be

[17] However, if a prospective investor were solicited other than by electronic media, providing a summary risk disclosure statement and notice of the electronic availability of a Disclosure Document would not constitute delivery of the Disclosure Document at the time of or prior to solicitation.

[18] Ideally, individual disclosure documents provided electronically would include electronic tables of contents, providing hyperlinks (or comparable features) to highlight and facilitate access to the principal risk factors, costs, and break-even amounts, matters which are required to be highlighted in hardcopy disclosure. In any event, a table of contents is required by Rules 4.24(c) and 4.34(c) to be included in all Disclosure Documents.

[19] Inclusion of an indication of the time required to download the Disclosure Document may assist the prospective client in determining whether to request a paper copy and is therefore strongly encouraged by the Commission.

[20] After experience with this arrangement, the Commission may develop more explicit rules, as determined to be necessary.

"readily accessible," the Commission requires that the Disclosure Document be accessible on a comparable basis to other promotional material on the CPO's or CTA's website. Thus, to the extent that a Disclosure Document is in a form that requires use of a specially designated viewer or software, the other promotional material should require use of such viewer or software. This requirement is necessary to prevent the situation where a user may access promotional materials, such as performance data or a narrative description of the trading methodology, but is unable to access the Disclosure Document.[21] Use of a concise risk disclosure statement which highlights the immediate availability of the Disclosure Document and electronic hyperlinking or other similarly accessible arrangement that requires no greater facility or steps than access to other materials on the site should balance the need for electronic delivery of Disclosure Documents to be no more cumbersome than hardcopy delivery with the need for a customer to be properly informed of the relevant costs and risks of the proposed investment. Prospective pool participants or advisory clients would be required to access only the abbreviated risk disclosure statement and not to "click and scroll" through the entire Disclosure Document. Permitting delivery of the Disclosure Document in the manner discussed above also promotes consistency with the approach of other financial regulators such as the SEC.[22] Specific examples illustrating how CPOs and CTAs may use electronic media to deliver Disclosure Documents are provided in Section V.

Delivery of a risk disclosure statement in the form provided above or with minor adjustments should satisfy the requirements for informed consent with respect to delivery of a Disclosure Document. Where the sample risk disclosure statement provided does not address all required disclosures, such as where the Disclosure Document is delivered in a different manner from the risk disclosure statement, *e.g.*, where a Disclosure Document will be delivered by means of electronic mail, or where accessing the electronic Disclosure Document entails additional costs, CPOs or CTAs should modify the risk disclosure statement to address these additional factors. In every case, the Disclosure Document should be as accessible as promotional material.

Format. Commission rules include a number of format requirements which are designed to assure that certain information is accorded special prominence or emphasis in the Disclosure Document. These requirements create an order of presentation under which certain basic information must be placed at the beginning of the document, information of lesser relevance is presented after matters of greater importance, and voluntarily presented information follows required disclosures. The prescribed order also facilitates comparison of documents by maintaining the same sequence of topics across documents of different registrants. In the Initial Release and the Proposed Rules, the Commission recognized that a Disclosure Document could be presented in electronic form in place of paper form, provided that documents electronically delivered comply with the formatting standards specified in Commission rules. Specifically, the Commission noted that, where Commission rules specify the prominence, location, or other attributes of the information required to be delivered, an electronic version of such information must present the information in the same order and must reflect (if not replicate) the differences in emphasis and prominence that would exist in a hardcopy document.

The Commission received only one comment addressed to format issues.[23] The commenter noted that certain electronic document formats do not have standard "pages" and thus may not present legends, disclaimers and notes in the same manner as documents in hardcopy form. To address this disparity, the commenter proposed that the Commission require the use of certain technologies that make the appearance of electronic documents nearly identical to their paper versions, such as the currently popular Adobe Acrobat. The Commission recognizes that electronic and paper versions of the same document may differ in some respects as to format, but as noted above, does not intend to limit the technologies that CPOs or CTAs may use to deliver their Disclosure Documents as long as such documents present information in the same format and order as specified in Commission rules, and reflect "the differences in emphasis and prominence that would exist in the paper document."[24] The Initial Release suggested methods by which the electronic versions of documents might present information for which special presentation requirements exist. For example, the Commission noted that where text is required to be presented in boldface type, an electronic presentation might achieve the same objective by changing the color or shading of the text or the background in a manner that causes that portion of the text to be emphasized.

Receipt of Acknowledgments by Electronic Media—Compliance with Rules 4.21(b) and 4.31(b). Commission Rule 4.21(b) provides that a "commodity pool operator may not accept or receive funds, securities or other property from a prospective pool participant unless the pool operator first receives from the prospective pool participant an acknowledgment signed and dated by the prospective participant stating that the prospective participant received a Disclosure Document for the pool."[25] Similarly, Commission Rule 4.31(b) provides that a "commodity trading advisor may not enter into an agreement with a prospective client to direct the client's commodity interest account or to guide the client's commodity interest trading unless the trading advisor first receives from the prospective client an acknowledgment signed and dated by the prospective client stating that the client received a Disclosure Document for the trading program pursuant to which the trading advisor will direct his account or will guide his trading."[26] This acknowledgment of delivery is required of a subscribing participant as opposed to one who is merely solicited, a distinction preserved in the electronic context. A signed and dated acknowledgment certifies that the

[21] The SEC has reflected similar concerns. For example, in example (38), the SEC stated, "A server available through the Internet contains a fund's prospectus and application form in separate files. Users can download or print the application form without first accessing, downloading or printing the prospectus; the form includes a statement that by signing the form, the investor certifies that he or she has received the prospectus. Logistically, it is significantly more burdensome to access the prospectus than the application form (*e.g.*, the investor needs to download special software before accessing the prospectus). The statement in the form about receipt of the prospectus would not by itself constitute electronic delivery of the prospectus, and the application form is not evidence of delivery of the prospectus, given the need to download special software before the prospectus can be viewed." 60 FR 53458, 53465 (October 13, 1995).

[22] *See* footnote 16 *supra*.

[23] That commenter also asked whether an electronic Disclosure Document must be contained as a single file or may be several files linked together. This comment appears to address language in proposed Rule 4.1, which equated readily communicated information with material in a "single file." 61 FR at 44012. This commenter favored linking several files together so that the Disclosure Document may be downloaded in portions, each of which could be downloaded more rapidly than the entire document. This comment and the Commission's modifications to proposed Rule 4.1 are discussed below in Section VI.

[24] 61 FR at 42161.

[25] 17 CFR 4.21(b).

[26] 17 CFR 4.31(b).

prospective investor has received the Disclosure Document, and the acknowledgment is one of the records that CPOs and CTAs are required to maintain under Part 4.

In the Initial Release, the Commission stated that it "supports the use of electronic media to obtain customer acknowledgments but believes that measures must be taken to assure an adequate level of verification of the authenticity of such acknowledgments."[27] Similarly, in the Rule Proposal, the Commission stated that "adequate evidence of receipt of a Disclosure Document may be obtained in ways other than a manually signed paper receipt."[28] In the Initial Release, the Commission stated that use of personal identification numbers ("PINs") to verify the identity of a recipient represented a non-exclusive method of obtaining electronic acknowledgments of receipt of a Disclosure Document, and the Commission invited comment concerning the validity of electronic acknowledgments. The Commission noted that PINs serve two important objectives: (1) they enable the CPO or CTA, to the extent practicable, to verify the identity of the person sending the electronic communication; and (2) they help to protect innocent persons from false claims that they have sent a particular electronic communication.[29] Failure to include a valid PIN assigned to the intended party would render invalid any message purportedly sent by that person. The Commission has approved the use of PINs in lieu of manual signatures in other contexts, *e.g.*, by FCMs filing financial reports with self-regulatory organizations. Consequently, in the Initial Release, the Commission confirmed that the use of PINs "would provide an acceptable method of obtaining acknowledgments of receipt of Disclosure Documents."[30] Further, the Commission noted that under Rules 4.21(b) and 4.31(b), CPOs and CTAs bear the burden of obtaining a valid acknowledgment of receipt of Disclosure Documents and are thus responsible for establishing procedures adequate to establish the authenticity of electronic acknowledgments. The Commission originally stated that if a CPO or CTA plans to accept electronic acknowledgments, it is responsible for establishing a system for issuing individualized PINs, but requested comment concerning alternative methods of authentication. In a subsequent release, the Commission stated that the methodology specified was not intended to be exclusive, provided that the CPO or CTA could satisfy the relevant criteria for verifiability.[31]

A number of commenters, including the NFA, MFA and the Chicago Mercantile Exchange, objected to the requirement of use of a PIN to verify the authenticity of electronic acknowledgments. These commenters expressed concern that the Commission's discussion of a PIN system mandated the use of that technology and prevented use of any other means of verification. The MFA, for example, contended that existing regulations do not require that a registrant verify the authenticity of a customer's signature and recommended that, in light of multiple technologies and procedures which may satisfy the regulatory requirements, the Commission "require that a registrant develop procedures to ensure a means of identifying uniquely the recipient from whom an acknowledgment is required," without mandating a particular procedure. Although NFA objected to a requirement of authentication, it agreed that the rules currently require "receipt of an executed acknowledgment which uniquely identifies an individual and purports to be his signature."

The Commission believes that it is reasonable to require that electronic acknowledgments incorporate use of a PIN or other comparably efficacious form of verifying the identity of the recipient. The Commission recognizes, however, that different levels of verification control may be required depending upon the sensitivity of the signature obtained (*e.g.*, chief financial officers currently are permitted to sign electronically by PIN) and believes that greater flexibility may be appropriate where a signature merely evidences receipt of a document rather than validation of its contents. Further, the Commission does not wish to freeze its approaches to new technologies. The Commission therefore agrees that the acknowledgment requirement may be satisfied by any electronic methodology that uniquely identifies a specified person who has confirmed receipt of a document. As use of electronic media raises particular concerns of unique identification and attribution, a verification requirement of this nature is necessary and prudent.[32] Moreover, verification procedures should benefit CPOs and CTAs insofar as they may reduce the risk of customer complaints of failure to provide required disclosures. Thus, to the extent that methods other than PINs for verifying the identity of a person are available and provide a comparable level of identification of the recipient, the Commission does not intend PIN systems to be the exclusive method of obtaining electronic acknowledgments of receipt.

In the Initial Release, the Commission requested comment concerning alternatives to the use of PINs to verify receipt of electronically delivered documents. The commenters alluded to a number of alternatives, including electronic gating, security coded electronic mail, digital and electronic signatures, cryptography, public key-private key configurations and certificates of identity. However, the commenters' discussion of these alternatives did not provide information sufficient to assess the efficacy of these methods. Accordingly, the Commission has determined to continue to treat acknowledgment by PIN as adequate but also to set out a performance standard for the use of alternative mechanisms for receipt of electronic acknowledgments.

The performance standard requires use of a unique identifier to confirm the identity of the person sending the electronic acknowledgment to convey the acknowledgment in order to protect persons from claims that they have received a particular electronic communication when in fact they have not. Hard copy or electronic evidence of each use of such a system must be retained in order that the Commission and other authorities can verify that the acknowledgment was in fact given.[33] Registrants who develop alternative systems that meet this performance criterion are permitted, but not required, to submit such systems to the Commission's Division of Trading and Markets for review.

III. Use of Electronic Media To Deliver Documents Other Than Disclosure Documents

A. Account Statements for Pools

In the Initial Release, the Commission also provided guidance concerning the delivery of documents other than Disclosure Documents (specifically, monthly and quarterly account statements required to be delivered to pool participants by Rule 4.22, and modifications of Disclosure

[27] 61 FR at 42160.

[28] 61 FR at 44011.

[29] 61 FR at 42161.

[30] *Id.*

[31] 61 FR at 44011.

[32] Indeed, many parties on the Internet presently use PIN systems to verify the identity of an individual.

[33] See Section IV, *infra*, concerning electronic recordkeeping.

Documents).[34] As discussed in the Initial Release, CPOs may deliver electronically monthly and quarterly account statements required by Rule 4.22 provided that the CPO obtains the pool participant's informed consent. The procedures outlined for obtaining informed consent discussed above provide a single mechanism for establishing informed consent to delivery of Disclosure Documents as well as other required documents. A CPO seeking informed consent to deliver monthly or quarterly account statements would disclose: (1) that the CPO is required to deliver the monthly or quarterly account statement; (2) the right of the pool participant to elect to receive such statement in hardcopy form or by means of electronic delivery; (3) the specific media and method by which electronic delivery will be made; (4) the potential costs associated with receiving or accessing the electronic account statement; and (5) the prospective customer's right to revoke his consent to electronic delivery of account statements at any time.

The Commission received no comments with respect to electronic delivery of monthly or quarterly account statements other than NFA's comment, discussed above, concerning whether a CPO is required to obtain informed consent to deliver pool account statements at the time it obtains informed consent to deliver a Disclosure Document. As noted above, CPOs may obtain informed consent concerning pool account statements at any time, either in conjunction with informed consent to deliver a Disclosure Document or separately, as long as the informed consent is obtained prior to electronic delivery of the document in question.

B. Modifications

Commission Rules 4.26 and 4.36 require that Disclosure Documents be used for no longer than nine months and contain performance information that is current as of a date not more than three months prior to the date of the Disclosure Document. Rules 4.26 and 4.36 also require that, in the event that a CPO or CTA knows or should know that a Disclosure Document is materially inaccurate or incomplete, the registrant must correct the defect and distribute the correction to, in the case of a CPO, all existing pool participants and previously solicited pool participants prior to accepting or receiving funds from such prospective participants and, in the case of a CTA, all existing clients in the trading program and each previously solicited client for the trading program prior to entering into an agreement to manage such prospective client's account. The Initial Release made clear that CPOs and CTAs may use electronic media to comply with the amendment requirements of Rules 4.26 and 4.36 provided that the intended recipient has consented to electronic delivery of such information. Due to the relatively lower costs of electronic publishing, a CPO or CTA may wish to update its electronically presented Disclosure Documents more frequently than it would a hardcopy version of such document distributed in the customary manner. As stated in the Initial Release, however, the electronic version of a Disclosure Document must be at least as current as any paper-based version.[35]

In the Initial Release, the Commission stated that CPOs and CTAs relying upon electronic delivery of a Disclosure Document must continue to provide access to the Disclosure Document for a period of nine months to allow repeated access to the Disclosure Document used at the time of solicitation. The requirement that Disclosure Documents be maintained at a CPO's or CTA's website for a period of nine months was designed to coincide with the maximum effective period of a Disclosure Document. However, NFA commented that the Commission's proposal would require CPOs and CTAs to maintain multiple versions of their Disclosure Documents on their websites and that this would have the potential to confuse prospective investors. The Commission agrees with this comment and, to avoid the potential confusion described by NFA, adopts NFA's recommendation that CPOs and CTAs be required to maintain only the most current version of their Disclosure Documents on their websites.[36] The informed consent required for electronic delivery of a Disclosure Document provides that a CPO or CTA furnish a hardcopy Disclosure Document to a prospective investor at any time. Consequently, individuals who may have visited a website earlier and who wish to receive a prior version of a Disclosure Document may contact the CPO or CTA, who must provide the previous version of the Disclosure Document, either in hardcopy (or electronic form if the individual consents).

C. Term Sheets

Rule 4.21(a) provides that a CPO soliciting a prospective pool participant who is an accredited investor, as defined in 17 CFR 230.501(a), may provide the prospective participant with a notice of intended offering and statement of the terms of the intended offering, *i.e.*, a "term sheet," prior to delivery of a Disclosure Document. This is an exception to the general prohibition against solicitation of prospective pool participants unless a Disclosure Document has been given previously or is given contemporaneously. In the Initial Release, the Commission stated that a CPO may not satisfy the requirements of Rule 4.21(a) by electronically posting a "term sheet" because "[i]n posting a term sheet on a public electronic forum, a CPO is soliciting all persons who are able to access such term sheet, many of whom may not be 'accredited investors.' Consequently, unless a CPO restricts access to its term sheet to 'accredited investors' only, a CPO must also provide a copy of its Disclosure Document in accordance with the criteria set forth herein in order to comply with the requirements of Rule 4.21(a)."[37] In its comment letter, MFA agreed that, "where the registrant is able to restrict access to the term sheet when it is distributed electronically in the same manner as he restricts access to paper-based versions of the term sheet, he should be permitted to use term sheets distributed electronically." Thus, term sheets may be used electronically in accordance with Rule 4.21(a) provided that access to such term sheets is restricted to persons who the CPO reasonably believes to be accredited investors.[38] For example, a CPO might present on its website a series of questions to determine whether an individual is an accredited investor and restrict access to its term sheet to those persons who, based upon the responses to such questions, it reasonably believes are accredited investors. Similarly, if a CPO requires the use of a password to

[34] In the Initial Release, the Commission invited comment from CPOs, accounting professionals, and other interested persons concerning the advisability of amending Rule 1.16 to allow for certification of Annual Reports by independent public accountants by means of electronic media. The Commission received no comments on this issue.

[35] Ideally, the paper version would explain that more frequent updates could be obtained electronically.

[36] Additionally, this prevents any potential confusion that could result in prospective investors being solicited through use of an out-of-date Disclosure Document. *See* Rules 4.26(a)(2) and 4.36(b). Rules 4.24(d)(4) and 4.34(d)(2) state that a Disclosure Document must contain the date on which the CPO or CTA first intends to use the document, and Rules 4.26(a)(1) and 4.36(a)(1) require that all information must be current as of that date (although performance information may be current as of a date up to three months prior thereto).

[37] 61 FR at 42159 n.92.

[38] *See also* IPONET, 1996 SEC No-Act. LEXIS 642 (July 26, 1996).

access its term sheet and restricts such passwords to persons it reasonably believes to be accredited investors based upon information available to it, such CPO also would be in compliance with Rule 4.21.[39]

D. Review of Websites

The Commission also received a comment that NFA should offer to review the content of websites much in the way as it reviews promotional materials. Pursuant to NFA Compliance Rule 2–29 and the related Interpretive Notice dated May 1, 1989,[40] as a service to its members, NFA will review promotional material prior to its first use.[41] To the extent that CPOs and CTAs favor a voluntary prior review process for electronic media, they may propose this to NFA directly.

IV. Maintenance of Records

A substantial number of the comments received in response to the Initial Release concerned the application of the Commission's recordkeeping requirements in the context of electronic media. Rule 4.23, with respect to CPOs, and Rule 4.33, with respect to CTAs, specify books and records that must be maintained by CPOs and CTAs in accordance with Rule 1.31. These records include the acknowledgments required by Rules 4.21(b) and 4.31(b), as well as the original or a copy of each report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice distributed by CPOs and CTAs. Rule 1.31, requires among other things, that records be retained for a period of five years and be readily accessible during the first two years of the five-year period. Rule 1.31(b) provides that copies may be retained on microfilm, microfiche, or optical disk but must be maintained in accordance with the standards set forth in Rule 1.31(c) and (d).[42]

To facilitate CPOs' and CTAs' use of electronic media when possible and to avoid imposing duplicative or inconsistent requirements on registrants who may also be registered with the SEC, the Commission hereby permits a CPO or CTA, whether or not registered with the SEC, to use guidelines set forth by the SEC in its recent rulemaking in connection with recordkeeping requirements for broker-dealers.[43] Accordingly, a CPO or CTA may maintain required records pursuant to Commission Rule 1.31 or as allowed by SEC regulations.[44] For that purpose, in the case of CPOs and CTAs, the designated examining authority would be considered to be the NFA.

Concerning the storage and maintenance of records of electronic communications, the Commission understands that it may be difficult or impossible as a technical matter to store certain data in exactly the format in which it is transmitted to customers. However, the CPO or CTA must be able to store and maintain required records in order that, upon request of any representative of the Commission or the United States Department of Justice, the CPO or CTA can reproduce the recorded materials in substantially the same form[45] and containing the same information as was transmitted to customers.

V. Illustrative Examples

(1) *Disclosure Document Must be Readily Accessible and Delivery of Risk Disclosure Statement May be Sufficient to Obtain Informed Consent.* ABC is a registered CTA who operates a site on the World Wide Web. The first page of ABC's website sets forth the risk disclosure statement followed by "yes" or "no" lines which can be clicked upon for viewers to confirm that they have read the statement and wish to continue or do not wish to continue. After "clicking" to continue, the user is hyperlinked to a document containing recent performance data as well as a prominent hyperlink to the Disclosure Document. Access to the Disclosure Document is comparably accessible as was access to the page displaying the performance data. In this case, ABC has complied with the requirements of Rule 4.31(a).

[39] In the Initial Release, the Commission noted that the SEC has taken the position that placing offering materials on the Internet would not be consistent with the prohibition against general solicitation or advertising in Rule 502(c) of Regulation D unless the prospective accredited investor purchasers who are permitted to access the offering materials have been otherwise located without a general solicitation. 60 FR at 53463–64. For example, the SEC has approved the use of a password protected page of a website that is accessible only to persons previously identified as qualified accredited investors as not involving any form of "general solicitation" or "general advertising" within the meaning of Rule 502(c) of Regulation D provided that the process whereby accredited investors are identified is generic in nature and does not reference any specific transactions. *See* IPONET, supra note 38.

[40] National Futures Association Manual, Vol. 3, No. 2, (Jan. 1, 1997) at ¶ 9009.

[41] Registrants have the options to file promotional material unless otherwise required to do so by rule or directive.

[42] Rule 1.31(d) states, among other things, that all records preserved on optical media pursuant to Rule 1.31(b) must be preserved on non-rewritable, write once read many ("WORM") media. In addition, the technology must have write-verify capabilities that continuously and automatically verify the quality and accuracy of the information stored and automically correct quality and accuracy defects. Rule 1.31(d)(1) states that an optical storage system must: (i) use removable disks; (ii) serialize the disks; (iii) time-date all files of information placed on the disks, reflecting the computer run time of the file of information and using a permanent and non-erasable time-date; and (iv) write files in ASCII or EBCDIC format. As the Commission has noted, the ASCII and EBCDIC formats "generally do not allow storage of paper records or electronic images, such as webpages, since such records or images are normally not written in ASCII or EBCDIC format. Therefore, these records would be required to be retained in hard[]copy form." 61 FR at 42162.

[43] SEC Release No. 34–38245, 62 FR 6469 (February 12, 1997). The SEC amended its Rule 17a–4(f) to provide for the production or reproduction of records by means of electronic storage media, with the limited exception of those records required for penny stocks. Rather than specify particular electronic storage media, the SEC provided that the particular medium chosen must meet certain criteria:

(A) Preserve the records exclusively in a non-rewrit[]able, non-erasable format;

(B) Verify automatically the quality and accuracy of the storage media recording process;

(C) Serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and

(D) Have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under [Rule 17a–4(f)] as required by the [SEC] or the [SROs] or which the member, broker, or dealer is a member.

17 CFR § 240.17a–4(f)(ii) (1997). If a broker-dealer chooses to use electronic storage media, it must notify its designated examining authority prior to using such media and, if the broker-dealer uses media other than optical disk technology or CD-ROM, it must provide notice of at least 90 days. The SEC also set forth, among other things, the following requirements: maintenance of duplicates of records, which can be stored on any medium satisfying the above criteria; organizing and indexing of both original and duplicate records; an audit system that can record both the entry and modification of records; a third-party download provider, whose name is provided to the SRO and who agrees to promptly furnish to the SEC and SRO(s) information necessary to access and download records; and, where a broker-dealer uses an outside service bureau to preserve records, an escrow agent who keeps a current copy of the information necessary to access and download records.

[44] A substantial number of Commission registrants are also registered with the SEC. As of March 31, 1997, 113 of 236 futures commission merchants ("FCM") were registered with the SEC as broker-dealers. Therefore, the Commission has attempted, where possible, to coordinate its regulatory efforts with SEC requirements. For instance, Rule 1.10(h) permits an FCM to file reports concerning its financial condition by submitting a copy of its Financial and Operational Combined Uniform Single report filed with the SEC in lieu of the Commission's Form 1–FR–FCM, and Rules 1.14 and 1.15, the Commission's risk assessment rules, attempt to avoid duplication of similar SEC rules with regard to recordkeeping and reporting.

In the Commission's recent advisory (62 Fed. Reg. 31507 (June 10, 1997) permitting FCMs to deliver confirmations, purchase and sale statements and monthly statements electronically, it also stated that they may comply with recordkeeping requirements by following either Commission Rule 1.31 or the SEC's guidance as set forth in Release No. 34–38245.

[45] For example, registrant logos may be deleted.

(2) *Disclosure Document Must be Comparably Accessible as Other Promotional Material.* ABC is a registered CTA who operates a site on the World Wide Web. The first page of ABC's website sets forth the risk disclosure statement with a section for individuals to indicate by clicking on the appropriate statement that they have read the statement and wish to continue. After "clicking" to continue, the user is hyperlinked to a document containing recent performance data as well as a prominent hyperlink to the Disclosure Document. For some users, clicking on the Disclosure Document hyperlink brings up instructions and hyperlinks concerning how to download the required software viewer to access the Disclosure Document. By contrast, accessing the performance data on the website does not require the use of the same viewer. In this case, ABC has not complied with Rule 4.21(a). The Disclosure Document is not as accessible as promotional material. Although some users may have the viewer already installed on their web browser, others may not. Requiring users to use specialized software to view the Disclosure Document but not the promotional material does not satisfy the requirement that the Disclosure Document be comparably accessible as the promotional material. The Disclosure Document must be as readily accessible as performance data and other promotional material.

(3) *Informed Consent Necessary to Deliver Monthly Account Statements at World Wide Web Site.* XYZ is a registered CPO who operates a site on the World Wide Web. XYZ plans to offer its pool participants the choice of receiving monthly account statements by electronic media or by postal mail. In a letter to pool participants, XYZ informs its investors that it plans to post its monthly account statements on its World Wide Web site and that persons who wish to receive monthly account statements electronically may elect to do so. In its letter, XYZ explains that the monthly account statements will be hyperlinked to its website. The letter also explains that pool participants electing to receive disclosures solely by electronic media may revoke their election at any time and request that any monthly account statement be sent to them in hardcopy. At the bottom of the letter is a form for pool participants to complete and mail or fax back to XYZ indicating that they consent to delivery of monthly account statements by electronic media. Pool participants who do not complete the form will continue to receive monthly account statements in hardcopy. XYZ has complied with the requirements for informed consent to deliver monthly account statements.

(4) *Informed Consent Necessary to Deliver Monthly Account Statements Through Electronic Mail.* RST is a registered CPO who operates a site on the World Wide Web. RST's website complies with all Commission requirements with respect to delivery of a concise risk disclosure statement and Disclosure Document. In order to provide RST's pool participants with access to monthly account statements faster and at less expense, RST has decided to use electronic mail to deliver monthly account statements to those pool participants interested in receiving such statements in this manner. On its website is a section devoted to providing information on how pool participants may receive monthly account statements by electronic mail. In addition to requesting the pool participant's electronic mail address, the section explains: (1) that RST is required to deliver monthly account statements; (2) the pool participant's right to elect to receive such statements either in hardcopy or electronic form; (3) that electronic account statements will be delivered as a part of an electronic mail message; (4) that there is no charge for electronic delivery of account statements; and (5) that pool participants' election to receive monthly account statements by electronic mail may be revoked at any time and that RST would then resume delivery of hardcopy statements. At the conclusion of these disclosures is an electronic form for pool participants to complete if they are interested in receiving monthly account statements in this manner. RST has complied with the requirement to obtain informed consent to delivery monthly account statements.

(5) *Modifications to Disclosure Document.* ABC is a registered CTA who operates a site on the World Wide Web. ABC posts its Disclosure Document on its website in a manner consistent with the requirements for obtaining informed consent. Because of the additional flexibility that electronic media provide, ABC updates the performance data on a monthly basis. For example, by the 5th day of every month, ABC's Disclosure Document performance data is current as of the month that just expired. ABC is not required to keep prior months' Disclosure Documents on its website even though prospective managed account customers may have viewed them without obtaining a copy. If a prospective client wishes to see a Disclosure Document as of a date several months ago, ABC must furnish that Disclosure Document to the prospective client, either in hardcopy or by electronic media if the prospective client consents. Based upon the modifications made in this Release, CTAs (or CPOs) are no longer required to maintain each Disclosure Document posted on the website for a period of nine months.

VI. Final Rules

Rule 4.1—Requirements as to form. Commission Rule 4.1(a) sets forth the form requirements for documents distributed pursuant to Part 4 and requires generally that documents be clear and legible, paginated and fastened in secure manner and that information required to be "prominently" disclosed must be in capital letters and in boldface type. Rule 4.1, which was adopted by the Commission in 1981, was designed to address hardcopy documents. The proposed amendments to Rule 4.1 issued by the Commission on August 19, 1996, were designed to reflect the reality that many documents today are presented in electronic media. Proposed Rule 4.1 was designed to make clear that documents may be distributed by electronic media. To this end, proposed Rule 4.1(c)(1) would have required that for documents distributed through an electronic medium, "all required information must be presented in a format readily communicated to the recipient" and that for this purpose "information is readily communicated to the recipient if it is accessible as a single file by means of commonly available hardware and software, and if the electronically delivered document is organized in substantially the same manner as would be required for a paper document with respect to the order of presentation and the relative prominence of information."[46] Proposed Rule 4.1(c)(2) also would have applied to electronic media the requirement of existing Rule 4.1(b) that information required to be "prominently" disclosed be displayed in capital letters and boldface type by requiring that such information be presented in a manner that is reasonably calculated to draw it to the recipient's attention. Proposed Rule 4.1(c)(3) would have required that a complete paper version of a document be provided to a recipient upon request. Finally,

[46] Additionally, the Commission stated in the preamble to the August 27, 1996 **Federal Register** release that "[e]lectronically delivered information is readily communicated for purposes of Part 4 if it is accessible in a single 'package' or by a single data retrieval process, without the need to download and assemble multiple files, and preferably without the need to use special 'viewer' software." 61 FR at 44010.

proposed Rule 4.1(d) required that if any graphic, image or audio material that is included with or that accompanies the Disclosure Document delivered to a recipient cannot be filed with the Commission in the form in which delivered to the recipient, the CPO or CTA must provide a fair and accurate narrative description, tabular representation or transcript of the omitted material in the version filed with the Commission.

The only comment received concerning these proposed amendments to Rule 4.1 was from a CTA who noted that requiring the use of a single file containing the Disclosure Document was unnecessarily restrictive and may not be advantageous since CTAs could link several sections of the Disclosure Document to a table of contents and thus accelerate the download time as compared to the time required for a single file. The Commission agrees that Rule 4.1(c)(1) need not specify whether a document is contained in a single or multiple files. Although the Commission believes that delivery procedures typically will result in delivery of the Disclosure Document in a single file, the Commission does not believe that it is necessary to specify such procedures by rule nor does the Commission wish to restrict the flexibility of CPOs or CTAs to devise alternative methods of delivery so long as such delivery "readily communicates" the information to the required recipient.[47]

As adopted, Rule 4.1(c)(2) clarifies that, where use of capital letters and bold-face type is required by Commission rules, this type of presentation would also be required in the context of electronic presentations. However, where the use of capital letters and bold-face type would not in the context of electronic media achieve the purpose of highlighting and emphasizing specified information, another method reasonably calculated to draw attention to the specified information should be used. Rule 4.1(c)(3), as adopted, clarifies that the paper version that must be made available to recipients of electronically-transmitted documents upon request must comply with applicable paper-based Part 4 rules. Based upon the Commission's further consideration of proposed Rule 4.1, section (d) is being adopted as proposed.

Rules 4.21 and 4.31—Required delivery of pool Disclosure Document and Required delivery of Disclosure Document to prospective clients. Rules 4.21(b) and 4.31(b) establish the requirement that CPOs and CTAs obtain a signed and dated acknowledgment of receipt of the Disclosure Document before accepting any funds from a prospective pool participant or client. As proposed, Rules 4.21(b) and 4.31(b) would have been modified to permit CPOs and CTAs to obtain acknowledgments electronically in a form approved by the Commission. Proposed Rules 4.21 and 4.31 provided that, "[w]here a Disclosure Document is delivered to a prospective pool participant by electronic means, in lieu of a manually signed and dated acknowledgment the pool operator may establish receipt by electronic means approved by the Commission." The proposed rules also would have required that the CPO and CTA retain the acknowledgment in accordance with Rules 4.23 and 4.33, respectively, either in hardcopy or in another form approved by the Commission.

The Commission did not receive any comments addressing the proposed amendments to Rules 4.23 and 4.33. While the Commission did receive comments concerning the requirements for and use of electronic acknowledgments, these comments were addressed in section II, supra, and Rules 4.21(b) and 4.31(b) have been modified in conformity with the analysis set forth above. Specifically, final Rules 4.21(b) and 4.31(b) have been modified to permit alternative methods of electronic verification so long as the performance criteria enunciated in section II are satisfied. As discussed above, use of a PIN or other unique identifier to confirm the identity of the person acknowledging receipt provides an acceptable method of obtaining electronic acknowledgments of receipt. This modification responds to the concerns of commenters that PINs might be considered the exclusive means of complying with Rules 4.21(b) and 4.31(b) with respect to electronic media. As discussed above, to facilitate use of electronic media, CPOs and CTAs may maintain required records either pursuant to Commission Rule 1.31 or as permitted by SEC regulations.

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611 (1994), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein would affect registered CPOs and CTAs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[48] The Commission previously determined that registered CPOs are not small entities for the purpose of the RFA.[49] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.[50]

The amendments adopted herein do not impose any new burdens upon CPOs or CTAs. Rather, these amendments facilitate the use of electronic media to meet existing requirements, and they clarify the application of existing regulations to the use of such media. Consequently, the Commission believes that the adoption of these rule amendments will in many cases reduce the burden of compliance by CPOs and CTAs. Moreover, CPOs and CTAs are free to continue using paper documents.

In certifying pursuant to section 3(a) of the of the RFA that the proposed revisions would not have a significant economic impact on a substantial number of small entities, the Commission invited comments from any CPOs and CTAs who believed that the proposed revisions, if adopted, would have a significant impact on their activities. No such comments were received on the revisions adopted herein.

Accordingly, pursuant to Rule 3(a) of the RFA, the Chairperson, on behalf of the Commission, certifies that the action taken herein will not have a significant impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, Pub. L. 104–13 (May 13, 1995), imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. While this rule has no burden, the group of rules (3038–0005) of which this is a part has the following burden:

Average Burden Hours per Response: 124.75.

Number of Respondents: 4,654.

Frequency of Response: On occasion.

[47] Of course, where multiple files must be downloaded by the recipient in order to view the entire Disclosure Document, the CPO or CTA must make this fact clear.

[48] 47 FR 18618–21 (April 30, 1982).

[49] 47 FR 18619–20.

[50] 47 FR 18618, 18620.

Copies of the OMB approved information collection package associated with this rule may be obtained from: Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB Washington DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 4

Advertising, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular sections 2(a)(1), 4b, 4c, 4*l*, 4m, 4n, 4*o*, and 8a, 7 U.S.C. 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, and 12a, the Commission amends chapter I of title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

Subpart A—General Provisions, Definitions and Exemptions

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23.

2. Section 4.1 is amended by adding paragraphs (c) and (d) to read as follows:

§ 4.1 Requirements as to form.

(a) * * *

(b) * * *

(c) Where a document is distributed through an electronic medium:

(1) The requirements of paragraphs (a) of this section shall mean that required information must be presented in a format that is readily communicated to the recipient. For purposes of this paragraph (c), information is readily communicated to the recipient if it is accessible to the ordinary user by means of commonly available hardware and software and if the electronically delivered document is organized in substantially the same manner as would be required for a paper document with respect to the order of presentation and the relative prominence of information. Where a table of contents is required, the electronic document must either include page numbers in the text or employ a substantially equivalent cross-reference or indexing method or tool;

(2) The requirements of paragraph (b) of this section shall mean that such information must be presented in capital letters and boldface type or, as warranted in the context, another manner reasonably calculated to draw the recipient's attention to the information and accord it greater prominence than the surrounding text; and

(3) A complete paper version of the document that complies with the applicable provisions of this part 4 must be provided to the recipient upon request.

(d) If graphic, image or audio material is included in a document delivered to a prospective or existing client or pool participant, and such material cannot be reproduced in an electronic filing, a fair and accurate narrative description, tabular representation or transcript of the omitted material must be included in the filed version of the document. Inclusion of such material in a Disclosure Document shall be subject to the requirements of § 4.24(v) in the case of pool Disclosure Documents, and § 4.34(n) in the case of commodity trading advisor Disclosure Documents.

3. Section 4.21 paragraph (b) is to be revised to read as follows:

Subpart B—Commodity Pool Operators

§ 4.21 Required delivery of pool Disclosure Document.

(a) * * *

(b) The commodity pool operator may not accept or receive funds, securities or other property from a prospective participant unless the pool operator first receives from the prospective participant an acknowledgment signed and dated by the prospective participant stating that the prospective participant received a Disclosure Document for the pool. Where a Disclosure Document is delivered to a prospective pool participant by electronic means, in lieu of a manually signed and dated acknowledgment, the pool operator may establish receipt by electronic means that use a unique identifier to confirm the identity of the recipient of such Disclosure Document, Provided, however, That the requirement of § 4.23(a)(3) to retain the acknowledgment specified in this paragraph (b) applies equally to such substitute evidence of receipt, which must be retained either in hard copy form or in another form approved by the Commission.

Subpart C—Commodity Trading Advisors

4. Section 4.31 paragraph (b) is to be revised to read as follows:

§ 4.31 Required delivery of Disclosure Document to prospective clients.

(a) * * *

(b) The commodity trading advisor may not enter into an agreement with a prospective client to direct the client's commodity interest account or to guide the client's commodity interest trading unless the trading advisor first receives from the prospective client an acknowledgment signed and dated by the prospective client stating that the client received a Disclosure Document for the trading program pursuant to which the trading advisor will direct his account or will guide his trading. Where a Disclosure Document is delivered to a prospective client by electronic means, in lieu of a manually signed and dated acknowledgment the trading advisor may establish receipt by electronic means that use a unique identifier to confirm the identity of the recipient of such Disclosure Document, Provided, however, That the requirement of § 4.33(a)(2) to retain the acknowledgment specified in this paragraph (b) applies equally to such substitute evidence of receipt, which must be retained either in hard copy form or in another form approved by the Commission.

Issued in Washington, DC on July 15, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–19147 Filed 7–21–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 8725]

RIN 1545–AU64

Miscellaneous Sections Affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to joint returns, property exempt from levy, interest, penalties, offers in compromise, and the awarding of costs and certain fees. The regulations reflect changes to the law made by the Taxpayer Bill of Rights 2 and a conforming amendment made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The regulations affect taxpayers with respect to filing of returns, interest, penalties, court costs, and payment, deposit, and collection of taxes.

DATES: These regulations are effective July 22, 1997.

For dates of applicability of these regulations, see §§ 301.6334–1 (e) and (f), 301.6601–1(f) (3) and (4), 301.6651–1 (a)(3) and (g)(2), 301.6656–3(c), 301.7122–1(e)(2), 301.7430–2(c)(3)(i)(B), 301.7430–4(b)(3)(ii), 301.7430–5(a) and (c)(3), and 301.7430–6.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman, (202) 622–4940 regarding joint returns and penalties; Robert A. Miller, (202) 622–3640 regarding levy; Donna J. Welch, (202) 622–4910 regarding interest; Thomas D. Moffitt, (202) 622–7900 regarding court costs; and Kevin B. Connelly, (202) 622–3640 regarding compromises (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1356. Responses to this collection of information are required to obtain an award of reasonable administrative costs.

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 control number.

The estimated annual burden per respondent varies from 10 minutes to 30 minutes, depending on individual circumstances, with an estimated average of 15 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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.

Background

This document contains amendments to the Income Tax Regulations and the Regulations on Procedure and Administration (26 CFR parts 1 and 301, respectively) relating to joint returns under section 6013, levy under section 6334, interest under section 6601, the failure to file penalty under section 6651, the failure to deposit penalty under section 6656, compromise under section 7122, and awards of costs and certain fees under section 7430. These sections were amended by the Taxpayer Bill of Rights 2 (TBOR2) (Pub. L. 104–168, 110 Stat. 1452 (1996)) and section 110(l)(6) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193, 110 Stat. 2105, 2173 (1996)). The changes made by TBOR2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are reflected in the final regulations.

A notice of proposed rulemaking was published in the **Federal Register** for January 2, 1997 (62 FR 77). One written comment was received in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations under sections 6013, 6334, 6601, 6651, 6656, 7122, and 7430 are adopted by this Treasury decision with minor revisions, which are discussed below.

Explanation of Revisions and Summary of Comments

The IRS received one comment regarding the proposed regulations. The commentator remarked that § 301.6601–1(f)(3) of the proposed regulations is unclear because, as drafted, the regulation implies that interest on all additions to tax, including those covered by section 6601(e)(2)(B), runs from the date of the notice and demand. Therefore, the final regulations clarify that interest on any addition to tax, except additions to tax described in section 6601(e)(2)(B), begins to run from the date of the notice and demand.

The commentator also requested clarification for purposes of computing the $100,000 threshold in §§ 301.6601–1(f)(3) and (4) and 301.6651–1(a)(3). Sections 303(a) and (b) of TBOR2 extend the interest-free period to 21 calendar days or 10 business days if the amount for which the notice and demand is made equals or exceeds $100,000. The commentator suggested that the $100,000 threshold should include tax, interest, and penalties. The language in the statute supports this interpretation. Under section 303(b)(1) of TBOR2, the 10 day period specifically applies to a notice and demand for interest and penalties. Therefore, the final regulations clarify that 10 business days is the applicable interest-free period if the total amount assessed, including tax, penalties, and interest, and shown on the notice and demand equals or exceeds $100,000.

In addition, § 301.6651–1(a)(3), regarding the failure to pay penalty, has been clarified by cross-referencing the definitions of calendar day and business day in § 301.6601–1(f)(5).

Effective Dates

These regulations are applicable on July 31, 1996, except that § 301.7122–1(e) is applicable on July 30, 1996, and § 301.6334–1(a)(2), (a)(3), (a)(11)(i), and (e), § 301.6601–1(f)(3), (f)(4), and (f)(5), § 301.6651–1(a)(3), and § 301.7430–4(b)(3)(ii) are applicable on January 1, 1997.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Moreover, it is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that in the past only an average of 38 taxpayers per year, the majority of whom were individuals, have filed a request to recover administrative costs. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small business.

Drafting Information: The principal authors of these regulations are Beverly A. Baughman and Donna J. Welch, Office of Assistant Chief Counsel (Income Tax and Accounting), Robert A. Miller and Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation), and Thomas D. Moffitt, Office of Assistant Chief Counsel (Field Service). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes,

Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6013–2(b)(1) is amended by removing the language "Unless" and adding "Beginning on or before July 30, 1996, unless" in its place.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 4. Section 301.6334–1 is amended by:

1. Revising paragraph (a)(2).
2. Removing the language "$1,100 ($1,050 for levies issued prior to January 1, 1990)" from paragraph (a)(3) and adding "$1,250" in its place.
3. Removing the language "(relating to aid to families with dependent children)" from paragraph (a)(11)(i).
4. Revising paragraph (e).
5. Adding paragraph (f).

The additions and revisions read as follows:

§ 301.6334–1 Property exempt from levy.

(a) * * *

(2) *Fuel, provisions, furniture, and personal effects.* So much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, that does not exceed $2,500 in value.

* * * * *

(e) *Inflotion adjustment.* For any calendar year beginning after December 31, 1997, each dollar amount referred to in paragraphs (a)(2) and (3) of this section will be increased by an amount equal to the dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year (substituting "calendar year 1996" for "calendar year 1992" in section 1(f)(3)(B)). If any dollar amount as adjusted is not a multiple of $10, the dollar amount will be rounded to the nearest multiple of $10 (rounding up if the amount is a multiple of $5).

(f) *Effective date.* Generally, these provisions are applicable with respect to levies made on or after July 1, 1989. However, any reasonable attempt by a taxpayer to comply with the statutory amendments addressed by the regulations in this section prior to February 21, 1995, will be considered as meeting the requirements of the regulations in this section. In addition, paragraphs (a)(2), (3), (11)(i) and (e) of this section are applicable with respect to levies issued after December 31, 1996.

Par. 5. Section 301.6601–1 is amended by:

1. Revising paragraphs (f)(3) and (f)(4).
2. Redesignating paragraph (f)(5) as paragraph (f)(6) and adding new paragraph (f)(5).

The additions and revisions read as follows:

§ 301.6601–1 Interest on underpayments.

* * * * *

(f) * * *

(3) Interest will not be imposed on any assessable penalty, addition to the tax (other than an addition to tax described in section 6601(e)(2)(B)), or additional amount if the amount is paid within 21 calendar days (10 business days if the amount assessed and shown on the notice and demand equals or exceeds $100,000) from the date of the notice and demand. If interest is imposed, it will be imposed only for the period from the date of the notice and demand to the date on which payment is received. This paragraph (f)(3) is applicable with respect to any notice and demand made after December 31, 1996.

(4) If notice and demand is made after December 31, 1996, for any amount and the amount is paid within 21 calendar days (10 business days if the amount assessed and shown on the notice and demand equals or exceeds $100,000) from the date of the notice and demand, interest will not be imposed for the period after the date of the notice and demand.

(5) For purposes of paragraphs (f)(3) and (4) of this section—

(i) The term *business day* means any day other than a Saturday, Sunday, legal holiday in the District of Columbia, or a statewide legal holiday in the state where the taxpayer resides or where the taxpayer's principal place of business is located. With respect to the tenth business day (after taking into account the first sentence of this paragraph (f)(5)(i)), see section 7503 relating to time for performance of acts where the last day falls on a statewide legal holiday in the state where the act is required to be performed.

(ii) The term *calendar day* means any day. With respect to the twenty-first calendar day, see section 7503 relating to time for performance of acts where the last day falls on a Saturday, Sunday, or legal holiday.

* * * * *

Par. 6. Section 301.6651–1 is amended by:

1. Revising paragraph (a)(3).
2. Adding paragraph (g).

The addition and revision read as follows:

§ 301.6651–1 Failure to file tax return or to pay tax.

(a) * * *

(3) *Failure to pay tax not shown on return.* In the case of failure to pay any amount of any tax required to be shown on a return specified in paragraph (a)(1) of this section that is not so shown (including an assessment made pursuant to section 6213(b)) within 21 calendar days from the date of the notice and demand (10 business days if the amount assessed and shown on the notice and demand equals or exceeds $100,000) with respect to any notice and demand made after December 31, 1996, there will be added to the amount stated in the notice and demand the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the district director or the director of the service center to be due to reasonable cause and not to willful neglect. The amount added to the tax is 0.5 percent of the amount stated in the notice and demand if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate. For purposes of this paragraph (a)(3), see § 301.6601–1(f)(5) for the definition of *calendar day* and *business day.*

* * * * *

(g) *Treatment of returns prepared by the Secretary*—(1) *In general.* A return prepared by the Secretary under section 6020(b) will be disregarded for purposes of determining the amount of the addition to tax for failure to file any return pursuant to paragraph (a)(1) of this section. However, the return prepared by the Secretary will be treated as a return filed by the taxpayer for purposes of determining the amount of the addition to tax for failure to pay the tax shown on any return and for failure to pay the tax required to be shown on a return that is not so shown pursuant to paragraphs (a)(2) and (3) of this section, respectively.

(2) *Effective date.* This paragraph (g) applies to returns the due date for which (determined without regard to extensions) is after July 30, 1996.

Par. 7. Section 301.6656–3 is added to read as follows:

§ 301.6656–3 Abatement of penalty.

(a) *Exception for first time depositors of employment taxes*—(1) *Waiver.* The Secretary will generally waive the penalty imposed by section 6656(a) on a person's failure to deposit any employment tax under subtitle C of the Internal Revenue Code if—

(i) The failure is inadvertent;

(ii) The person meets the requirements referred to in section 7430(c)(4)(A)(ii) (relating to the net worth requirements applicable for awards of attorney's fees);

(iii) The failure occurs during the first quarter that the person is required to deposit any employment tax; and

(iv) The return of the tax is filed on or before the due date.

(2) *Inadvertent failure.* For purposes of paragraph (a)(1)(i) of this section, the Secretary will determine if a failure to deposit is inadvertent based on all the facts and circumstances.

(b) *Deposit sent to Secretary.* The Secretary may abate the penalty imposed by section 6656(a) if the first time a depositor is required to make a deposit, the amount required to be deposited is inadvertently sent to the Secretary instead of to the appropriate government depository.

(c) *Effective date.* This section applies to deposits required to be made after July 30, 1996.

Par. 8. In § 301.7122–1, paragraph (e) is revised to read as follows:

§ 301.7122–1 Compromises.

* * * * *

(e) *Record*—(1) *In general.* If an offer in compromise is accepted, there will be placed on file the opinion of the Chief Counsel of the IRS with respect to the compromise, with the reasons for the opinion, and including a statement of—

(i) The amount of tax assessed;

(ii) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed; and

(iii) The amount actually paid in accordance with the terms of the compromise.

(2) *Exception.* For compromises accepted on or after July 30, 1996, no opinion will be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than $50,000. However, the compromise will be subject to continuing quality review by the Secretary.

* * * * *

Par 9. Section 301.7430–0 is amended by adding entries for § 301.7430–1(b)(4) and 301.7430–5(c)(3) to read as follows:

§ 301.7430–0 Table of contents.

* * * * *

§ 301.7430–1 Exhaustion of administrative remedies.

* * * * *

(b) * * *

(4) Failure to agree to extension of time for assessments.

* * * * *

§ 301.7430–5 Prevailing party.

* * * * *

(c) * * *

(3) Presumption.

* * * * *

Par. 10. Section 301.7430–1 is amended by adding paragraph (b)(4) to read as follows:

§ 301.7430–1 Exhaustion of administrative remedies.

* * * * *

(b) * * *

(4) *Failure to agree to extension of time for assessments.* Any failure by the prevailing party to agree to an extension of the time for the assessment of any tax will not be taken into account for purposes of determining whether the prevailing party has exhausted the administrative remedies available to the party within the Internal Revenue Service.

* * * * *

Par. 11. Section 301.7430–2 is amended by:

1. Removing the language "7430(c)(4)(B)(ii)" from the third sentence of paragraph (b)(2) and adding "7430(c)(4)(C)(ii)" in its place.

2. Removing the colon from the introductory text of paragraph (c)(3) and adding a dash in its place.

3. Revising paragraph (c)(3)(i)(B).

4. Removing the language "If more than $75" from paragraph (c)(3)(ii)(C) and adding "In the case of administrative proceedings commenced after July 30, 1996, if more than $110" in its place.

The revision reads as follows:

§ 301.7430–2 Requirements and procedures for recovery of reasonable administrative costs.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(B) A clear and concise statement of the reasons why the taxpayer alleges that the position of the Internal Revenue Service in the administrative proceeding was not substantially justified. For administrative proceedings commenced after July 30, 1996, if the taxpayer alleges that the Internal Revenue Service did not follow any applicable published guidance, the statement must identify all applicable published guidance that the taxpayer alleges that the Internal Revenue Service did not follow. For purposes of this paragraph (c)(3)(i)(B), the term applicable published guidance means final or temporary regulations, revenue rulings, revenue procedures, information releases, notices, announcements, and, if issued to the taxpayer, private letter rulings, technical advice memoranda, and determination letters. Also, for purposes of this paragraph (c)(3)(i)(B), the term administrative proceeding includes only those administrative proceedings or portions of administrative proceedings occurring on or after the administrative proceeding date as defined in § 301.7430–3(c);

* * * * *

Par. 12. Section 301.7430–4 is amended by:

1. Removing the language "$75" from paragraph (b)(3)(i) and adding ", in the case of proceedings commenced after July 30, 1996, $110" in its place.

2. Revising paragraph (b)(3)(ii).

3. Removing the language "$75" from the first, second, and third sentences of paragraph (b)(3)(iii)(B) and adding "$110" in its place.

4. Removing the language "$75" from the first sentence of paragraph (b)(3)(iii)(C) and adding "$110" in its place.

5. Removing the language "$75" from the third sentence of the example in paragraph (b)(3)(iii)(D) and adding "$110" in its place.

6. Removing the language "$75" from the second and third sentences of paragraph (c)(2)(ii) and adding "$110" in its place.

The revision reads as follows:

§ 301.7430–4 Reasonable administrative costs.

* * * * *

(b) * * *

(3) * * *

(ii) *Cost of living adjustment.* The Internal Revenue Service will make a cost of living adjustment to the $110 per hour limitation for fees incurred in any calendar year beginning after December 31, 1996. The cost of living adjustment will be an amount equal to $110 multiplied by the cost of living adjustment determined under section 1(f)(3) for the calendar year (substituting "calendar year 1995" for "calendar year 1992" in section 1(f)(3)(B)). If the dollar limitation as adjusted by this cost of living increase is not a multiple of $10, the dollar amount will be rounded to

the nearest multiple of $10 (rounding up if the amount is a multiple of $5).

* * * * *

Par. 13. Section 301.7430–5 is amended by:

1. Revising paragraph (a).
2. Adding paragraph (c)(3).

The addition and revision read as follows:

§ 301.7430–5 Prevailing party.

(a) *In general.* For purposes of an award of reasonable administrative costs under section 7430 in the case of administrative proceedings commenced after July 30, 1996, a taxpayer is a prevailing party only if—

(1) The position of the Internal Revenue Service was not substantially justified;

(2) The taxpayer substantially prevails as to the amount in controversy or with respect to the most significant issue or set of issues presented; and

(3) The taxpayer satisfies the net worth and size limitations referenced in paragraph (f) of this section.

* * * * *

(c) * * *

(3) *Presumption.* If the Internal Revenue Service did not follow any applicable published guidance in an administrative proceeding commenced after July 30, 1996, the position of the Internal Revenue Service, on those issues to which the guidance applies and for all periods during which the guidance was not followed, will be presumed not to be substantially justified. This presumption may be rebutted. For purposes of this paragraph (c)(3), the term applicable published guidance means final or temporary regulations, revenue rulings, revenue procedures, information releases, notices, announcements, and, if issued to the taxpayer, private letter rulings, technical advice memoranda, and determination letters (see § 601.601(d)(2) of this chapter). Also, for purposes of this paragraph (c)(3), the term administrative proceeding includes only those administrative proceedings or portions of administrative proceedings occurring on or after the administrative proceeding date as defined in § 301.7430–3(c).

* * * * *

Par. 14. Section 301.7430–6 is revised to read as follows:

§ 301.7430–6 Effective dates.

Sections 301.7430–2 through 301.7430–6, other than §§ 301.7430–2(b)(2), (c)(3)(i)(B), (c)(3)(ii)(C), and (c)(5); §§ 301.7430–4(b)(3)(i), (b)(3)(ii), (b)(3)(iii)(B), (b)(3)(iii)(C), (b)(3)(iii)(D), and (c)(2)(ii); and §§ 301.7430–5(a) and (c)(3), apply to claims for reasonable administrative costs filed with the Internal Revenue Service after December 23, 1992, with respect to costs incurred in administrative proceedings commenced after November 10, 1988. Section 301.7430–2(c)(5) is applicable March 23, 1993. Sections 301.7430–2(b)(2), (c)(3)(i)(B), and (c)(3)(ii)(C); 301.7430–4(b)(3)(i), (b)(3)(ii), (b)(3)(iii)(B), (b)(3)(iii)(C), (b)(3)(iii)(D), and (c)(2)(ii); and 301.7430–5(a) and (c)(3) are applicable for administrative proceedings commenced after July 30, 1996.

Dated: June 27, 1997.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–19052 Filed 7–21–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 32

[OJP(BJA)–1121]

RIN 1121–AA44

Federal Law Enforcement Dependents Assistance Program; Correction

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Public Safety Officers' Benefits Office, Justice.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final regulations that were published Tuesday, July 15, 1997 (62 FR 37713). These regulations were issued to comply with the Federal Law Enforcement Dependents Assistance (FLEDA) Act of 1996.

DATES: This correction is effective July 22, 1997.

FOR FURTHER INFORMATION CONTACT: Jeff Allison, Chief, Public Safety Officers' Benefits Office, 633 Indiana Avenue, NW., Washington, DC 20531. Telephone: (202) 307–0635.

SUPPLEMENTARY INFORMATION: The final regulations that are the subject of these corrections were drafted in accordance with the Federal Law Enforcement Dependents Assistance Act, Pub. L. 104–238, 110 Stat. 3114, Oct. 3, 1996, which established a new subpart 2 in Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3796 *et seq.*) to provide financial assistance to the children and spouses of Federal civilian law enforcement officers killed or permanently and totally disabled in the line of duty.

Executive Order 12866

This regulation has been written and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Justice Programs has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

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

Regulatory Flexibility Act

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: The FLEDA program will be administered by the Office of Justice Programs, and any funds distributed under it shall be distributed to individuals, not entities, and the economic impact is limited to the Office of Justice Program's appropriated funds.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or

significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

The collection of information requirements contained in the proposed regulation will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3504(h)).

The Need for Correction

The following language was omitted from the comment section: In the proposed rule, § 32.35(b) allowed for exceptions to the requirement that applications for retroactive assistance must be submitted within five years of the last date the applicant pursued such program of education. Upon further reflection, the phrase "absent compelling justification" will be eliminated. Given the retroactive date established by Congress, and the family notification process being developed by the Bureau, it is difficult to envision circumstances wherein an otherwise eligible student would not be able to submit their application for retroactive assistance within five years after the last date he or she pursued such program of education.

Correction of Publication

Accordingly, the publication on Tuesday, July 15, 1997, of the final regulations at 62 FR 37713 is corrected as follows:

§ 32.35 [Corrected]

On page 37717, in the first column, in § 32.35(b), at the beginning of the second sentence remove, the words "absent compelling justification,".

Nancy Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 97–19220 Filed 7–21–97; 8:45 am]

BILLING CODE 4410–18–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN44–01–7269a; FRL–5861–6]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) is conditionally approving a revision to the Minnesota State Implementation Plan (SIP) for the Saint Paul particulate matter (PM) nonattainment area, located in Ramsey County Minnesota. The SIP was submitted by the State for the purpose of bringing about the attainment of the PM National Ambient Air Quality Standards (NAAQS). The rationale for the conditional approval and other information are provided in this notice.

DATES: This "direct final" rule is effective September 22, 1997, unless EPA receives adverse or critical comments by August 21, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of this SIP revision and EPA's analysis are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–8328.

SUPPLEMENTARY INFORMATION:

I. Background

Upon enactment of the Clean Air Act Amendments of 1990, certain areas were designated nonattainment for M and classified as moderate under sections 107(d)(4)(B) and 188(a) of the amended Clean Air Act (Act). See 56 FR 56694 (November 6, 1991) and 57 FR 13498, 13537 (April 16, 1992). A portion of the St. Paul area was designated nonattainment thus requiring the State to submit SIP revisions by November 15, 1991, satisfying the attainment demonstration requirements of the Act.

The State submitted SIP revisions and intended to meet these requirements in 1991 and 1992. The enforceable element of the State's submittals were administrative orders for nine facilities in the St. Paul area. On February 15, 1994 at 59 FR 7218, EPA took final action to approve Minnesota's submittals as satisfying the applicable requirements for the St. Paul M nonattainment area. The EPA also made a final determination pursuant to section 189(e) that secondary PM formed from PM precursors does not contribute significantly to exceedances of the NAAQS.

The EPA received a request from the Minnesota Pollution Control Agency (MPCA) on February 9, 1996 to revise the PM SIP for Ramsey County, Minnesota. The revision to the SIP is for the control of PM emissions from certain sources located along Red Rock Road (Red Rock Road Area), within the boundaries of Ramsey County. The SIP revision request was reviewed for completeness based on the completeness requirements contained in Title 40 of the Code of Federal Regulations, part 51, appendix V. The EPA determined the submittal to be complete, and notified the State of Minnesota in a May 6, 1996 letter from Valdas Adamkus, EPA to Charles Williams, MPCA.

Red Rock Road Area. St. Paul has three "pockets" of M problems in the nonattainment area: University Avenue/ Mississippi Street, Childs Road, and Red Rock Road. At the time of the original air dispersion modeling and the SIP revision submittals (1992), MPCA staff believed all culpable sources were accounted for and that the control strategies demonstrated in the modeling and the Administrative Orders would be adequate for the area to attain the PM NAAQS. However, exceedances have been recorded between 1992 and 1995 at an ambient monitor located at 1303 Red Rock Road.

Two facilities on Red Rock Road have administrative orders that are part of the 1992 M SIP: Commercial Asphalt, Inc. (a subsidiary of Tiller Corporation), and North Star Steel Company. The MPCA believes that these sources were not culpable for a major fraction of these M exceedances (based upon microscopic analysis of the filters and wind directions during the relevant days).

Since the original air quality dispersion modeling for the SIP was completed, several small sources, whose activities did not require permits, have located along Red Rock Road. Consequently, the changes in land use has resulted in increased vehicle traffic on unpaved roads. Because of the changing dynamics of the area, MPCA recognized that the M SIP submitted in 1992 no longer accurately characterized the area.

After reviewing the data collected from air monitoring, site visits, and meetings with sources in the area, MPCA staff concluded that the changes along Red Rock Road are the cause of the recent problems in the area, and not

because the former SIP was inadequate. The MPCA believes the original SIP was adequate to attain the PM NAAQS at the time of the original submittal. With the new information on Red Rock Road collected, MPCA staff performed new dispersion modeling which showed that the control strategies included in North Star Steel's and Commercial Asphalt's Administrative Orders were still adequate. However, the MPCA recognizes that changes which have occurred along Red Rock Road since the original SIP was submitted necessitate revision to this area's SIP. Moreover, the MPCA believes that the Red Rock Road area situation is an isolated problem that does not affect the rest of the nonattainment area in St. Paul. An ambient monitor located across from the Childs Road sources in St. Paul has not shown any exceedances since before 1987. This monitor is located approximately 1.5 miles from the monitor on Red Rock Road.

II. Evaluation of State's Submission

A. Evaluation of the State Administrative Orders

The modeling identified three facilities in the area that either are, or could be, significant contributors to the current exceedances. In order to bring the area into modeled attainment, two of these facilities are required to commit to control measures to reduce their PM emissions. The third facility is required to either quantify their PM emissions to show that they can meet the NAAQS, or commit to control measures to reduce their PM emissions. MPCA put these requirements into Administrative Orders which were signed by St. Paul Terminals, Inc., AMG Resources Corporation, and Lafarge Corporation on February 2, 1996. In addition, the State also hopes to further analyze other sources outside of the 2 kilometer area from the ambient monitor, but within 4 kilometers. This is because there have been emission changes to some of these sources and the State will need to evaluate whether emissions from these sources cause additional concern for this nonattainment area. Because of these changes, as well as potentially significant changes by the other sources in the 4 kilometer area and other revisions, an additional modeling analysis will be submitted by the State to EPA.

St. Paul Terminals. St. Paul Terminals contributes significant amounts of PM from truck traffic on its roads without the implementation of controls. The Administrative Order for St. Paul Terminals includes applying dust suppressant on unpaved roads and pressure washing paved roads. However, St. Paul Terminals has committed to implementing control measures on its property roads with a greater control efficiency than the control measures assumed in the modeling. The company chose to pave some previously unpaved areas, "power wash" with water all paved areas, and apply chemical dust suppressants (salts) in the remaining unpaved areas. In addition, to prevent the entrainment of fugitive dust from sediment tracked onto Red Rock Road, the Company will pressure wash Red Rock Road to the extent that track out of sediment from the facility can be seen on Red Rock Road.

AMG Resources Corporation. The PM emissions at the facility are generated from three metal shredders. Particulate emissions are controlled by cyclones, one for each shredder. The cyclone exhaust gases are vented into the building and escape the building through two wall vents with fans. The State initially assumed that all of the PM emissions from the metal shredders (subsequently emitted through the wall vents) are equal to that limited by Minnesota's Industrial Process Rule (Minn. R.7011.0735). However, because AMG could not model attainment with this emission rate, AMG Resources disputed the State's assumption that the shredder wall vents emit the amount limited within Minn. R. 7011.0735, and that all shredder emissions reach the outside air. The State later assumed that the vents emit at a rate 10 percent of the original assumption and issued an Administrative Order to AMG Resources allowing them to conduct a performance stack test on the shredders (in absence of any approved methods for testing the wall vents), in order to prove that additional controls at the facility are not needed. Performance testing of the shredder emissions has subsequently been performed by AMG. A letter from MPCA to EPA, dated May 20, 1997 states that MPCA has verified the test results showing that AMG is able to meet the PM emission rate assumed in the State attainment modeling. Because AMG has fulfilled the requirements of the Administrative Order, MPCA has requested that the Administrative Order for AMG be removed from the SIP submittal.

Lafarge Corporation. At the end of 1994, Lafarge Corporation purchased Red Rock Road of Minnesota, Inc. The facility receives, transfers, stores, and ships cement. The cement is received by river barge, transferred to a hopper by crane and clamshell bucket, conveyed into storage silos and storage dome, and shipped by truck. The PM emission sources at Lafarge Corporation are five baghouses, fugitive emissions from the transfer of the cement from the barge to the hopper, and truck and car traffic on the paved industrial roads. The modeling for Lafarge demonstrated that the operation of unloading cement from a barge with a clamshell bucket could not demonstrate compliance with the PM NAAQS. In addition, it is unclear if the five baghouses are in compliance with the PM NAAQS without further testing (Lafarge has not conducted performance testing to determine their emissions).

The Administrative Order requires the Company to: (1) Complete installation of a pneumatic unloader in place of the clamshell bucket by March 31, 1998; (2) operate the clamshell bucket in a prescribed manner in the interim until the pneumatic unloader is operational; and (3) submit revised modeling to MPCA which will include baghouse and stack parameters for the pneumatic unloading system. The Order also requires vendor certification and/or performance testing of all their baghouses. When vendor certification and/or performance testing is complete, Lafarge's Order will be revised to include specific limits for the baghouses.

The pneumatic unloading system is assumed to be a much cleaner system for unloading the barges. However, at the time of the submittal, no system had been chosen, therefore, no emissions data was available for the modeling analysis. Assumptions were made in the modeled attainment demonstration regarding the distribution of emissions with the pneumatic unloader installed, however, these will not be truly representative of operating conditions after April 1, 1998. In the interim, the administrative order requires the company to operate its current clamshell unloading system in accordance with prescribed measures designed to reduce the amount of fugitive emissions. The operating measures remain in effect until the pneumatic unloader is in operation. However, this scenario was not modeled. Specific information on dispersion characteristics associated with pneumatic unloader operation will be available in early 1998. The MPCA has assumed that the pneumatic unloader's fugitive PM emissions will be zero. However, emissions from other points will change as a result of the unloader. The MPCA will remodel the Red Rock Road area with the specific emission information from Lafarge once it becomes available.

B. EPA Analysis of Air Quality Data Modeling and Results

The results from the modeling analysis preliminarily demonstrate protection of the PM NAAQS. However, due to the lack of emission limits and specific information regarding emission distribution at Lafarge Corporation following the installation of the pneumatic unloader, EPA is conditionally approving the attainment demonstration/SIP revision at this time. Final approval will be conditioned upon EPA receiving a subsequent modeled attainment demonstration taking into consideration the sources which have experienced emission changes that may impact the Red Rock Road attainment demonstration. A more detailed discussion of the state's modeling analysis can be found in EPA's June 6, 1997 Technical Support Document.

C. Conditions and Commitments

The EPA has determined that the attainment demonstration for the Red Rock Road portion of the Ramsey County PM nonattainment area is not fully approvable at this time. As previously explained in this document, the demonstration lacks specific emissions data related to the operation of the pneumatic loading system to be installed by Lafarge Corporation. This information will not be available until early 1998. However, EPA believes that the SIP submittal is adequate to be approved on a conditional basis. When the emissions associated with the installation of the pneumatic loading system are known, the administrative order for Lafarge will be revised to reflect those limits on specific emission units. Additionally, a new modeling demonstration must be submitted reflecting the new limits as well as additional changes identified in this document. This remodeling must be submitted to EPA within 1 year of publication of the notice of conditional approval for the Red Rock Road area SIP revision.

III. Final Action

The EPA is approving this SIP revision, based on the condition that the State will submit a revised modeling demonstration which will contain the corrections detailed in this notice within 12 months of this final approval action. If the State fails to submit a SIP revision, this conditional approval under section 110(k) will be converted to a disapproval and the sanctions clock will begin. If the State does not submit a SIP, and the EPA does not approve the SIP on which the disapproval was based within 18 months of the disapproval, the EPA must impose the sanctions under section 179 of the Act.

IV. Miscellaneous

A. Comment and Approval Procedure

The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on September 22, 1997, unless adverse or critical comments concerning this action are submitted and postmarked by August 21, 1997. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received concerning this action will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action, the public is advised that this action will be effective on September 22, 1997.

B. Applicability to Future SIP Decisions

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

C. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

Conditional approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, the EPA certifies that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA from basing its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

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

E. 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 the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the conditional approval action promulgated does not include a Federal

mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

F. Submission to Congress and the General Accounting Office

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

G. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 22, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: July 8, 1997.

Michelle D. Jordan,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1219 is amended by adding new paragraph (b) to read as follows:

§ 52.1219 Identification of plan—Conditional Approval.

* * * * *

(b) On February 9, 1996, the State of Minnesota submitted a request to revise its particulate matter (PM) State Implementation Plan (SIP) for the Saint Paul area. This SIP submittal contains administrative orders which include control measures for three companies located in the Red Rock Road area—St. Paul Terminals, Inc., Lafarge Corporation and AMG Resources Corporation. Recent exceedances were attributed to changes of emissions/operations that had occurred at particular sources in the area. The results from the modeling analysis submitted with the Red Rock Road SIP revision, preliminarily demonstrate protection of the PM National Ambient Air Quality Standards (NAAQS). However, due to the lack of emission limits and specific information regarding emission distribution at Lafarge Corporation following the installation of the pneumatic unloader, EPA is conditionally approving the SIP revision at this time. Final approval will be conditioned upon EPA receiving a subsequent modeled attainment demonstration with specific emission limits for Lafarge Corporation, corrected inputs for Peavey/Con-Agra, and consideration of the sources in the 2–4 km range which have experienced emission changes that may impact the Red Rock Road attainment demonstration.

[FR Doc. 97–19213 Filed 7–21–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7220]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968; 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa	Unincorporated areas.	May 14, 1997, May 21, 1997, *The Arizona Republic.*	The Honorable Don Stapley, Chairperson, Maricopa County, Board of Supervisors, 301 West Jefferson Street, Phoenix, Arizona 85003.	Apr. 24, 1997	040037
Pima	City of Tucson	June 4, 1997, June 11, 1997, *The Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	May 9, 1997	040076
Pima	City of Tucson	June 4, 1997, June 11, 1997, *The Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	May 9, 1997	040076
California:					
San Diego	City of Chula Vista	May 2, 1997, May 9, 1997, *San Diego Daily Transcript.*	The Honorable Shirley Horton, Mayor, City of Chula Vista, 276 Fourth Avenue, Chula Vista, California 91910.	Apr. 9, 1997	065021
Orange	City of Irvine	May 1, 1997, May 8, 1997, *Irvine World News.*	The Honorable Christina Shea, Mayor, City of Irvine, P.O. Box 19575, Irvine, California 92623.	Apr. 8, 1997	060222
Alameda	City of Livermore	June 3, 1997, June 10, 1997, *Tri-Valley Herald.*	The Honorable Cathie Brown, Mayor, City of Livermore, 1052 South Livermore Avenue, Livermore, California 94550–4899.	May 15, 1997	060008
San Diego	City of National City.	May 2, 1997, May 9, 1997, *San Diego Daily Transcript.*	The Honorable George Waters, Mayor, City of National City, 1243 National City Boulevard, National City, California 91950.	Apr. 9, 1997	060293
San Diego	Unincorporated areas.	May 2, 1997, May 9, 1997, *San Diego Daily Transcript.*	The Honorable Bill Horn, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, San Diego, California 92101.	Apr. 9, 1997	060284
Kansas:					
Harvey	City of Halstead	May 1, 1997, May 8, 1997, *The Harvey County Independent.*	The Honorable Kenneth B. Kierl, Mayor, City of Halstead, P.O. Box 312, Independent Halstead, Kansas 67056–0312.	Apr. 4, 1997	200131
Harvey	Unincorporated areas.	May 1, 1997, May 8, 1997, *The Harvey County Independent.*	The Honorable Craig R. Simons, Harvey County Administrator, Administration Department, P.O. Box 687, Newton, Kansas 67114–0687.	Apr. 4, 1997	200585
Pratt	City of Pratt	May 22, 1997, May 29, 1997, *The Pratt Tribune.*	The Honorable Glenna Borho, Mayor, City of Pratt, P.O. Box 807, Pratt, Kansas 67124.	May 5, 1997	200278
Nevada: Douglas	Unincorporated areas.	May 14, 1997, May 21, 1997, *The Record Courier, Tahoe Daily Tribune.*	The Honorable Jacques Etchegoyhen, Chairman, Douglas County Board of County Commissioners, Minden Inn, P.O. Box 218, Minden, Nevada 89423.	Apr. 29, 1997	320008

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma: Cleveland.	City of Norman	June 6, 1997, June 13, 1997, *Norman Transcript.*	The Honorable Bill Nations, Mayor, City of Norman, P.O. Box 370, Norman, Oklahoma 73070.	May 15, 1997	400046
South Dakota: Lawrence.	City of Spearfish ..	May 16, 1997, May 23, 1997, *Blackhill Pioneer.*	The Honorable Johnny Niehaus, Mayor, City of Spearfish, 625 Fifth Street, Spearfish, South Dakota 57783.	Apr. 24, 1997	460046
Texas:					
Bexar	Unincorporated areas.	June 10, 1997, June 17, 1997, *San Antonio Express News.*	The Honorable Cyndi T. Krier, Bexar County Judge, 100 Dolorosa, Suite 101, San Antonio, Texas 78205.	May 23, 1997	480035
Dallas	Unincorporated areas.	June 12, 1997, June 19, 1997, *The Dallas Morning News.*	The Honorable Lee F. Jackson, Dallas County Judge, 411 Elm Street, Dallas, Texas 75202.	May 21, 1997	480165
Tarrant	City of Fort Worth	May 8, 1997, May 15, 1997, *Fort Worth-Star Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Forth Worth, Texas 76102–6311.	Aug. 13, 1997	480596
Dallas	City of Garland	June 12, 1997, June 19, 1997, *The Garland News.*	The Honorable James Ratliff, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002.	May 21, 1997	485471
Tarrant	City of Haltom City.	May 8, 1997, May 15, 1997, *Fort Worth Star-Telegram.*	The Honorable Gary Larson, Mayor, City of Haltom City, P.O. Box 14246, Haltom City, Texas 76117–0246.	Aug. 13, 1997	480599
Harris	City of Houston ...	June 6, 1997, June 13, 1997, *Houston Chronicle.*	The Honorable Bob Lanier, Mayor, City of Houston, P.O. Box 1562, Houston, Texas 77251–1562.	May 14, 1997	480296
Collin	City of Plano	May 23, 1997, May 30, 1997, *Plano Star Courier.*	The Honorable John Longstreet, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	Apr. 29, 1997	480140
Dallas	City of Rowlett	June 12, 1997, June 19, 1997, *The Rowlett Lakeshore Times.*	The Honorable Buddy Wall, Mayor, City of Rowlett, P.O. Box 99, Rowlett, Texas 75030–0099.	May 21, 1997	480185
Dallas	City of Sachse	June 18, 1997, June 25, 1997, *The Wylie News.*	The Honorable Larry Holden, Mayor, City of Sachse, 5560 Highway 78, Sachse, Texas 75048.	May 21, 1997	480186
Bexar	City of San Antonio.	May 23, 1997, May 30, 1997, *San Antonio Express-News.*	The Honorable William E. Thornton, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	Apr. 28, 1997	480045
Denton	City of The Colony	June 4, 1997, June 11, 1997, *Lewisville Leader.*	The Honorable William Manning, Mayor, City of The Colony, 5151 North Colony Boulevard, The Colony, Texas 75056.	May 12, 1997	481581

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

Dated: July 15, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–19215 Filed 7–21–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation

determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Pima (FEMA Docket No. 7212).	City of Tucson	Mar. 6, 1997, Mar. 13, 1997, *The Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726–7210.	Feb. 21, 1997	040076
Colorado: El Paso (FEMA Docket No. 7212).	City of Colorado Springs.	Feb. 14, 1997, Feb. 21, 1997, *Gazette Telegraph.*	The Honorable Robert Isaac, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.	Jan. 17, 1997	080060
Oklahoma: Oklahoma (FEMA Docket No. 7212).	City of Oklahoma City.	Feb. 6, 1997, Feb. 13, 1997, *Daily Oklahoman.*	The Honorable Ronald J. Norick, Mayor, City of Oklahoma City, 200 North Walker Avenue, Oklahoma City, Oklahoma 73102.	Jan. 14, 1997	405378
South Dakota: Pennington (FEMA Docket No. 7212).	City of Rapid City	Feb. 11, 1997, Feb. 18, 1997, *Rapid City Journal.*	The Honorable Edward McLaughlin, Mayor, City of Rapid City, 300 Sixth Street, Rapid City, South Dakota 57701–2724.	Jan. 17, 1997	465420
Texas:					
Collin (FEMA Docket No. 7212).	City of Dallas	Mar. 6, 1997, Mar. 13, 1997, *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, 1500 Marilla Street, Suite 5EN, Dallas, Texas 75201.	Feb. 11, 1997	480171
Dallas (FEMA Docket No. 7212).	City of Garland	Feb. 20, 1997, Feb. 27, 1997, *Garland News.*	The Honorable James B. Ratliff, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002.	Jan. 22, 1997	485471
Harris (FEMA Docket No. 7212).	Unincorporated areas.	Feb. 7, 1997, Feb. 14, 1997, *Houston Chronicle.*	The Honorable Robert Eckels, Harris County Judge, Harris County Administration Building, 1001 Preston Street, Houston, Texas 77002.	Jan. 15, 1997	480287
Tarrant (FEMA Docket No. 7212).	City of Hurst	Mar. 6, 1997, Mar. 13, 1997, *Fort Worth Star Telegram.*	The Honorable Bill Sounder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, Texas 76054.	Feb. 20, 1997	480601

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Dallas (FEMA Docket No. 7212).	City of Mesquite ..	Feb. 13, 1997, Feb. 20, 1997, *Mesquite News.*	The Honorable Cathye Ray, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, Texas 75185–0137.	Jan. 14, 1997	485490
Montgomery (FEMA Docket No. 7212).	Unincorporated areas.	Feb. 11, 1997, Feb. 18, 1997, *Conroe Courier.*	The Honorable Alan B. Sadler, Montgomery County Judge, 301 North Thompson, Suite 210, Conroe, Texas 77301.	Jan. 22, 1997	480483

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

Dated: July 15, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–19216 Filed 7–21–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register.**

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act.

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

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

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

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Arcata (City), Humboldt County (FEMA Docket No. 7210)	
Janes Creek:	
Just upstream of Samoa Boulevard	*7
Just downstream of U.S. Highway 101	*35
Maps are available for inspection at the City of Arcata Public Works Department, 736 F Street, Arcata, California.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
LOUISIANA	
Assumption Parish (Unincorporated Areas) (FEMA Docket No. 7210)	
Pierre Pass at Pierre Part:	
At the area surrounding Lake Vevret	*6
Maps are available for inspection at City Hall, 141 Highway 1008, Napoleonville, Louisiana.	
NEBRASKA	
Milford (City), Seward County (FEMA Docket No. 7210)	
Big Blue River:	
Approximately 1.5 miles downstream of Burlington Northern Railroad	*1,401
Approximately 3.0 miles upstream of Burlington Northern Railroad	*1,413
Maps are available for inspection at the City of Milford City Hall, 505 First Street, Milford, Nebraska.	
OKLAHOMA	
Piedmont (City), Canadian and Kingfisher Counties (FEMA Docket No. 7210)	
Solider Creek South Branch:	
Just above dam located 0.5 mile upstream of 16th Street Northeast	*1,168
Approximately 3,500 feet upstream of Piedmont Road	*1,205
Deer Creek Tributary 5A:	
Just upstream of Washington Street	*1,156
Approximately 2,000 feet upstream of Piedmont Street	*1,198
Maps are available for inspection at City Hall, 314 Edmond Road, Piedmont, Oklahoma.	
TEXAS	
Junction (City), Kimble County (FEMA Docket No. 7210)	
Llano River:	
Approximately 500 feet downstream of Interstate Highway 10	*1,695
At confluence of North and South Llano Rivers	*1,698
North Llano River:	
At confluence with South Llano River	*1,698
Approximately 1,000 feet upstream of U.S. Highways 83, 290, and 377	*1,709
South Llano River:	
At confluence with North Llano River	*1,698
Approximately 700 feet upstream of Flatrock Lane	*1,711
Maps are available for inspection at City Hall, 102 North Fifth Street, Junction, Texas.	

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

Dated: July 15, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–19219 Filed 7–21–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–268; DA 97–1481]

Advanced Television Systems and Their Impact on the Existing Television Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: By this Order, we are denying a request from Hogan and Hartson, L.L.P., that we consolidate the due date for responses to the petitions for reconsideration of the *Sixth Report and Order* in MM Docket No. 87–268, 62 FR 26684, with the due date that will be established for responses to any supplemental filings relating to channel change requests that we may receive under the procedure we established recently for such filings. In denying this request, we are concerned that extending the time for filing responses to the petitions for reconsideration to consolidate those responses with responses any supplemental filings we may receive would serve to delay the final resolution of issues relating to the allotment of DTV channels.

DATES: Responses to petitions for reconsideration of the *Sixth Report and Order* in this proceeding are due July 18, 1997. Supplemental filings relating to petitions for reconsideration of the *Sixth Report and Order* that request changes to DTV allotments are due August 22, 1997.

ADDRESSES: Federal Communications Commission, Office of the Secretary, Room 222, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Bruce Franca (202–418–2470) or Alan Stillwell (202–418–2470), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION:

1. In the *Sixth Report and Order* in MM Docket No. 87–268, the Commission set forth a Table of Allotments for digital TV (DTV) service, rules for initial DTV allotments, procedures for assigning DTV allotments to eligible broadcasters, and plans for spectrum recovery, 62 FR 26684, adopted April 3, 1997, FCC 97–115 (released April 21, 1997). We received over 200 petitions for reconsideration of various aspects of this decision. Oppositions to these petitions are due July 18, 1997. On July 2, 1997, we issued an *Order*, DA–1377, 62 FR 37145, clarifying our action in that decision with regard to OET Bulletin No. 69 and providing an additional 45-day period for parties requesting reconsideration of individual allotments included in the DTV Table to submit supplemental information relating to their petitions. Supplemental filings relating to those requests are due on or before August 22, 1997. We also released OET Bulletin No. 69 on July 2, 1997, concurrent with our *Order*. As provided under § 1.429(f) of our rules, oppositions to the supplements to the petitions for reconsideration would normally be due 15 days after the date of public notice of the filing of the supplements. *See* 47 CFR 1.429(f).

2. On July 9, 1997, Hogan and Hartson, L.L.P. (Hogan & Hartson) requested that we consolidate the deadline for filing oppositions to the petitions for reconsideration of the *Sixth Report and Order* with the deadline for the filing of oppositions to supplements to those petitions for reconsideration. Hogan and Hartson argues that consolidation of these two deadlines would streamline the DTV proceeding and avoid the filing of two sets of opposition pleadings (and replies). It states that a consolidated opposition deadline after the date for supplementing petitions would instead permit all parties to prepare (and the Commission's staff to review) a single consolidated opposition to all petitions, as supplemented. It believes that the result would be a more efficient, and less confusing, proceeding.

3. In a statement filed on July 10, 1997, the Association for Maximum Service Television, Inc. (MSTV) and the National Association of Broadcasters (NAB) endorse our recent actions releasing OET Bulletin No. 69 and providing for limited supplementary filings. MSTV and NAB state that we have appropriately provided additional time for petitioners that have raised

questions about specific DTV assignments to supplement their petitions in these respects in light of OET Bulletin No. 69. They also state that, just as significantly, we did not extend the current deadline for filing oppositions and replies with regard to petitions for reconsideration. They agree that these deadlines should not be extended, noting that OET Bulletin No. 69, because of the narrowness of its scope, does not bear materially on general policy issues.

4. While recognize the arguments that Hogan and Hartson raise with regard to the desirability of avoiding multiple filings relating to the petitions for reconsideration and any supplemental information that may be filed, we are concerned that extending the time allowed for responding to the petitions would serve to delay the final resolution of issues relating to the allotment of DTV channels. We are particularly concerned that providing an extended period of time for filing oppositions to the petitions for reconsideration could increase uncertainty for broadcasters with regard to our DTV allotment policies and the availability of channels and thereby hinder their ability to proceed with the rapid introduction of DTV service. We believe that it is important that these issues be concluded as expeditiously as possible and therefore will proceed in accordance with the schedule and procedures for filing oppositions that is currently in place.

5. Accordingly, it is ordered that, pursuant to §§ 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and §§ 0.31, 0.241, 1.3, and 1.429 of the Commission's rules, 47 CFR 0.31, 0.241, 1.3, 1.429, Hogan and Hartson's request for consolidation of opposition deadlines is denied.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–19235 Filed 7–21–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB97

Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Southwestern Willow Flycatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) designates critical habitat for the southwestern willow flycatcher (*Empidonax traillii extimus*), a species federally listed as endangered under the authority of the Endangered Species Act of 1973, as amended (Act). The Fish and Wildlife Service has identified 18 critical habitat units totaling 964 river kilometers (km) (599 river miles) in Arizona, California, and New Mexico. As required by section 4 of the Act, the Service considered economic and other relevant impacts prior to making a final decision on the size and configuration of critical habitat.

EFFECTIVE DATE: August 21, 1997.

ADDRESSES: The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021. The complete file for this rule will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Sam F. Spiller, Field Supervisor, Arizona Ecological Services Office, U.S. Fish and Wildlife Service, at the above address (Telephone 602/640–2720).

SUPPLEMENTARY INFORMATION:

Background

Ecological Considerations

The southwestern willow flycatcher (*Empidonax traillii extimus*) is a small passerine bird, approximately 15 centimeters (cm) (5.75 inches) in length. It is one of four subspecies of the willow flycatcher recognized in North America (Hubbard 1987, Unitt 1987, Browning 1993). The southwestern willow flycatcher's breeding range includes southern California, Arizona, New Mexico, western Texas, southwestern Colorado, southern portions of Nevada and Utah, and extreme northwestern Mexico (Hubbard 1987, Unitt 1987, Wilbur 1987). During the breeding season, the species occurs in riparian habitats along rivers, streams, open water, cienegas, marshy seeps, or saturated soil where dense growths of willows (*Salix* sp.), *Baccharis*, arrowweed (*Pluchea* sp.), tamarisk (*Tamarix* sp.) or other plants are present, sometimes with a scattered overstory of cottonwood (*Populus* sp.) (Grinnell and Miller 1944, Phillips 1948, Zimmerman 1970, Whitmore 1977, Hubbard 1987, Unitt 1987, Whitfield 1990, Brown and Trosset 1989, Brown 1991, Sogge *et al.* 1997). These riparian communities, which tend to be rare and widely separated, provide nesting, foraging, and migratory habitat for the southwestern willow flycatcher. *Empidonax traillii extimus* is an insectivore that forages within and occasionally above dense riparian vegetation, taking insects on the wing and gleaning them from foliage (Wheelock 1912, Bent 1960).

Empidonax traillii extimus nests in dense riparian vegetation approximately 4–7 meters (m) (13–23 feet) tall, often with a high percentage of canopy cover. Historically, *E. t. extimus* nested primarily in willows, with a scattered overstory of cottonwood (Grinnell and Miller 1944, Phillips 1948, Whitmore 1977, Unitt 1987, Sogge *et al.* 1997). In addition to nesting in riparian woodland vegetation consisting of willows, arrowweed, tamarisk "or other species", southwestern willow flycatchers nest almost exclusively in coast live oaks (*Quercus agrifolia*) on the Upper San Luis Rey River in San Diego County, California, which may be defined as an oak "riparian woodland." Following modern changes in riparian plant communities in the southwest, *E. t. extimus* still nests in willows where available but is also known to nest in areas dominated by tamarisk and Russian olive (Zimmerman 1970, Hubbard 1987, Brown 1988). Sedgewick and Knopf (1992) found that sites selected as song perches by male willow flycatchers exhibited higher variability in shrub size than did nest sites and often included large central shrubs. Habitats not selected for either nesting or singing were narrower riparian zones, with greater distances between willow patches and individual willow plants.

Large scale losses of southwestern wetlands have occurred, particularly the cottonwood-willow riparian habitat of the southwestern willow flycatcher (Phillips *et al.* 1964, Johnson and Haight 1984, Katibah 1984, Johnson *et al.* 1987, Unitt 1987, General Accounting Office 1988, Dahl 1990, State of Arizona 1990). Changes in the riparian plant community have reduced, degraded and eliminated nesting habitat for the willow flycatcher, curtailing its

distribution and numbers (Serena 1982, Cannon and Knopf 1984, Taylor and Littlefield 1986, Unitt 1987, Schlorff 1990). Habitat losses and changes have occurred (and continue to occur) because of urban, recreational and agricultural development, fires, water diversion and impoundment, channelization, livestock grazing, and replacement of native habitats by introduced plant species (see 58 FR 39495 and Tibbitts *et al.* 1994 for detailed discussions of threats and impacts).

Brood parasitism by the brown-headed cowbird (*Molothrus ater*) is another significant and widespread threat to the southwestern willow flycatcher (Rowley 1930, Garret and Dunn 1981, Unitt 1987, Sogge 1995a and 1995b, Whitfield and Strong 1995, Sferra *et al.* 1997). Although some host species seem capable of simultaneously raising both cowbirds and their own chicks, such is not the case with southwestern willow flycatchers. Of all the nests monitored throughout the southwest between 1988 and 1996, there are only two cases known where southwestern willow flycatchers successfully fledged both flycatchers and cowbirds. In all other cases, parasitism caused complete nest failure or the successful rearing of only cowbird chicks (Brown 1988, Whitfield 1990, Whitfield and Strong 1995, Sogge 1995a and 1995b, Maynard 1995, Sferra *et al.* 1997).

In a review of historical and contemporary records of *Empidonax traillii extimus* throughout its range, Unitt (1987) noted that the species has "declined precipitously * * *" and that "the population is clearly much smaller now than 50 years ago." He believed the total was "well under" 1000 pairs, more likely 500 (Unitt 1987). Nesting groups monitored since that time have continued to decline (Whitfield 1990, Brown 1991, Sogge and Tibbitts 1992, Whitfield and Laymon, unpubl. data). Since 1992, more than 800 historic and new locations have been surveyed range wide to document the status of the southwestern willow flycatcher (USFWS, unpubl. data). The current known population of southwestern willow flycatchers is estimated at between 300 and 500 pairs (Sogge *et al.* 1997). This indicates a critical population status, with more than 75 percent of the locations where flycatchers are found having five or fewer territorial birds and up to 20 percent of the locations having single, unmated individuals. The distribution of breeding groups is highly fragmented, with groups often separated by considerable distances (e.g., approximately 88 kilometers (km) (55 miles) straight-line distance between breeding flycatchers at Roosevelt Lake, Gila County, Arizona, and the next closest breeding groups known on either the San Pedro River (Pinal County) or Verde River (Yavapai County). Additional survey effort, particularly in southern California, may discover additional small breeding groups. However, rangewide survey efforts have yielded positive results in fewer than 10 percent of surveyed locations. Moreover, survey results reveal a consistent pattern range wide; the southwestern willow flycatcher population as a whole is comprised of extremely small, widely-separated breeding groups or unmated flycatchers.

For a thorough discussion of the ecology and life history of the southwestern willow flycatcher, see Sogge *et al.* (1997), the proposed rule to list the southwestern willow flycatcher as endangered with critical habitat (58 FR 39495) or the final rule listing the southwestern willow flycatcher as endangered (60 FR 10694).

Previous Federal Actions

On January 25, 1992, a coalition of conservation organizations petitioned the Service, requesting listing of *Empidonax traillii extimus* as an endangered species, under the Act. The petitioners also appealed for emergency listing, and designation of critical habitat. On September 1, 1992, the Service published a finding that the petition presented substantial information indicating that listing may be warranted and requested public comments and biological data on the species (57 FR 39664). On July 23, 1993, the Service published a proposal to list *E. t. extimus* as endangered with critical habitat (58 FR 39495), and again requested public comments and biological data on the species. The Service published a final rule to list *E. t. extimus* as endangered on February 27, 1995 (60 FR 10694). The Service deferred the designation of critical habitat for this endangered species until July 23, 1995, pursuant to 16 U.S.C. Sec. 1533(b)(6)(C), citing issues raised in public comments, new information, and the lack of the economic information necessary to perform the required economic analysis. The Service reopened the comment period on the proposal to designate critical habitat. During and following the listing moratorium and a series of rescissions of listing funds imposed by Congress from April 1995 to April 1996, the Service took no action on the proposal to designate critical habitat due to resource constraints. On March 20, 1997, the U.S. District Court of Arizona, in response to a suit by the Southwest Center for Biological Diversity, ordered the Service to designate critical habitat for the southwestern willow flycatcher within 120 days. On July 3, 1997, the Court clarified that order, noting that the 120-day timeframe was provided for the Service to make a decision as to whether or not to designate critical habitat and not to make a substantive determination of designation.

The Service has not previously designated critical habitat for the flycatcher because, as discussed in detail below, critical habitat designation provides little or no conservation benefit despite the great cost to put it in place. The Service's conclusion in this regard is reflected in its Listing Priority Guidance (61 FR 64475), under which designation of critical habitat is accorded the lowest priority among the Service's various listing activities. In accordance with the Listing Priority Guidance, since the lifting of the moratorium the Service has spent the scarce resources available to it for listing activities on meeting other requirements of the Act that provide significantly more conservation benefit. Nonetheless, the Service has been ordered to make a final determination with regard to critical habitat in an exceedingly short period of time. This final rule is issued to comply with that order. The rule meets the technical requirements of the Act; however, because of the unprecedented time constraints resulting from the court order, the Service was not able to provide the level of analysis and completeness that it has in the past on such rules. The Service is designating critical habitat for the southwestern willow flycatcher as it was proposed in 1993, with the deletion of some minor areas that were found to have been proposed in error because they have little or no potential for flycatcher habitat (see Issue 4 in **Summary of Comments and Recommendations**). The Service concedes that there may be additional areas that could be excluded because they no longer require special management considerations or protection due to ongoing management agreements, such as that with respect to Camp Pendleton. Similarly, the Service has been unable to consider additional areas for inclusion in this rule in response to the comments received.

Even promulgating this rule stripped down to its essentials has placed an enormous burden on the Service. The Service had no option but to disrupt significant work at the Field Office, Regional, and National levels in order to provide the resources to generate this

final rule. The Service intends to further articulate its views concerning critical habitat, and to provide the public with an opportunity to comment on those views, in the development of a specific critical habitat policy in the very near future. However, the below analysis is provided to elaborate on why the Service has placed critical habitat designation among the lowest priorities in the Listing Priority Guidance, and therefore why critical habitat for the flycatcher was not designated prior to this time.

Critical Habitat

Designation of critical habitat for endangered or threatened species has been among the most costly and controversial classes of administrative actions undertaken by the Service in administering the Act. Over 20 years of experience in designating critical habitat and applying it as a tool in conserving species leads the Service to seriously question its utility and the value it provides in comparison to the monetary, administrative, and other resources it absorbs. Although the Service is, in this case, designating critical habitat pursuant to a Court order that requires the Service to make a final determination, the Service believes that critical habitat is not an efficient or effective means of securing the conservation of species. An analysis supporting this conclusion is presented below.

The Designation Process

When the Service lists a species as threatened or endangered, the Act requires that it specify, "to the maximum extent prudent and determinable," the species' critical habitat. If critical habitat is not considered determinable at the time a final rule is adopted to list a species, it must be designated "to the maximum extent prudent" within 1 additional year. Thus the ultimate test in determining whether or not critical habitat is designated for a species is one of prudence. The basis for the Court order directing the present designation was the Service's failure to either designate critical habitat or to find that its designation would not be prudent within 1 year of the listing of the southwestern willow flycatcher as an endangered species.

The Act's definitions of "critical habitat" and "conservation" are central to any interpretation of critical habitat's attributes and effects. Critical habitat is defined in Section 3(5)(A) of the Act as "(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species." The term "conservation," as defined in section 3(3) of the Act, means ". . . to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." A designation of critical habitat thus implies not only specific knowledge of the habitat needs of a species, but also an idea of what would be needed in the way of habitat protection and management to bring about the species' recovery.

The Act also requires a consideration of economic and other consequences as part of the designation process, with the option of excluding areas from designation if the benefits of such exclusion outweigh the benefits of designation, and if exclusion would not result in the extinction of the species. A good understanding of the effects of designation, both in general and for particular cases, is required to carry out this analytic requirement and to provide a basis for the consideration of potential exclusions.

At the time a species is listed, there is generally no detailed understanding of the management measures that will be required for its recovery, so that designation at this time can only crudely reflect its conservation needs. Meanwhile, the required analysis is necessarily highly speculative in that it must incorporate assumptions regarding future economic activity that may be difficult to characterize, and it is aimed at the increment of effect on these activities attributable to designation over and above those consequent to the species' listing. Finally, the economic balancing that is the object of the analysis is only possible to the extent that these two sets of effects can be differentiated, and the limit on this balancing (i.e., that exclusion may not cause extinction) is not meaningful if the failure to designate critical habitat cannot plausibly have this effect.

In determining the extent to which designation of critical habitat is prudent, Congress directed the Service to consider whether the designation would be of benefit to the species concerned. In recent years, the Service has foregone designating critical habitat for most species it has listed on the basis that it would not provide any net benefit to their conservation.

Designation by regulation

Critical habitats are designated in the Code of Federal Regulations and can be altered only through a rulemaking process that commonly requires over a year from start to finish. In fact, revision is a sufficiently complex undertaking that the Service has never revised a critical habitat designation, in spite of it being possible to do so. The range and habitat use of a species do not necessarily remain unchanged over time or change so slowly as to be readily tracked by costly and time-consuming regulatory amendments.

The Consequences of Designation

Section 7 of the Act requires that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat. This requirement is in addition to the prohibition against jeopardizing the continued existence of a listed species, and it is the only mandatory legal consequence of a critical habitat designation. An understanding of the interplay of the "jeopardy" and "adverse modification" standards is necessary to the proper evaluation of the prudence of designation as well as the conduct of consultation under section 7. Implementing regulations (50 CFR part 402) define "jeopardize the continued existence of" and "destruction or adverse modification of" in virtually identical terms. Jeopardize the continued existence of means to engage in an action "that reasonably would be expected * * * to reduce appreciably the likelihood of both the survival and recovery of a listed species." Destruction or adverse modification means an "alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the value of the habitat so designated. Thus, actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of a critical habitat designation does not materially affect the outcome of consultation. This is in contrast to the public perception that the adverse modification standard sets a lower threshold for violation of section 7 than that for jeopardy. In fact, biological opinions which conclude that a Federal agency action is likely to adversely

modify critical habitat but not to jeopardize the species for which it is designated are extremely rare historically, and none have been issued in recent years.

Scope of Analysis

Given the difficulty of separating the independent incremental effects of designation of critical habitat from those associated with the listing of a species, it should not be surprising that the approach to economic analysis is problematic. A recent analysis for the designation of nearly 4 million acres of critical habitat for the marbled murrelet concluded, in part, that the designation "is not likely to restrict the activities of any federal agency" and that it "will not cause these agencies (the Forest Service and Bureau of Land Management) to manage federal lands in a manner that will have immediate, direct impacts on the flow of goods and services from these lands." Critics have complained that economic analyses of critical habitat designations greatly underestimate the effects of the ESA on the economy, or alternatively that environmental benefits are generally given cursory coverage. Both points of view have elements of validity. On the one hand, the effects of the ESA on society stem overwhelmingly from the protection afforded by the listing of species, but the tenuous effects of critical habitat designation are the only ones subject to the requirement of economic analysis. On the other hand, the object of the analysis is an examination of areas for possible exclusion from critical habitat, leading to a focus on possible deleterious economic effects that might provide grounds for exclusion, rather than the benefits society derives from the operation of the ESA.

The Cost of Designation

In a recent declaration filed in a Federal District Court, the Service's Assistant Director estimated that economic analyses alone for the designation of critical habitat for the marbled murrelet (quoted above) and Mexican spotted owl cost in excess of $100,000 each. The *total* cost of other recent designations, as those for the desert tortoise and Colorado River fishes, have been estimated at approximately $1,000,000 each. The Service currently has on hand information sufficient to propose nearly 200 candidate species for listing, and several hundred other species are known to require status surveys to determine whether they qualify. The resources required to designate a critical habitat typically are ten times what would be required to list a backlogged candidate species. On conservation grounds, the Service cannot justify devoting resources to a critical habitat designation that would otherwise be available to afford basic protection to ten or more candidate species. Critical habitat designations have too little effect on the way land and water is managed for the conservation of species to justify the drain they represent on Federal resources.

Public Perception of Designation

Controversy over critical habitat designation arises in substantial part from public misunderstanding of the effects designation has on potential resource uses. The common public perception is that critical habitat is an inviolate preserve within which human activities are excluded entirely or drastically curtailed. It is not difficult to understand this misperception given the common-sense meaning of "critical habitat." In fact, the designation of critical habitat may provide some benefits to a species by identifying areas important to the species' conservation, particularly until a recovery plan is adopted, including habitat that is not presently occupied and that may require restoration efforts to support recovery. However, these benefits are minor, apply only where there is Federal agency involvement, and consume considerable funds that could be spent elsewhere to much greater benefit.

Identification of Critical Habitat for the Southwestern Willow Flycatcher

Empidonax traillii extimus is endangered by extensive loss of nesting habitat and is now extirpated across much of its former breeding range. A neotropical migratory bird, *E. t. extimus* is present in its breeding habitat from late April until August or September. It then migrates to wintering grounds in Mexico, Central America, and perhaps northern South America (Gorski 1969, McCabe 1991). Little is known about threats in its wintering grounds. However, even during the nonbreeding season when the species is not present, nesting habitat and especially potentially recoverable nesting habitat remain vulnerable. Conserving and enhancing the constituent elements of current and potential nesting habitat is necessary to facilitate recovery of the species. The Service may designate as critical habitat areas outside the geographical area presently occupied by a species when a designation limited to its present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)). Such a situation exists for the southwestern willow flycatcher, for which recovery of the physical and biological features and constituent elements of nesting habitat and space for population growth are needed to ensure the conservation and recovery of the species.

Primary Constituent Elements

The Service is required to base critical habitat determinations on the best available scientific information (50 CFR 424.12). In determining what areas to designate as critical habitat, the Service considers those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include but are not limited to the following: (1) Space for individual and population growth; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. The Service is proposing to designate as critical habitat areas which provide or with rehabilitation will provide the above five physical and biological features and primary constituent elements.

For all areas of critical habitat designated here, these physical and biological features and primary constituent elements are provided or will be provided by dense thickets of riparian shrubs and trees (native and exotic species). This vegetation, by definition, occurs near rivers, streams, open water, cienegas, marshy seeps, or saturated soil. Constituent elements of critical habitat include the riparian ecosystem within the 100-year floodplain, including areas where dense riparian vegetation is not present, but may become established in the future. The species composition of vegetation ranges from nearly monotypic stands (i.e., single species) to stands with multiple species (see Sogge *et al.* 1997). Vegetation structure ranges from simple, single stratum patches as low as 3 meters (9 feet) in height and lacking a distinct overstory to complex patches with multiple strata and canopies nearing 18 meters (60 feet) in height. Vegetation patches may be uniformly dense throughout, or occur as a mosaic of dense thickets interspersed with small openings, bare soil, open water, or shorter/sparser vegetation. Riparian patches used by breeding flycatchers vary in size and shape, and may be relatively dense, linear contiguous

stands or irregularly-shaped mosaics of dense vegetation with open areas. The size of vegetation patches or habitat mosaics used by southwestern willow flycatchers varies considerably and ranges from as small as 0.8 hectares (2 acres) to several hundred hectares. However, narrow linear riparian patches only one to two trees deep that have no potential (absent limiting factors) to increase in depth are not considered breeding habitat, although they may be used by southwestern willow flycatchers during migration.

A total of approximately 964 km (599 miles) of stream and river are being designated as critical habitat. The areas described were chosen for critical habitat designation because they contain the remaining known southwestern willow flycatcher nesting sites, and/or formerly supported nesting southwestern willow flycatchers, and/or have the potential to support nesting southwestern willow flycatchers. All areas contain or with restoration will contain suitable nesting habitat in a patchy, discontinuous distribution. This distribution is partially the result of natural regeneration patterns of riparian vegetation (e.g. cottonwood-willow). The distribution of these habitat patches is expected to shift over time. Because of this spatial and temporal distribution of habitat patches, it is important that the entirety of the proposed river reaches be considered critical habitat. All areas contain some unoccupied habitat or former (degraded) habitat, needed to recover ecosystem integrity and support larger southwestern willow flycatcher numbers during the species' recovery. A number of separate, protected, healthy populations of southwestern willow flycatchers are needed to protect the species from extinction by functioning as population sources (Pulliam 1988). Protection of this proposed critical habitat should ensure sufficient quantity and quality of habitat to stabilize and recover this species. The southwestern willow flycatcher is already extirpated from a significant portion of its former range.

Critical habitat for the southwestern willow flycatcher will include riparian areas within the 100-year floodplain along streams and rivers in southern California, Arizona, and New Mexico (Figure 1). Descriptions and maps of each area are located in this rule under "Regulation Promulgation."

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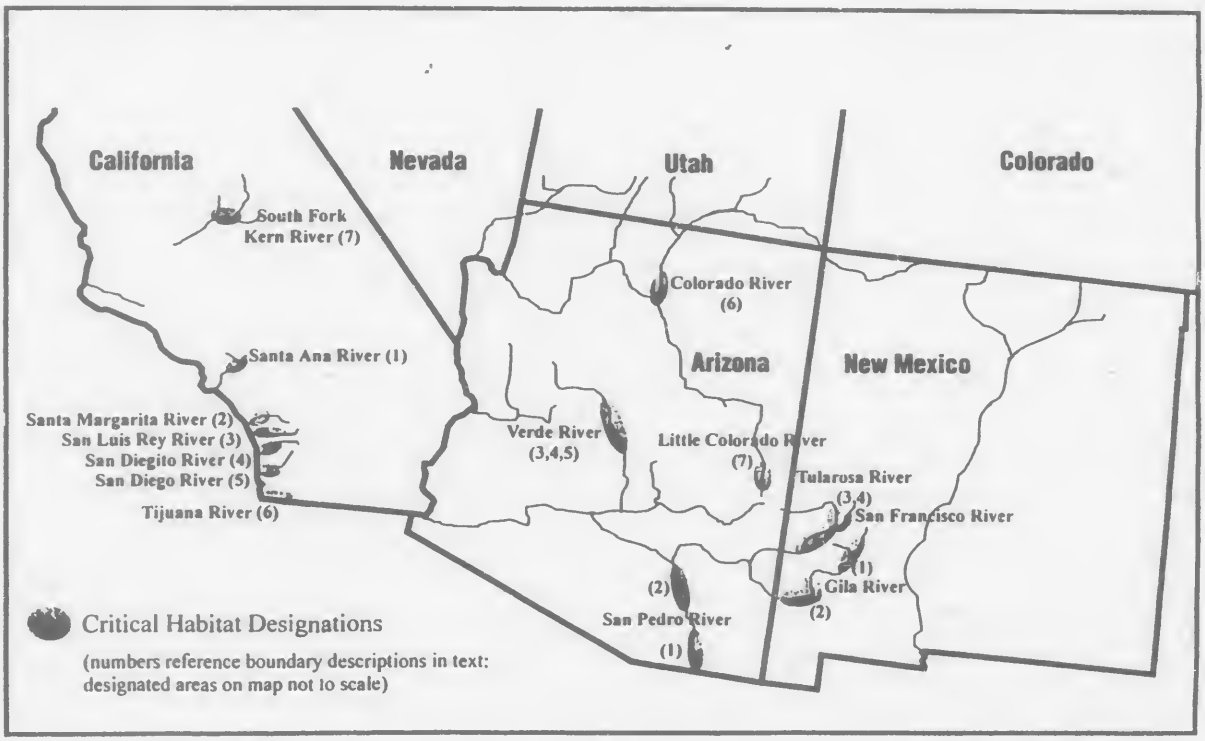
Figure 1. Location of critical habitat areas designated for the southwestern willow flycatcher.



Available Conservation Measures

Because *Empidonax traillii extimus* is a listed species, the Act provides conservation measures, including recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified in 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Marine Corps and Service have worked together to develop a comprehensive, ecosystem-oriented wildlife conservation management plan covering all riparian and coastal wetland habitat areas on the base at Camp Pendleton. This effort culminated in a mutually agreed upon conservation strategy and implementation program that was endorsed by the Secretary of the Interior and Service at a signing ceremony with the Commanding General in October 1995. The conservation program has contributed substantially to the protection and recovery of the least Bell's vireo, southwestern willow flycatcher, and other listed species (i.e., arroyo toad, tidewater goby, California least tern, and western snowy plover) found in riparian and coastal wetland habitats along the Santa Margarita River and Pacific Ocean. Indeed, the Department of Defense awarded Camp Pendleton the Department's Natural Resources Award for 1996 largely because of the successful implementation of the riparian and coastal wetland conservation program. The Service does not intend the designation of critical habitat to result in the imposition of any additional restrictions for actions taken at Camp Pendleton which are consistent with the conservation measures outlined under the management plan. Thus, for example, if the Marine Corps needed a permit under the Clean Water Act for an activity which was consistent with the conservation management plan, the Service would not view such activity as adversely modifying or destroying critical habitat for the willow flycatcher.

On other Federal lands, various ongoing activities within riparian areas may benefit the flycatcher. The Forest Service and Bureau of Land Management have focused attention on modifying livestock grazing practices in recent years, particularly as they affect riparian ecosystems. The Bureau of Land Management's San Pedro National Riparian Conservation Area in Arizona has excluded livestock for 10 years which has resulted in significant restoration of riparian habitats and increased populations of bird species associated with riparian habitat, including the willow flycatcher. The Forest Service, in cooperation with others, is monitoring the southwestern willow flycatcher population on the San Luis Rey River on Forest Service lands, and has an on-going brown-headed cowbird trapping program on the San Luis Rey River and other streams within the Cleveland National Forest. As mitigation for other projects impacting riparian habitats, the Bureau of Reclamation is engaged in a cowbird management program and riparian habitat restoration projects in several areas in the range of *Empidonax traillii extimus*, including some historical nesting locations. Riparian habitat rehabilitation is also underway at several National Wildlife Refuges in the breeding range of *E. t. extimus*, which are managed by the Service. Grand Canyon National Park has instituted a seasonal recreation closure at the remaining site with nesting willow flycatchers in the Grand Canyon.

In addition to conservation on Federal lands, in 1991, the State of California established the Natural Communities Conservation Planning (NCCP) Program to address conservation needs of natural ecosystems throughout the State. The Multiple Species Conservation Program (MSCP) in southwestern San Diego County is one of the first subregional plans under the NCCP to be developed. The MSCP planning area consists of 12 jurisdictions and several water districts, each of which will develop subarea plans to implement the MSCP within their boundaries. The City of San Diego has approved the MSCP and finalized their subarea plan. The remaining jurisdictions and the Otay Water District are expected to finalize their subarea plans within the near future.

The southwestern willow flycatcher is considered a covered species under the MSCP based on the proposed level of conservation. The MSCP will preserve over 9,000 acres or 75 percent of the remaining riparian habitats within the planning boundary. Impacts to riparian areas outside of the preserve will be avoided, minimized, and mitigated under local guidelines and ordinances, and existing State and Federal wetland regulations. Thus, no net loss of acreage of riparian habitat is proposed within the MSCP, and no additional restrictions are anticipated as a result of critical habitat designation.

All of the designated critical habitat for the southwestern willow flycatcher along the San Dieguito, San Diego, and Tijuana Rivers will be conserved and managed within the MSCP preserve system. The MSCP assures permittees that compliance with the Federal policy of "no net loss" of wetland functions and values, the U.S. Environmental Protection Agency's section 404(b)(1) guidelines, and the requirements of the MSCP and local subarea plan will constitute the full extent of mitigation measures directed specifically at the incidental take of covered species recommended by the Service pursuant to the Act and the National Environmental Policy Act. In addition, the Service has agreed that, if the subarea plans for each jurisdiction under the MSCP are properly functioning, the Service will not require that permittees or third party beneficiaries commit additional land, additional land restrictions, or additional financial compensation beyond that provided in each implementing agreement should critical habitat for a covered species be designated.

The approved NCCP/Habitat Conservation Plan for the Central and Coastal Subregions of Orange County, California, provides benefits to the southwestern willow flycatcher. The plan establishes an approximately 37,300-acre nature preserve and requires surveys for the southwestern willow flycatcher to ensure that occupied habitat with potentially significant long-term conservation value will be conserved. The adaptive management program for the preserve includes monitoring, cowbird control, and habitat enhancement measures for the flycatcher. Again, the Service anticipates that no additional restrictions will apply to activities undertaken in accordance with the

approved Orange County NCCP plan as a result of this critical habitat designation.

The Audubon Society manages one of the largest remaining flycatcher populations in California, and The Nature Conservancy (TNC) manages several areas with high recovery potential. TNC maintains a cowbird trapping program in Orange County that provides indirect benefits to potential nesting habitat for the southwestern willow flycatcher.

In addition to public and private lands, critical habitat occurs on land belonging to the Yavapai-Apache Tribe in Arizona and on land belonging to the Pala Mission Tribe in California. Pursuant to Tribal sovereignty and the Service's associated responsibilities, as well as the recent Secretarial Order for American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act, the Service has consulted with both tribes prior to completion of this rule in order to ensure that tribal cultural values, and reserved hunting, fishing, gathering and other rights were considered in this designation. The Service will continue to work cooperatively with the tribes and remain available to assist in development of conservation plans for the area that meet both the intent of the Act and Tribal needs.

It is the policy of the Service to identify to the maximum extent practicable at the time of listing those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed or on-going activities. These activities are listed in the final rule listing the southwestern willow flycatcher (60 FR 10694). Likewise, section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Such activities may include:

(1) Removing, thinning or destroying riparian vegetation. Activities which remove, thin, or destroy riparian vegetation, by mechanical, chemical (herbicides or burning), or biological (grazing) means reduce constituent elements for southwestern willow flycatcher sheltering, feeding, breeding, and migrating.

(2) Surface water diversion or impoundment, groundwater pumping, or any other activity which may alter the quantity or quality of surface or subsurface water flow. Activities which alter the quantity or quality of surface or subsurface water flow may affect riparian vegetation, food availability, or the general suitability of the site for nesting or migrating.

(3) Destruction/alteration of the species' habitat by discharge of fill material, draining, ditching, tiling, pond construction, and stream channelization (i.e., due to roads, construction of bridges, impoundments, discharge pipes, stormwater detention basins, etc.).

(4) Overstocking of livestock. Excessive use of riparian areas and uplands for livestock grazing may affect the volume and composition of riparian vegetation, may physically disturb nests, may alter floodplain dynamics such that regeneration of riparian habitat is impaired or precluded, and may facilitate brood parasitism by brown-headed cowbirds.

(5) Development of recreational facilities and off-road vehicle operation. Activities which facilitate recreational activities and off-road vehicle use may affect riparian vegetation, result in compaction of soils degrading areas where riparian vegetation is established or would become established, alter floodplain dynamics such that riparian regeneration is impaired or precluded, promote fires in riparian habitats, reduce space for individual and population growth, and inhibit normal behavior.

In general, activities that do not remove or degrade constituent elements of habitat for *Empidonax traillii extimus* are not likely to destroy or adversely modify critical habitat. Each proposed action will be examined pursuant to section 7 of the Act in relation to its site-specific impacts.

The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of *Empidonax traillii extimus*. Federal activities outside of critical habitat are still subject to review under section 7 if they may affect *E. t. extimus*. Prohibitions of Section 9 also continue to apply both inside and outside of designated critical habitat.

Summary of Comments and Recommendations

In the July 23, 1993, proposed rule to list the *Empidonax traillii extimus* as endangered with critical habitat (58 FR 39495), all interested parties were requested to submit comments or information that might bear on the listing of or designation of critical habitat for the southwestern willow flycatcher. The comment period was originally scheduled to close October 21, 1993, but was extended to November 30, 1993. Appropriate State agencies, Federal agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the following newspapers: In California, the Los Angeles Times, L.A. Watts Times, Kern Valley Sun, and San Diego Union-Tribune; in Arizona, the Arizona Daily Sun, Arizona Republic, Tucson Daily Citizen, White Mountain Independent, and Arizona Daily Star; in New Mexico, the Albuquerque Journal, Albuquerque Tribune, Santa Fe New Mexican, Carlsbad Current-Argus, Silver City Daily Press; in Nevada, the Las Vegas Sun; in Colorado, the Durango Herald; in Utah, the Daily Spectrum; and in Texas, the El Paso Times. The inclusive dates of publications were August 31 through September 13, 1993, for the initial comment period and October 28 through November 5, 1993, for the public hearings and extension of public comment period.

The Service held six public hearings. Three of these were held in anticipation of interest in the proposed rule, and three additional were held in response to requests from the public. A notice of the hearing dates and locations was published in the **Federal Register** on October 18, 1993 (58 FR 53702). Approximately 424 people attended the hearings. Approximately 17 people attended the hearing in Tucson, AZ; 27 in Flagstaff, AZ; 10 in Las Cruces, NM; 12 in Albuquerque, NM; 350 in Lake Isabella, CA; and 8 in San Diego, CA. Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

A second public comment period was held from February 27, 1995, to April 28, 1995, during which comments were solicited on proposed critical habitat. A total of 3,240 written and oral responses was received during the two public comment periods. All comments received were reviewed for substantive issues and new data regarding critical habitat and the southwestern willow flycatcher. Comments of a similar nature are grouped into a number of general issues. Ten general issues were identified relating specifically to proposed critical habitat. These are addressed in the following summary.

Issue 1: Development of conservation agreements would be more effective in providing a net benefit to the southwestern willow flycatcher than designation of critical habitat, and existing agreements make designation of critical habitat unnecessary in some areas.

Service Response: The Service agrees that implementation of comprehensive conservation agreements could effectively protect and enhance both occupied and unoccupied habitat for the southwestern willow flycatcher, and also have the potential to provide for recovery of the species. Toward this end, the U.S. Marine Corps and the State of California have both worked with the Service to develop ecosystem-oriented conservation plans that the Service believes will be highly effective in providing for the conservation needs of the southwestern willow flycatcher at Camp Pendleton and in portions of San Diego and Orange counties. Unfortunately, due to imposed time constraints and lack of funding, at this time the Service is not able to undertake further analysis with regard to critical habitat designation although such analysis might ultimately negate the need for designation in areas such as these.

Issue 2: Designation of critical habitat would offer no additional protection above listing; critical habitat can only be designated for areas on which essential biological and physical features are currently found.

Service Response: The designation of critical habitat may provide some benefits to the southwestern willow flycatcher by identifying for the public areas important to the species' conservation and highlighting areas important to the species until a recovery plan is adopted, including habitat that is not presently occupied by flycatchers and that may require restoration efforts to support recovery. The areas included in this designation are believed to be justified as providing biological and physical features essential to the flycatcher's conservation. Nevertheless, the Service generally agrees that the protection afforded by the designation of critical habitat is marginal in comparison to the protective measures provided by the species' listing. Regardless of the perceived benefit of this designation, however, the Service is required to comply with the Court order requiring a final determination on designation within a specified time limit.

Issue 3: Critical habitat would not improve the status of the southwestern willow flycatcher because cowbirds, rather than habitat, are the limiting factor.

Service Response: The Service recognizes that cowbird parasitism is a major threat to the viability of the southwestern willow flycatcher. That threat is exacerbated by the small size and highly fragmented nature of extant riparian habitats. Habitat suitability for cowbirds, and thus cowbird abundance and rates of parasitism, appear to decrease as habitat size and extent increases, ostensibly because patches with higher ratios of interior to edge habitat are more difficult for cowbirds to penetrate. In addition, larger habitat patches should have more host species. Thus, increasing the size and extent of riparian habitat on a local scale should reduce the rate of cowbird parasitism on southwestern willow flycatchers by decreasing habitat suitability for the cowbird and by increasing the number of non-flycatcher host species that can be parasitized. In many of the small riparian stands inhabited by flycatchers the number of cowbirds may outnumber host species, including the flycatcher. In those areas cowbird management programs will be needed to increase flycatcher reproductive success in the short-term. The Service believes, however, that over the long-term the most effective strategy to reduce the rate and extent of cowbird parasitism is to reduce riparian habitat fragmentation on a regional scale and to vastly increase the size and extent of riparian habitat on a local scale.

Issue 4: The proposed critical habitat includes areas with little potential for appropriate habitat and omits areas with known flycatcher breeding groups or areas with high potential for occupancy by flycatchers.

Service Response: The Service received many comments from Federal, State, and private entities recommending deletions and additions to proposed critical habitat. In response to public comments, some areas that were included in the proposed rule were found to be proposed in error because they have little or no potential for flycatcher habitat, and were omitted from the final designation. These include: Approximately 5 miles of shoreline at Lake Isabella downstream of the South Fork Wildlife Area, removed due to a lack of potential for habitat to develop along the lakeshore (Kern County, CA); Peck's Lake, removed due to a lack of potential for habitat to develop around shoreline (Yavapai County, AZ); approximately 5 miles along the upper portion of Wet Beaver Creek, removed due to lack of potential for suitable habitat to develop (Yavapai County, AZ); approximately 14 miles along the upper portion of West Clear Creek, removed due to lack of potential for suitable habitat to develop (Yavapai County, AZ); approximately 20 miles along the Rio Grande, removed due to lack of potential for suitable habitat to develop (Bernalillo County, NM).

The Service did not consider omissions for other reasons or additions to the critical habitat proposed in 1993 because imposed time constraints and lack of resources made this impracticable. This does, not, however, preclude the Service from considering further omissions and additions to critical habitat for this species at some time in the future as resources allow.

Issue 5: Existing regulatory mechanisms and agency management plans targeted at listed species provide adequate protection.

Service Response: The Service agrees that some existing regulatory mechanisms and management plans provide conservation benefits to the flycatcher. As mentioned in Issue 1, the U.S. Marine Corps and the State of California have both worked with the Service to develop ecosystem-oriented conservation plans that the Service believes will be highly effective in providing for the conservation needs of the southwestern willow flycatcher at Camp Pendleton and in portions of San Diego and Orange counties. Although designation of critical habitat should not impose any additional restrictions on actions consistent with the management agreements in these areas now or in the future, they do not cover sufficient area to provide adequate protection for the species as a whole. Furthermore, the Service is obliged to comply with a Court order to designate critical habitat for the flycatcher.

Provisions of section 404 of the Clean Water Act do not specifically protect the southwestern willow flycatcher or its habitat, but do provide some protection to the aquatic and riparian ecosystems of which it is a part. Section 404 also provides for mitigation for destruction of these habitats, although even temporary destruction and subsequent replacement of important riparian habitat may adversely affect the southwestern willow flycatcher. Regardless of the possible conservation benefits of the Clean Water Act, however, this designation is required by Court order.

Issue 6: The Service is required to comply with the National Environmental Policy Act in designating critical habitat.

Service Response: An Environmental Assessment (EA) and a draft Finding of No Significant Impact (FONSI) have been prepared for this rule in accordance with 40 CFR 1501.3 (see following section entitled National Environmental Policy Act). The EA and FONSI are available upon request from the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** above).

Issue 7: Designation of critical habitat would result in loss of revenues that local communities derive from use of public lands; critical habitat will adversely affect State, Municipal, and private lands.

Service Response: Critical habitat only applies to Federal actions on Federal lands or Federally-permitted actions on private lands. The economic analysis provided in this final rule demonstrates that there will be no adverse economic effects above the effects that would result from the listing of the species.

Issue 8: Riparian habitats are in a constant state of change, making any boundaries established under critical habitat also subject to change; lateral boundaries of critical habitat do not meet regulatory requirements because they are difficult to interpret and change seasonally; the constituent elements of critical habitat for the southwestern willow flycatcher have not been adequately described.

Service Response: The upstream/downstream boundaries established with this final rule, to a limited extent, incorporated the dynamic nature of riparian habitats that commentors referred to and that is discussed under issue number two. The Service agrees, however, that the lateral boundaries of critical habitat are inadequate and do not incorporate the dynamic nature of riparian systems. For example, changes in the distribution of riparian habitats in response to natural flooding events, or changes in stream flow due to droughts, impoundments, etc., sometimes leave suitable habitat more than 100 meters from surface water. To alleviate this inadequacy, the lateral boundaries of critical habitat were established by the 100-year floodplain, which is delineated on maps available at county offices and the Federal Emergency Management Agency.

Issue 9: The Service is focusing management efforts for the southwestern willow flycatcher too narrowly on factors affecting the species only on its breeding grounds.

Service Response: The Service agrees that factors affecting the southwestern willow flycatcher during the non-breeding season could be playing a significant role in the status of this species. To that end the Service has supported work currently funded by the Bureau of Reclamation to identify the distribution of the southwestern willow flycatcher during the non-breeding season. If research demonstrates adverse effects outside of the United States, the Secretary has the authority under section 8 of the Act to provide assistance to foreign governments in developing management programs necessary for the conservation of the southwestern willow flycatcher. This opportunity, however, does not eliminate, reduce, or change the obligations of Federal agencies under sections 7 and 9 of the Act, nor does it change the obligations of citizens under section 9 of the Act.

Issue 10: The goal of the critical habitat designation is protection of riparian habitat, not protection of the flycatcher.

Service Response: Section 2(b) of the Act states, "(t)he purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section." The purpose established in section 2(b) of the Act explicitly recognizes the critical role of ecosystems and, therefore, habitat, in the protection of endangered species. In so far as the southwestern willow flycatcher is a neotropical migratory bird species that is dependent solely on riparian areas to carry out the portion of its life cycle devoted to breeding, the Service acknowledges and supports the concept of protecting habitat in order to conserve the southwestern willow flycatcher. However, the goal of the critical habitat designation for the southwestern willow flycatcher is to protect areas essential to the conservation of this species. Other riparian areas that were not found to be essential to the conservation of the flycatcher have been omitted from this final rule.

Paperwork Reduction Act

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

Economic Effects

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Secretary may exclude areas from critical habitat if the benefits of exclusion outweigh the benefits of including the area in critical habitat, unless failure to designate a specific area would result in extinction of the species. The economic analysis assists in making that determination by examining how the designation may affect Federal lands, and any non-Federal activity with some Federal involvement. Activities on private or State-owned lands that do not involve Federal permits, funding or other Federal actions are not restricted by the designation of critical habitat.

Economic effects caused by the listing of the flycatcher as endangered and by other statutes are the baseline upon which critical habitat is imposed. The analysis examines the incremental economic and conservation effects of the critical habitat addition. Economic effects are measured as changes in National income, and regional jobs and household income.

Fourteen counties in three States are affected by the designation of critical habitat: Cochise, Pima, Pinal, Yavapai, Gila, Coconino, and Apache counties in Arizona; Kern, Riverside, San Bernardino, and San Diego counties in California; and Catron, Grant, and Hidalgo counties in New Mexico. In total, nearly 964 river km (599 miles) are being designated as critical for the southwestern willow flycatcher. The percent of total length of rivers in each State affected by critical habitat designation is relatively small: 12.4 percent for Arizona; 0.5 percent for California; and 6.6 percent for New Mexico. A high percentage of public access to rivers and streams exists in all three States.

By focusing attention on a certain area, designating critical habitat may result in minor economic benefits provided directly by the species and indirectly by its habitat, including aesthetic or scenic beauty, biodiversity, ecosystem and passive use (existence) values. Quantitative or monetary values for such benefits are not now possible due to data limitations.

The Forest Service, Bureau of Land Management, Bureau of Reclamation, Marine Corps, and Army Corps of Engineers manage areas of proposed critical habitat for the flycatcher. The Corps of Engineers and other Federal agencies that may be involved with funding or permits for projects in the critical habitat areas may also be affected. Because the Service believes that virtually all "adverse modification" calls would also result in "jeopardy" calls under section 7 of the Act, designation of critical habitat for the flycatcher is not expected to result in any incremental restrictions on agency activities. Critical habitat designation will, therefore, result in no additional protection for the flycatcher nor any additional economic effects beyond those that may have been caused by listing and by other statutes. Additionally, all previously completed biological opinions would not require reinitiation to reconsider any critical habitat designated in this rulemaking.

If no Federal agency is involved in management, funding, or by other means of non-Federal areas with critical habitat for the flycatcher, they are not subject to the section 7 consultation process for critical habitat.

Economic effects caused by the listing of the flycatcher as endangered and by other statutes are the baseline upon which critical habitat is imposed. The analysis examines the incremental economic and conservation effects of the critical habitat addition. Economic effects are measured as changes in national income, and regional jobs and household income. Of the 14 counties where critical habitat is proposed, 9 would qualify as small businesses. However, because critical habitat designation is not expected to cause additional habitat restrictions in any biological opinions issued under the Act, there are no incremental economic effects attributable to the designation. A copy of the economic analysis and description of the exclusion process with supporting documents are included in the Service's administrative record and may be obtained by contacting the Service (see **ADDRESSES** section).

The Service reviewed the proposal to designate critical habitat for the flycatcher and the assessment of associated benefits and costs. Because the economic analysis identified no economic benefits from excluding any of the areas, the Service has made a determination to designate all of the 18 areas as critical habitat for the southwestern willow flycatcher.

In addition, the Service has determined that this rulemaking would not have a significant effect on a substantial number of small entities in the area, such as businesses, organizations and governmental jurisdictions, under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). This rulemaking was reviewed under Executive Order 12866.

Unfunded Mandates

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Civil Justice Reform

The Department has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

National Environmental Policy Act Compliance

An Environmental Assessment (EA) and a draft Finding of No Significant Impact (FONSI) have been prepared for the final rule to designate critical habitat for the southwestern willow flycatcher (*Empidonax traillii extimus*), in accordance with 40 CFR 1501.3. The EA and FONSI are available upon request from the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** above).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** above).

Author: The primary author of this final rule is Sam Spiller, Arizona Ecological Services Office (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201-4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11 (h) is amended by revising the "Critical habitat" entry for "Flycatcher, southwestern willow," under Birds, to read "17.95(b)'.

3. Section 17.95(b) is amended by adding critical habitat for the Southwestern willow flycatcher (*Empidonax traillii extimus*), in the same alphabetical order as this species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Southwestern Willow Flycatcher
(Empidonax traillii extimus)

California: Areas of land and water as follows:

1. Santa Ana River, Riverside and San Bernardino Counties: from Rio Road (T2S, R5W, no surveyed section but at 34° 59′ 00″ North, 117° 25′ 15″ West) downstream to Prado Flood Control Basin Dam (T3S, R7W, Section 20). Approximately 25 km (16 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.

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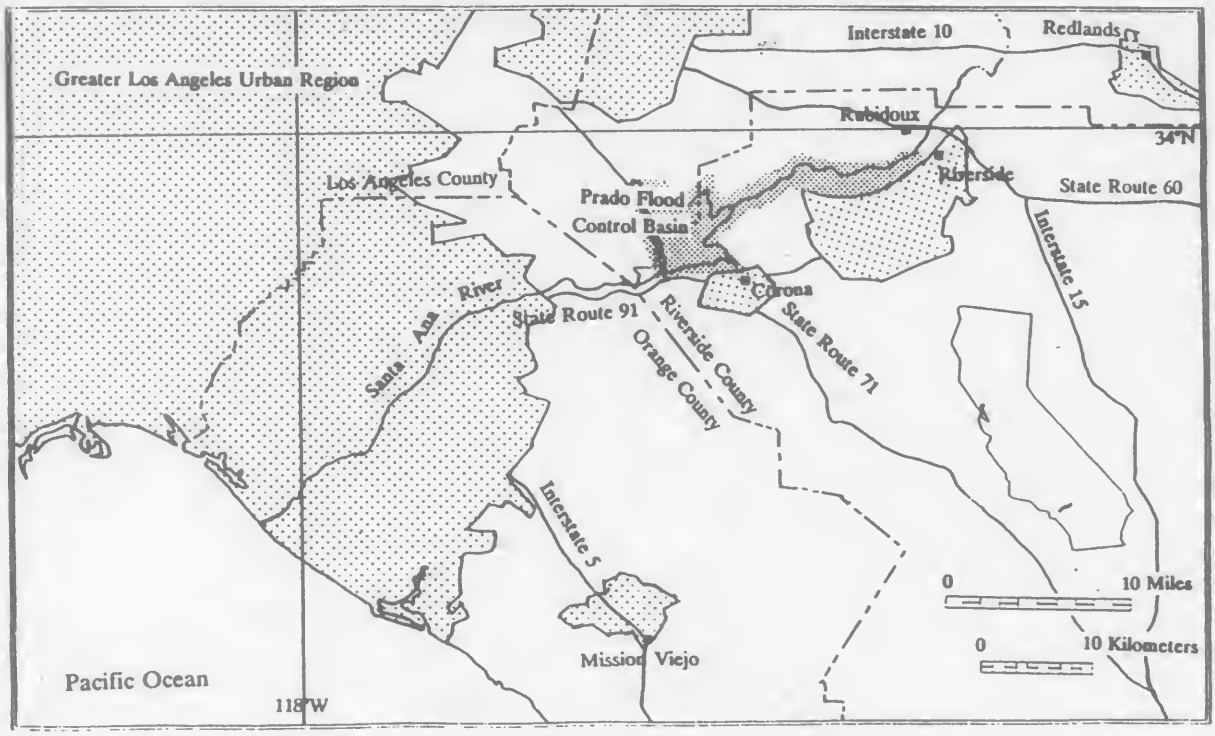
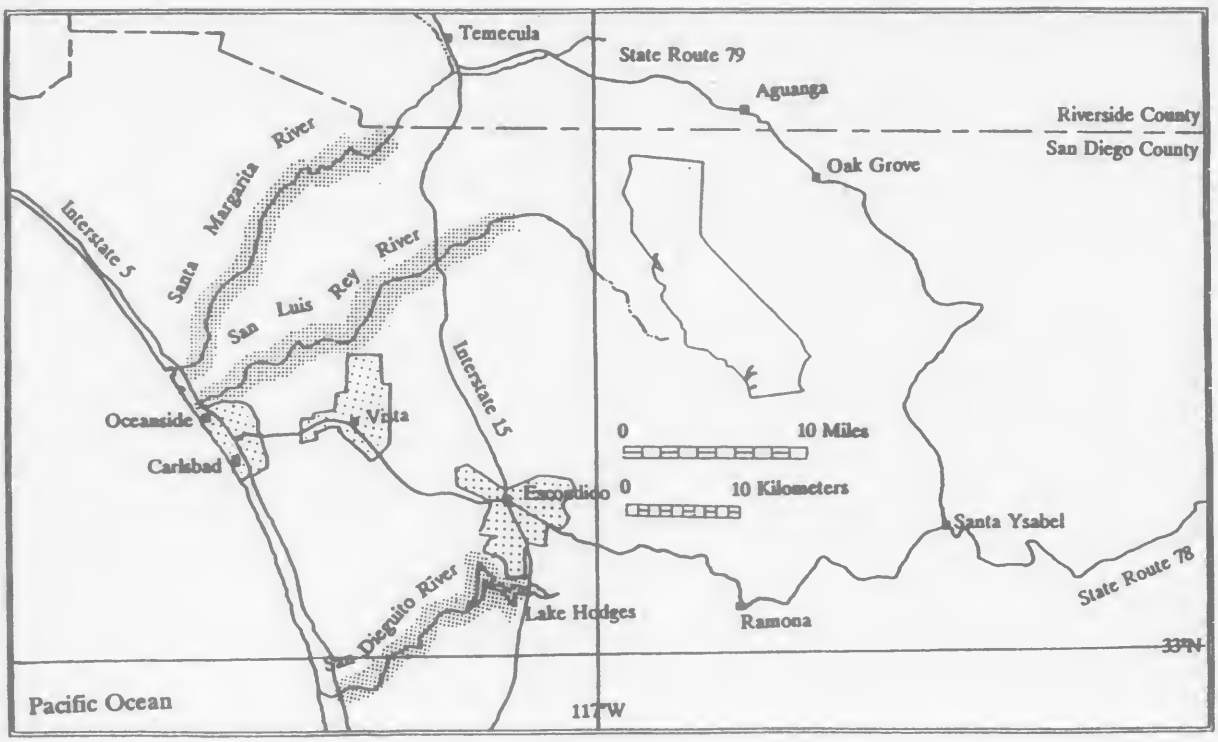


2. Santa Margarita River, San Diego County: from the unnamed trail at T8S, R3W, Section 34) downstream to northbound Interstate 5 (T11S, R5W, Section 19). Approximately 33 km (20 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.

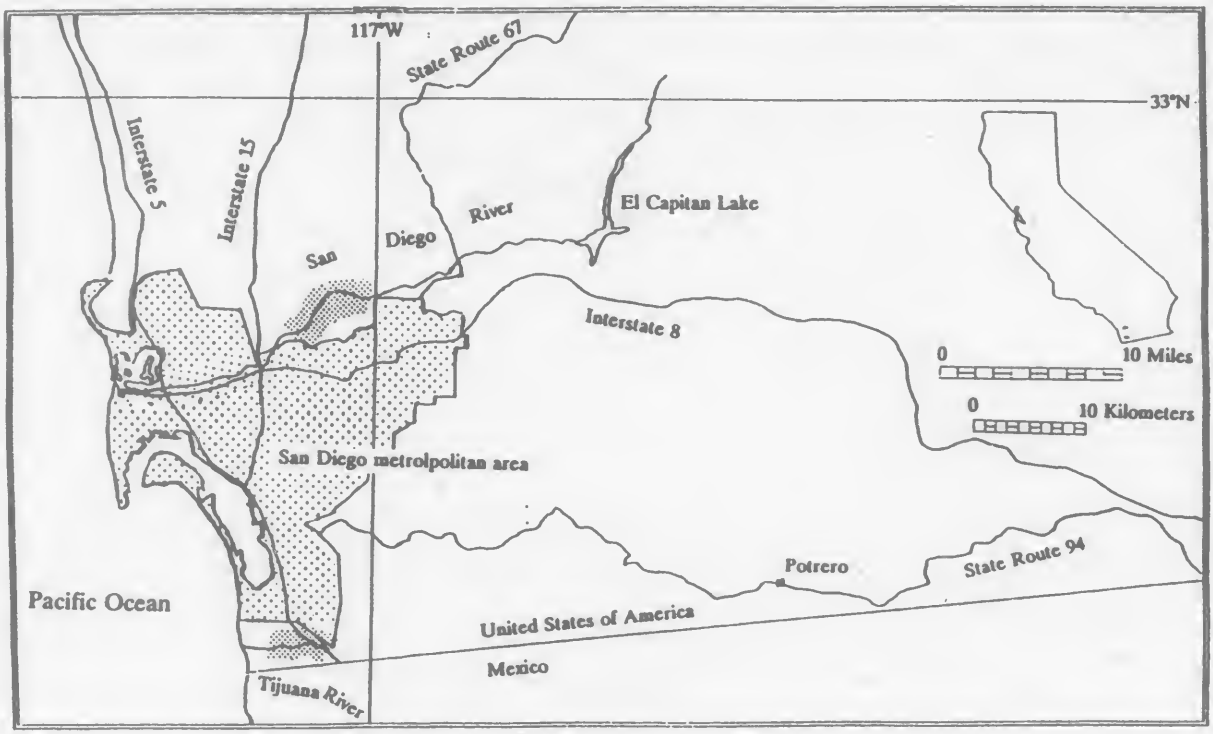
3. San Luis Rey River, San Diego County: from Mission Road (T9S, R2W, Section 27) downstream to northbound Interstate 5 (T11S, R5W, Section 22). Approximately 39 km (24 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.

4. San Diegito River, San Diego County: from southbound Interstate 15 (T13S, R2W, no section surveyed, but at 33° 3′ 45″ North, 117° 4′ 00″ West) downstream to northbound Interstate 5 (T14S, R4W, Section 12). Approximately 24 km (15 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.

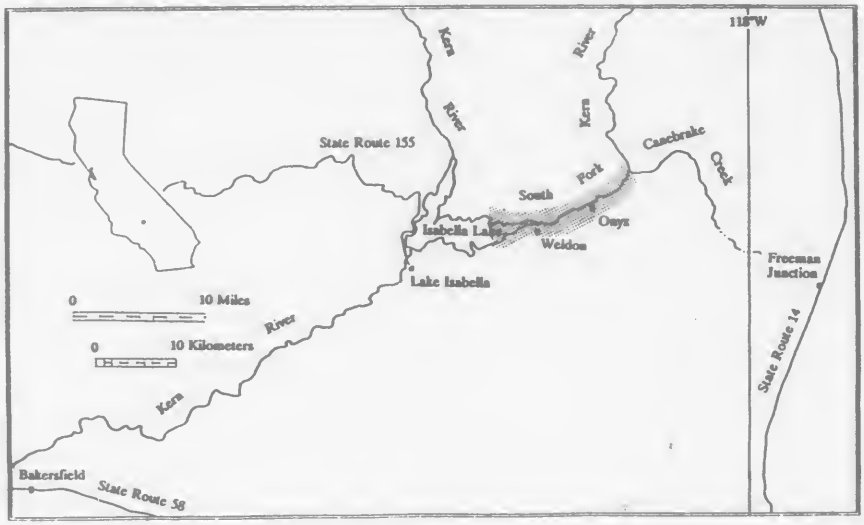


5. San Diego River, San Diego County: from Carlton Hills Boulevard (T15S, R1W, no section surveyed, but at 32° 50′ 45″ North, 117° 59′ 30″ West) downstream to the Second San Diego Aqueduct T15S, R2W, no section surveyed, but at 32° 49′ 30″ North, 117° 3′ 45″ West). Approximately 8 km (5.5 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.

6. Tijuana River, San Diego County: from Larsen Field (T19S, R2W, Section 1) downstream to the windmill at T19S, R2W, Section 4. Approximately 5.5 km (3.3 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.



7. South Fork of the Kern River, Kern County: from the confluence of Canebrake Creek (T25S, R36E, Section 30) downstream to a line running north-south between Lyme Dyke and Lime Point encompassing the South Fork Wildlife Area at the eastern end of Lake Isabella (T26S, R34E, Sections 13 and 14). Approximately 26 km (16 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.



Arizona: Areas of land and water as follows:

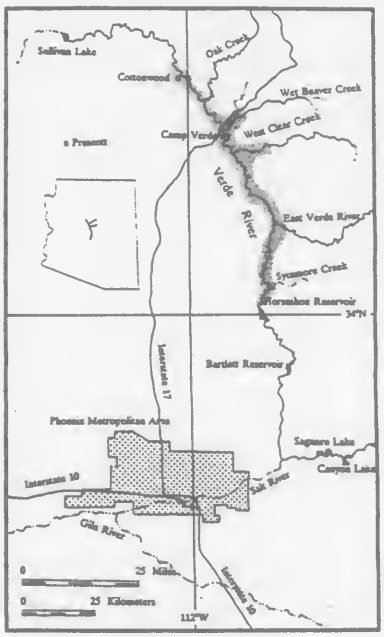
1. San Pedro River, Cochise County: from the Hereford Bridge (T23S, R22E, Section 9), downstream to eastbound Interstate 10 bridge at Benson (T17S R20E, Section 11). Approximately 87 km (54 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.

2. San Pedro River, Cochise, Pima and Pinal Counties: from the Gaging Station near Aguaja Canyon (T12S, R18E, Section 19), downstream to the confluence with the Gila River (T5S, R15E, Section 23). Approximately 106 km (66 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.

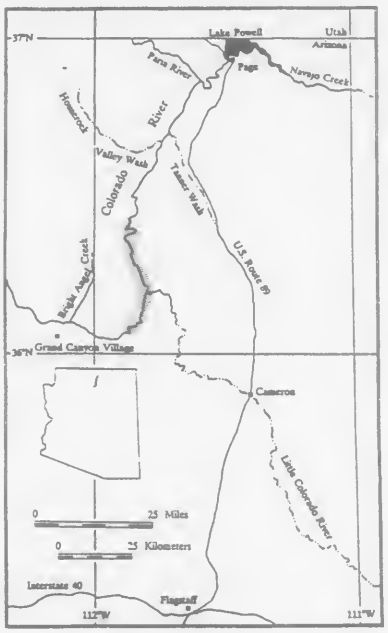
3. Verde River, Yavapai and Gila Counties: from Sob Canyon (T17N, R3E, Section 29) to its inflow into Horseshoe Reservoir (T8N, R6E, Section 15), including Tavasci Marsh and Ister Flat. Approximately 145 km (90 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.

4. Wet Beaver Creek, Yavapai County: from the gauging station upstream of the Beaver Creek Ranger Station (T15N, R6E, Section 24), downstream to the confluence of Beaver Creek and the Verde River (T14N, R5E, Section 30). Approximately 32 km (20 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.

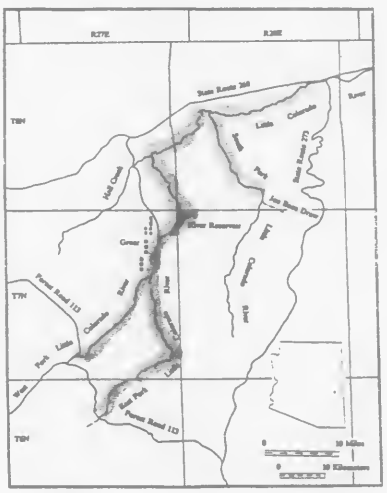
5. West Clear Creek, Yavapai County: from the section line dividing sections 18 and 17 in T13N, R6E downstream to the confluence with the Verde River (T13N, R5E, Section 17). Approximately 14 km (9 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.



6. Colorado River, Coconino County: from river mile 39 (T35N, R5E, Section 16) downstream to river mile 71.5 (T31N, R5E Section 8). (River mile 0 = Lee's Ferry). Approximately 52 km (32 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.

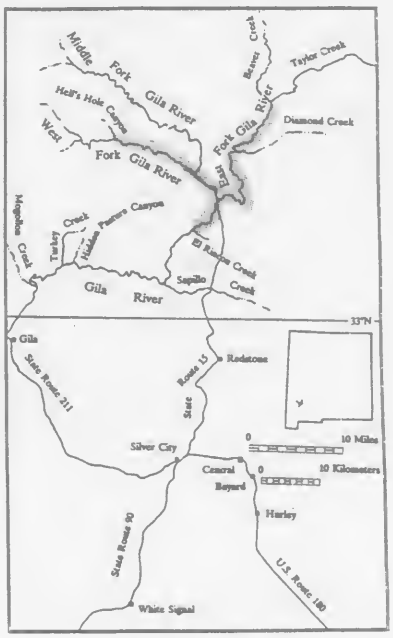


7. Little Colorado River, and the West, East, and South Forks of the Little Colorado River, Apache County: from the diversion ditch at T8N, R28E, Section 16, upstream to Forest Road 113 on the West Fork (T7N, R27E, Section 33), upstream to Forest Road 113 on the East Fork (T6N, R27E, Section 10), and upstream to Joe Baca Draw on the South Fork (T8N, R28E, Section 34). Approximately 48 km (30 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.



New Mexico: Areas of land and water as follows:

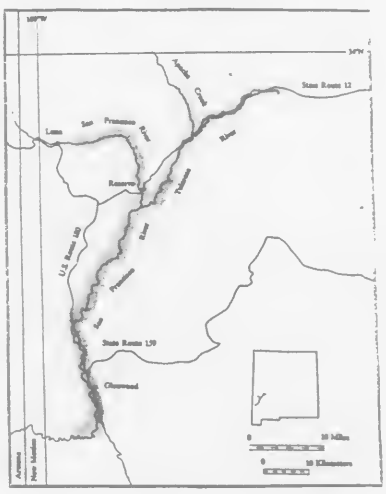
1. Gila River and the East and West Forks of the Gila River, Catron and Grant Counties: from El Rincon on the Gila River (T13S, R14W, S36) upstream to Hell's Hole Canyon on the West Fork of the Gila River T12S, R15W, S4), and upstream to the confluence of Taylor Creek and Beaver Creek on the East Fork of the Gila River (T11S, R12W, S17). Approximately 63 km (39 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.



2. Gila River, Grant and Hidalgo Counties: from the confluence of Hidden Pasture Canyon (T14S, R16W, Section 14) downstream to the confluence of Steeple Rock Canyon (T18S, R21W, Section 33). Approximately 90 km (56 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.

3. San Francisco River, Catron County: from the confluence of Trail Canyon (T6S, R20W, Section 4) downstream to San Francisco Hot Springs, near the confluence with Box Canyon (T12S, R20W, Section 23). Approximately 105 km (65 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.

4. Tularosa River and Apache Creek, Catron County: from the confluence of the Tularosa and San Francisco Rivers (T7S, R19W, Section 23) upstream, to the source of the Tularosa River near the continental divide (T4S, R15W, Section 33), and upstream on Apache Creek to the confluence with Whiskey Creek (T4S, R18W, Section 25). Approximately 60 km (37 miles). The boundaries include areas within the 100-year floodplain where thickets of riparian trees and shrubs occur or may become established as a result of natural floodplain processes or rehabilitation.



Dated: July 16, 1997.

Joseph E. Doddridge,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–19209 Filed 7–21–97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC61

Endangered and Threatened Wildlife and Plants; Final Rule To Extend Endangered Status for the Jaguar in the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) extends endangered status to the jaguar (*Panthera onca*) throughout its range under the authority of the Endangered Species Act of 1973, as amended. With this rule, the jaguar is now also listed as endangered in the United States, as well as in Mexico and Central and South America. In the United States, a primary threat to this species is illegal shooting. A minimum of 64 jaguars were killed in Arizona since 1900. The most recent individual killed in Arizona was in 1986.

Loss and modification of the jaguar's habitat are likely to have contributed to its decline. While only a few individuals are known to survive in the United States (Arizona and New Mexico), the presence of the species in the United States is believed to be dependent on the status of the jaguar in northern Mexico. Documented observations are as recent as 1996. Critical habitat was found to not be prudent and therefore is not being designated.

DATES: Effective August 21, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021.

FOR FURTHER INFORMATION CONTACT: Sam Spiller, Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section) (telephone 602/640–2720; facsimile 602/640–2730).

SUPPLEMENTARY INFORMATION:

Background

The jaguar (*Panthera onca*) is the largest species of cat native to the Western Hemisphere. Jaguars are muscular cats with relatively short, massive limbs and a deep-chested body. They are cinnamon–buff in color with many black spots; melanistic forms are also known, primarily from the southern part of the range. Its range in North America includes Mexico and portions of the southwestern United States (Hall 1981). A number of jaguar records are known from Arizona, New Mexico, and Texas. Additional reports exist for California and Louisiana. Records of the jaguar in Arizona and New Mexico have been attributed to the subspecies *Panthera onca arizonensis*. The type specimen of this subspecies was collected in Navajo County, Arizona, in 1924 (Goldman 1932). Nelson and Goldman (1933) described the distribution of this subspecies as the mountainous parts of eastern Arizona north to the Grand Canyon, the southern half of western New Mexico, northeastern Sonora, and, formerly, southeastern California. The records for Texas have been attributed to *Panthera onca veraecrucis*. Nelson and Goldman (1933) described the distribution of this subspecies as the Gulf slope of eastern and southeastern Mexico from the coast region of Tabasco, north through Vera Cruz and Tamaulipas, to central Texas.

Swank and Teer (1989) indicate that the historical range of the jaguar includes portions of the States of Arizona, New Mexico, Texas and Louisiana. These authors consider the current range to occur from central Mexico through Central America and into South America as far as northern Argentina. They state that the United States no longer contains established breeding populations, which probably disappeared in the 1960's. They also maintain that the jaguar prefers a warm, tropical climate, is usually associated with water, and is only rarely found in extensive arid areas.

Brown (1983) presented an analysis suggesting there was a resident breeding population of jaguars in the southwestern United States at least into the 20th century. The Service (U.S. Fish and Wildlife Service 1990) recognizes that the jaguar continues to occur in the American Southwest, at least as an occasional wanderer from Mexico.

The life history of the jaguar has been summarized by Nowak (1991) and Seymour (1989), among others. Jaguars breed year-round range-wide, but at the southern and northern ends of their range there is evidence for a spring breeding season. Gestation is about 100 days; litters range from one to four cubs (usually two). Cubs remain with their mother for nearly 2 years. Females begin sexual activity at 3 years of age, males at 4. Studies have documented few wild jaguars more than 11 years old.

The list of prey taken by jaguars range-wide includes more than 85 species (Seymour 1989), such as peccaries (javelina), capybaras, pacas, armadillos, caimans, turtles, and various birds and fish. Javelina and deer are presumably mainstays in the diet of jaguars in the United States and Mexico borderlands.

Jaguars are known from a variety of habitats (Nowak 1991, Seymour 1989). They show a high affinity to lowland wet habitats, typically swampy savannas or tropical rain forests. However, they also occur, or once did, in upland habitats in warmer regions of North and South America.

Within the United States, jaguars have been recorded most commonly from Arizona, but there are also records from California, New Mexico, and Texas, and reports from Louisiana. Currently there is no known resident population of jaguars in the United States, though they still occur in northern Mexico.

Arizona

Goldman (1932) believed the jaguar was a regular, but not abundant, resident in southeastern Arizona. Hoffmeister (1986) considered the jaguar an uncommon resident species in Arizona. He concluded that the reports of jaguars between 1885 and 1965 indicated that a small but resident population once occurred in southeastern Arizona. Brown (1983) suggested that the jaguar in Arizona ranged widely throughout a variety of habitats from Sonoran desert scrub upward through subalpine conifer forest. Most of the records were from Madrean evergreen-woodland, shrub-invaded semidesert grassland, and along rivers (Girmandonk 1994).

The most recent records of a jaguar in the United States are from the New Mexico/Arizona border area and in southcentral Arizona, both in 1996, and confirmed through photographs. In 1971, a jaguar was taken east of Nogales, Arizona, and, in 1986, one was taken from the Dos Cabezas Mountains in Arizona. The latter individual reportedly had been in the area for about a year before it was killed (Ron Nowak, Fish and Wildlife Service, pers. comm., 1992).

The Arizona Game and Fish Department (1988) cited two recent reports of jaguars in Arizona. The individuals were considered to be transients from Mexico. One of the reports was from 1987 from an undisclosed location. The other report was from 1988, when tracks were observed for several days prior to the

treeing of a jaguar by hounds in the Altar Valley, Pima County.

An unconfirmed report of a jaguar at the Coronado National Memorial was made in 1991 (Ed Lopez, Coronado National Memorial, pers. comm., 1992). In 1993, an unconfirmed sighting of a jaguar was reported for Buenos Aires National Wildlife Refuge (William Kuvlesky, Fish and Wildlife Service, *in litt.*, 1993). The following are historical accounts of jaguar occurrence:

California. Merriam (1919) summarized several accounts of jaguars, from various locations in California, which were obtained from documents published between 1814 and 1860. Strong (1926) provided evidence the Cahuilla Indians of the Coachella Valley and San Jacinto and Santa Rosa Mountains of southern California were familiar with the jaguar. Nowak (1975) mentioned reports of jaguars in the Tehachapi Mountains from 1855, and the last known individual from California which was killed near Palm Springs in 1860 (Strong 1926). Nowak speculated the animal may have been a breeding individual.

Louisiana. Nowak (1973) speculated on the occurrence of jaguars east of Texas. Several early accounts mentioned jaguars and tigers. He cited Baird (1859) who believed that specimens had been taken from Louisiana. Nowak also discussed the killing of what was probably a jaguar near New River, Ascension Parish, Louisiana in 1886. Lowery (1974) mentioned this killing and included the jaguar in the fauna of Louisiana on a provisional basis.

New Mexico. Barber (1902) speculated that jaguars made their way into the Mogollon Mountains of New Mexico by ascending the Gila River. Bailey (1931) suggested that jaguars seemed to be native in southern New Mexico but were regarded as wanderers from across the United States-Mexico border. He listed nine reports of jaguars in New Mexico from 1855 to 1905. Brown (1983) stated that the last record from New Mexico was from 1905. Nowak (1975) mentioned reports of jaguars along the Rio Grande from as late as 1922. Halloran (1946) reported that dogs "jumped" a jaguar in the San Andres Mountains in 1937. Findley *et al.* (1975) stated that jaguars once occurred as far north as northern New Mexico.

Texas. Bailey (1905) stated that the jaguar was once reported as common in southern and eastern Texas but had become extremely rare. Nowak (1975) believed that an established population once occurred in the dense thickets along the lower Nueces River and northeast to the Guadalupe River. He suggested that jaguars probably continued to wander from Mexico into the brush country of the southernmost part of the State. However, brush clearing has possibly reduced chances for reestablishment of the species in Texas.

Mexico. Leopold (1959) believed the distribution of the jaguar in Mexico included the tropical forests of southeastern Mexico, the coastal plains to the mouth of the Rio Grande on the Gulf of Mexico side, and the Sonoran foothills of the Sierra Madre Occidental on the Pacific side. The highest densities of jaguars were found along heavily forested flatlands and foothills of southern Sinaloa, the swamps of coastal Nayarit, the remaining uncut forests along the Gulf coast as far east as central Campeche, and the great rain forests of northern Chiapas. He indicated that occasional wandering individuals were found far from these areas and that some had followed tropical gorges far into the mountains. He believed that jaguars had traveled up the Brazos, Pecos, Rio Grande, Gila, and Colorado Rivers on their northern movements. He mentioned a 1955 record of a jaguar near the southern tip of the San Pedro Martir range, Baja California. Leopold asserted that this individual was 500 miles from regularly occupied jaguar habitat.

Swank and Teer (1989) described the distribution of the jaguar in North America as a broad belt from central Mexico to Central America. They found that the most northerly established populations, as reported by Mexican officials, were in southern Sinaloa and southern Tamaulipas.

Brown (1991) did not believe the jaguar was extirpated from northern Mexico. Although jaguars were considered relatively common in Sonora in the 1930's and 1940's, he cited a population about 800 miles south of the United States-Mexico border as the most northern officially reported. However, Brown suggested that there may be more jaguars in Sonora than are officially reported. He mentioned reports of two jaguars which were killed in central Sonora around 1970. He also discussed assertions by the local Indians that both male and female jaguars still occurred in the Sierra Bacatete about 200 miles south of Arizona. Brown speculated that if a reproducing population of jaguars is still present in these mountains, it may be the source of individuals which travel northward through the Sierra Libre and Sierra Madera until they reach Arizona. Nowak (pers. comm., 1992) reiterated that as late as 1987, the species was still considered common in the Sierra Bacatete near Guaymas, Sonora.

Brown (1989) reported that biologists from Mexico have stated that at least two jaguars have been killed in Chihuahua. In 1987, Nowak (pers. comm., 1992) claimed that jaguars were still regularly present along the Soto la Marina River of central Tamaulipas, which is about 150 miles from the southern tip of Texas. He also hypothesized that jaguars may be entering Arizona from Mexico due to habitat destruction in Sonora. Large stretches of natural forest were cleared in central Tamaulipas. In Arizona, by contrast, jaguar prey populations have increased, and large tracts of brush and canyon woodland are still available to provide cover for jaguars.

Previous Federal Actions

Prior to this final rule, the jaguar was listed as endangered from the United States and Mexico border southward to include Mexico and Central and South America (37 FR 6476, March 30, 1972; 50 CFR 17.11, August 20, 1994). The species was originally listed as endangered in accordance with the Endangered Species Conservation Act of 1969 (ESCA). Pursuant to the ESCA, two separate lists of endangered wildlife were maintained, one for foreign species and one for species native to the United States. The jaguar appeared only on the List of Endangered Foreign Wildlife. In 1973, the Endangered Species Act (Act) superseded the ESCA. The foreign and native lists were replaced by a single "List of Endangered and Threatened Wildlife," which was first published in the **Federal Register** on September 26, 1975 (40 FR 44412).

On July 25, 1979, the Service published a notice (44 FR 43705) stating that, through an oversight in the listing of the jaguar and six other endangered species, the United States populations of these species were not protected by the Act. The notice asserted that it was always the intent of the Service that all populations of the seven species deserved to be listed as endangered, whether they occurred in the United States or in foreign countries. Therefore, the notice stated that the Service intended to take action as quickly as possible to propose the United States populations of these species for listing.

On July 25, 1980, the Service published a proposed rule (45 FR 49844) to list the jaguar and four of the other species referred to above in the United States. The proposal for listing the jaguar and three other species was withdrawn on September 17, 1982 (47 FR 41145). The notice issued by the Service stated that the Act mandated

withdrawal of proposed rules to list species which have not been finalized within 2 years of the proposal.

On August 3, 1992, the Service received a petition from the instructor and students of the American Southwest Sierra Institute and Life Net to list the jaguar as endangered in the United States. The petition was dated July 26, 1992. On April 13, 1993 (58 FR 19216), the Service published a finding that the petition presented substantial information indicating that listing may be warranted, and requested public comments and biological data on the status of the jaguar. On July 13, 1994 (59 FR 35674), the Service published a proposed rule to extend endangered status to the jaguar throughout its range.

On September 8, 1994, the Service received a petition from the Trans Texas Heritage Association to list the jaguar as extinct in the United States. The Service responded to the petitioner on December 5, 1994, that the request was not a petitionable action.

On April 10, 1995, Congress enacted a moratorium prohibiting work on listing actions (Public Law 104–6) and eliminated funding for the Service to conduct final listing activities. The moratorium was lifted on April 26, 1996, by means of a Presidential waiver, at which time limited funding for listing actions was made available through the Omnibus Budget Reconciliation Act of 1996 (Public Law No. 104–134, 100 Stat. 1321, 1996). The Service published guidance for restarting the listing program on May 16, 1996 (61 FR 24722). The listing process for the jaguar was resumed in September 1996, when the Southwest Center for Biological Diversity filed a law suit and motion for summary judgment for the Secretary to finalize the listing for the jaguar and four other species.

On January 15, 1997, the Arizona Game and Fish Department and New Mexico Department of Game and Fish requested that the Service reopen the jaguar public comment period for 70 days so that they could finalize and submit an interstate/intergovernmental "Conservation Assessment and Strategy for the Jaguar in Arizona and New Mexico" and "Memorandum of Agreement for the Conservation of the Arizona Jaguar." These documents, collectively referred to as the Conservation Agreement (CA), reflect the commitments of the agencies to expedite the development and implementation of conservation measures needed for the Arizona jaguar in the United States.

The Service considered the CA as new information relevant to the listing determination. The comment period was reopened for a total of 15 days, from January 31 through February 14, 1997 (62 FR 4718). The completion date for the final listing determination was reassigned to April 1, 1997. On March 14, 1997, the U.S. District Court for the District including Arizona ordered the Service to list the jaguar as endangered no later than 120 days from the date of the order. On July 3, 1997, the Court clarified that order, noting that the 120-day timeframe was provided for the Service to make a decision as to whether or not to extend endangered status for the jaguar in the United States.

Summary of Comments and Recommendations

In the July 13, 1994, proposed rule (59 FR 35674) and associated notifications, all interested parties were requested to submit factual reports or information that might bear on whether or not the jaguar should be listed. The comment period originally closed on September 12, 1994, but was reopened from November 15 to December 14, 1994 (59 FR 53627; October 25, 1994), to allow submission of additional comments and public hearings. Appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in Arizona in the Arizona Republic, Phoenix Gazette, Arizona Daily Star, Tucson Citizen, and Green Valley News/Sun; in New Mexico in the Albuquerque Journal, Albuquerque Tribune, Las Cruces Sun-News, Santa Fe New Mexican, Alamogordo Daily News, Defensor Chieftain, and Silver City Daily Press and Independent; and in Texas in the Corpus Christi Caller-Times and The McAllen Monitor. The inclusive dates of publication were July 29 to August 3 for the initial comment period. The inclusive dates of publication for the comment period extension and public hearings were November 11 to November 15 and did not include the Green Valley News but did include the El Paso Times/Herald Post.

Public hearings were requested by the Cochise County (Arizona) Planning Department, the Board of Supervisors of Apache County (Arizona), the Eastern Arizona Counties Organization, the County of Otero (New Mexico), and the Texas Wildlife Association. The Service conducted three public hearings. Interested parties were contacted and notified of the hearings. A notice of the hearing dates and locations was published in the **Federal Register** on October 25, 1994 (59 FR 53627). Approximately 60 people attended the hearings. About 15 people attended the hearing in Safford, Arizona, 10 in El Paso, Texas, and 35 in Weslaco, Texas. Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

Upon resumption of the listing process following the listing moratorium, a third public comment period was opened, January 31, 1997, through February 14, 1997. Notice of this reopening of the comment period was published between January 31, 1997 and February 8, 1997 (62 FR 4718). Newspaper notices inviting public comment were published in Arizona in the Green Valley News, Arizona Daily Star (Tucson), Tucson Citizen, and Arizona Republic (Phoenix); in Texas in the Corpus Christi Caller Times, Las Cruces Sun-News, The Monitor (McAllen), and El Paso Times/Herald; and in New Mexico in the Albuquerque Journal, Albuquerque Tribune, Silver City Daily Press, Defensor Chieftain (Socorro), Alamogordo Daily News, and Santa Fe New Mexican. No additional formal public meetings were held during this period.

A total of 266 written comments were received during all open comment periods. The listing proposal was supported by 185; 43 opposed the proposed listing; 31 supported the CA in lieu of listing, and 7 either commented on information in the proposed rule but expressed neither support nor opposition, provided additional information only, or were non-substantive or irrelevant to the proposed listing. In addition, a "petition" to place the jaguar on the endangered species list included 115 signatures.

Oral or written comments were received from 21 parties at the hearings. Four supported listing, 15 opposed listing, and 2 expressed neither support nor opposition, provided additional information only, or provided comments that were nonsubstantive or irrelevant to listing.

In addition to the public comments, the Service sought out peer review from three independent scientists. Two of the three peer reviewers responded. A discussion of their comments follow the discussion of public comments and Service responses below.

Written comments and oral statements presented at the public hearings and received during the comment periods are incorporated into this rule as appropriate and/or are addressed in the following discussion of issues and responses. Comments of a similar nature or point are grouped into a number of general issues. These issues

and the Service's response to each are discussed below.

Issue 1: The jaguar is not native to the United States. The assumption by the Service that the historical range includes the United States is not borne out by the historical record. The United States was merely peripheral to the historic range. The species was never more than wandering individuals that occasionally crossed the border into the United States. The native jaguar is extirpated from the United States. Only the State of Arizona has had alleged reports of jaguars. No breeding population of the jaguar exists in the United States. The likelihood of establishing a breeding population would be impossible because of previous habitat modification and distances of breeding populations from the United States. Suitable habitat, even for random wanderings, no longer exists. That is why visits were rare in the 1900's and why the visits resulted in the demise of the stray. It is incumbent upon the Service to provide evidence that the jaguar was a breeding species in the United States.

Service response: As discussed in the "Summary of Factors Affecting the Species," the Service believes that the jaguar is native to the United States. The evidence strongly indicates that the historical range of the jaguar included portions of the southwestern United States. The jaguar is not extirpated from the United States as indicated by continuing reports and documentation of individuals in Arizona. The most recent observation was made in late 1996 from Arizona and New Mexico.

The issue of whether a breeding population is wholly supported within the United States is not relevant. The fact that individuals occur in the United States warrants their consideration for listing, evaluation of relevant threats, and development of appropriate conservation considerations.

Issue 2: The Service should list the jaguar as extinct in the United States and herewith is a petition for such a finding. Another commenter stated the actual scientific evidence that either subspecies of jaguar still exists is lacking. Another commenter stated there appears to be no evidence of subspecies identification of jaguars for California, Louisiana, New Mexico, or Mexico.

Service response: As discussed in the section regarding previous Federal action, the Service responded to the petition to list the jaguar as extinct in the United States in a letter dated December 5, 1994 (John Rogers, Fish and Wildlife Service, *in litt.*, 1995). In that letter, the Service stated that it does not add species to the list of endangered and threatened wildlife and plants as extinct, and therefore, the Service believed that the request was not a petitionable action.

As discussed above, there are two subspecies that are known from, and may occur in, the United States. The reports and records of jaguars in Arizona, California, and New Mexico are attributable to *Panthera onca arizonensis*. The type locality for this subspecies is in Navajo County, Arizona. The reports and records of jaguars in Louisiana and Texas are attributable to *P. o. veraecrucis*. Although the subspecies designation of the jaguar is not relevant to the listing proposal, the Service has confirmed that *P. o. arizonensis* is in Arizona; the Service believes that *P. o. veraecrucis* may be extant in Texas.

Issue 3: There are no scientifically valid records to support the idea that jaguars existed in California in recent centuries. No post-Pleistocene remains have been collected in California, nor in the Colorado River corridor from northern Arizona to the Gulf of California. None of the purported sightings in those areas were made by biologists or reputable naturalists. Early 19th century references in central California were based on hearsay or misidentification. The purported sightings in southern California are not reliable. It is conceivable that individuals wandered into California from Arizona or Mexico historically, given their long-range dispersal ability. However, such events would have been rare.

Service response: Available information indicates that California was part of the historical range of the jaguar, but no conclusive data exist. The California Department of Fish and Game (R. Jurek, pers. comm. 1996) does not accept these records as valid. Regardless, this rule extends endangered status to the jaguar in the United States throughout its range. Thus, whether or not California is part of the historical range, jaguars that may occur there are protected by the Act.

Issue 4: A commenter stated that most of the accounts in the proposal are anecdotal. Another stated there were discrepancies in the number of jaguars taken or killed in Arizona and that it is incumbent upon the Service to provide documentation for the information presented in the proposed rule.

Service response: The Service has carefully evaluated the information available regarding the jaguar for accuracy and relevance, whether anecdotal or not. The Service has addressed any discrepancies it has perceived and made changes where appropriate in this final rule. Many accounts of jaguar occurrence are from the historical literature and field accounts. Reconciling historical information is often complex, so the Service has tried to use the best information available, relying primarily on those aspects of the data which are best substantiated. Finally, this rule includes updated information that definitively documents jaguar occurrences as recently as 1996.

Issue 5: One commenter stated that listing of the jaguar will lead to efforts to reintroduce the species. Another commenter stated that until the encroachment of people into these predatory animals' habitat can be stopped, it is not ethical to reintroduce a listed species. Furthermore, there are no areas big enough for reintroduction. Alternatively, another commenter stated the jaguar should be reintroduced in Texas. Places to start should include the Rio Grande River, perhaps in the Big Bend area. The jaguar is a top predator in the food chain and would provide biological control of various ungulates and rodents. The Service should begin a public education program to protect the jaguar and break ground on reintroduction. Another commenter was particularly interested in the prospect of reintroduction of the jaguar to California and other States. Another commenter stated that proper planning is needed for reintroduction.

Service response: Depending on the species involved and the situation it faces, reintroduction may or may not be a viable means to reach recovery. The Service has no plans for reintroduction of the jaguar anywhere in the United States. If reintroduction is contemplated at any time in the future it would be the subject of a separate rulemaking.

Issue 6: None of the jaguars reported taken in recent times were taken as a result of legal, licensed, sport hunting. Thus, the jaguars reported taken were poached and not hunted.

Service response: The accuracy of this statement would depend on the wildlife laws and regulations that were in effect at the time all of the known jaguars were taken. However, the Service acknowledges that the wording in the proposed rule could have been misconstrued to mean jaguars are victims of legal hunting. The appropriate corrections have been made in the text of the final rule.

Issue 7: Property rights may be abridged by this action in the States considered by the Service to be part of the historical range. Activities of the Service are adversely affecting people throughout the State of Texas, with

little, if any, benefit to the species. The proposed rule is seen as another attempt to further restrict legal hunting and predator control activities. Frivolous listings violate citizens' 9th and 10th amendment rights. Another commenter stated listing would require protection of the jaguar, thereby violating livestock owner's 5th and 14th amendments and civil rights. Will landowners not be subject to aerial inspection? Will the Service not be subject to lawsuits from the Humane Society? Possible acquisition of private property to create habitat for nonexisting or reintroduced jaguars would cause great loss to livestock and all other wild animals in south Texas. Listing of other species (Mexican spotted owl) has resulted in affecting other industries (logging) and actually resulted in further endangering the species. If the jaguar is listed, Federal agencies must comply with section 7 of the Act. Activities that may be affected are clearing of habitat, destruction of riparian areas, fragmentation or blocking of corridors that jaguars may use to cross from Mexico into the United States, and any trapping or animal control activities designed to target the jaguar or other large predators. This is an outrageous blatant attack on the agricultural economies of the States involved. Trapping and animal damage control activities designed to target large predators should not be victims of the listing of the jaguar. These programs have a legitimate function and should not be destroyed on behalf of a phantom species.

Service response: Under the Act, listing of species must be considered only on the basis of the best biological information available. Listing decisions cannot be made on the basis of economic factors or possible problems or conflicts that may arise from compliance with section 7 and 9 of the Act. Once listed, however, the Service strives to recover threatened and endangered species in ways that minimize impacts on industry or private citizens. Further discussion of activities that may or may not violate the Act are discussed under the Available Conservation Measures section.

Issue 8: No scientific information has been provided to support the argument that the jaguar requires protection in the United States. The proposed rule fails to demonstrate (under the listing factors) that the species is endangered in the United States.

Service response: The Service believes that the information regarding the threats to the jaguar in the United States discussed under the five factors indicates that the species merits listing.

Issue 9: Jaguars that occur in the United States do not possess the genetics needed to enhance the breeding population.

Service response: The Service does not possess relevant information regarding the genetic status of the jaguar in the United States. However, the genetic contribution of all individuals of a declining species may be of great importance. The listing does not depend on the value of the genetic importance of the individuals. However, if, for example, the jaguar was known to suffer from genetic diseases, that could be considered as a factor to list the species.

Issue 10: It would be a mistake to select boundaries of protected areas based on the conditions that existed 50–100 years ago. What is the basis for stating that clearing of habitat may affect the jaguar? The majority of records were from the turn of the century when there was very little of the current mesquite infestation. It is incumbent upon the Service to provide evidence that riparian areas are being destroyed anywhere in the Southwest. If jaguar habitat stretches from 2,000 to 9,000 feet of elevation, a vast swath of both Arizona and New Mexico would be subject to review.

Service response: Under this listing action, the Service is not setting any boundaries for protected areas. As a result of this action, the species will be protected under the Act throughout its entire range.

Clearing of habitat could affect jaguars either directly or through effects on its prey. Although listing of the jaguar does not hinge on loss of riparian areas that may be used by jaguars, such loss has occurred and is continuing in the Southwest. As outlined in other sections of this rule, the available scientific literature indicates that jaguars do rely on riparian areas for habitat and movement corridors. However, very little is actually known about the habitat requirements and movement corridors for the jaguar in the United States at the northern periphery of its range. The Service agrees that large areas may have to be considered when evaluating effects of activities on the jaguar. However, very localized activities may actually be judged to have less of an effect on jaguars than if jaguars occupied very narrow habitat areas. As discussed in the Available Conservation Measures section, the Service anticipates few projects will be reviewed under section 7 of the Act because jaguars can be expected to occur in few areas.

Issue 11: In Texas, the jaguar is already protected by the State's endangered species law. The State can seek civil restitution for wildlife losses due to intentional harm or negligence, with the current replacement cost for a jaguar being over $7,000. It is highly suspect whether Federal protection would be additive, given the number of Texas game wardens (more than 450) and the handful of Federal agents. The Service refuses to recognize any State regulation as adequate, preferring to increase the burden of Federal regulations on all States involved. Protection of the species from the threat of shooting does not require Federal listing; it can be accomplished through hunting regulations and other means. New Service policies provide for increased emphasis on working with State agencies. Texas Wildlife and Parks Department (TWPD) will undertake to develop an interstate cooperative effort similar to the one for the swift fox. If the Service accepts this strategy, it will have the full support and cooperation of TWPD. Another commenter suggested that instead of listing, the Service should work with the States to get their laws strengthened.

Service response: As discussed under Factor D, the penalties for violation of the Act are much stronger than any current State provisions. The Service believes that such protection provided by the Act is appropriate for the jaguar. The Service understands that despite an offered $4,000 reward, the Arizona Game and Fish Department encountered difficulties in obtaining information relevant to a suspected killing of a jaguar in Arizona. In addition to the take prohibition, listing the species under the Act will provide other protection as well (See Available Conservation Measures). In addition, listing provides an appropriate range-wide perspective when considering the species' recovery needs. In absence of other regulatory mechanisms that will adequately protect the jaguar, the Service believes that listing is warranted.

Issue 12: The Service is precluded from including the jaguar in the list of United States endangered species because the proposal to list was not acted upon in a timely manner by the Service pursuant to the proposal to list in 1980 (45 FR 49844). The Service failed to complete the listing process in 1982, thereby requiring withdrawal of the proposal. The Service should be precluded from the current proposed action based on the Service's earlier oversight and omissions.

Service response: As discussed under Previous Federal Actions, the Service did propose to list the jaguar in the United States in 1980. The proposal was withdrawn in 1982 in accordance with the regulations under the Act in place at that time. That proposal and

withdrawal are not related to the present proposal and do not preclude the Service from proposing or finalizing the current action.

Issue 13: There is no benefit to the species from the proposed rule. It is apparent that the intent of the rule is to prohibit certain practices such as trapping and animal damage control within the States involved and to extend Federal control.

Service response: The fact that jaguars will be afforded the protections of the Act in the United States is clearly a benefit to the species. Prohibition of practices that affect the jaguar is not the intent of this listing. However, some activities could be affected by the listing, as discussed under Available Conservation Measures.

Issue 14: Commenters suggested that livestock losses to jaguars will occur. Jaguars will jeopardize the recreational industry in the Gila Wilderness. Balance of wildlife and the human factor would be completely destroyed. Several commenters expressed uneasiness with the idea of facing or being stalked by a jaguar. Listing would pose a threat to the general public safety, which Arizona counties are charged to protect under Arizona Revised Statutes, Section 11–806(b).

Service response: While not considered as listing factors, the Service does not believe that listing the jaguar will result in losses to the livestock or recreational industries or pose a threat to general public safety.

Issue 15: Designation of critical habitat is needed. Recommended areas include the Animas Range in the bootheel of New Mexico and the San Pedro River Valley, Huachuca Mountains, and Santa Cruz Basin in Arizona. Loss of habitat is a primary threat; habitat loss will prevent jaguar recovery and increase its vulnerability to poaching. Because there is no recovery plan, it is essential that critical habitat be designated at the time of listing. The jaguar requires whole landscapes for survival and recovery; additional knowledge about specific natural community preferences in the Southwest are not a prerequisite for determining critical habitat. Designation of large blocks of critical habitat would not aid poachers and should help alert law enforcement to the need for antipoaching surveillance. Why not designate all riparian ways in the Southwest as critical habitat? Critical habitat will help the Service in controlling activities of Animal Damage Control.

Service response: The July 13, 1994 (59 FR 35674), proposed rule did not include a proposal for designation of critical habitat because it was determined not to be prudent. The Service still believes this to be the case. The Service's reasons for a "not prudent" determination are discussed under the Critical Habitat section of this final rule.

Issue 16: Federal listing would require a recovery plan and later designation of critical habitat. The Service has recognized that such a plan would require importing of jaguars into habitat that must be suitable for its foraging, which is not available in the border areas of the United States with Mexico. What guarantee is there that the Service will not designate critical habitat? What would preclude any organization from petitioning the Service to declare critical habitat for the jaguar?

Service response: The jaguar was briefly addressed in a recovery plan for the listed cats of Texas and Arizona (U.S. Fish and Wildlife Service, 1990). Upon listing, it would probably be appropriate to develop a more extensive recovery plan for the species. The existing recovery plan for the listed cats does not recommend importing jaguars.

The July 13, 1994 (59 FR 35674) proposed rule did not include a proposal for designation of critical habitat because it was determined not to be prudent. The Service has no information that critical habitat is prudent. Critical habitat is defined in section 3(5)(A) of the Act as the geographical area on which are found those physical or biological features essential to the conservation of the species. Areas on the periphery of a species range or areas that are only infrequently used by a species often do not exhibit the qualities that would constitute a critical habitat designation. To the extent that identification of habitats that are essential for the recovery of the species rangewide is necessary, the Service would identify these areas as part of the recovery planning process.

Issue 17: Listing of the jaguar could have significant impacts on the success of the Service in the lower Rio Grande Valley, and particularly in the Lower Rio Grande Valley National Wildlife Refuge complex. Listing would frustrate rather than benefit efforts for species. While there may be merit in listing, the protection and restoration of habitat in south Texas may be thwarted. It is difficult to get funding to complete the Lower Rio Grande Valley Refuge. Although the species deserves every protection, listing at this time will be counter-productive. Another commenter stated the Act is a serious law intended for serious problems. The Act is not an animal rights act, and listing the jaguar would be an abuse of the Act.

Service response: As stated previously, listing decisions are to be based on the best available scientific and commercial information and the five listing factors discussed in this rule (see Summary of Factors Affecting the Species section). The Service disagrees that listing would preclude management of the species in Texas, and agrees that the Act is a serious law and that its protections should be afforded to a species that has suffered extensive curtailment of its range and is still vulnerable to a variety of threats.

Issue 18: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) provides stiff penalties for illegal importation. This law should be effective against "canned hunts."

Service response: CITES is an international treaty that regulates trade (import/export) in wildlife between countries. CITES does not, however, address activities with wildlife that occur within the United States. So although CITES regulates international trade in jaguars, it offers no protection to the jaguar from "canned" or baited hunts. (See Factor D for further information on CITES.) Certain State penalties do apply to the jaguar that may be enforced by the Federal government under the Lacey Act. In the case of transportation across State lines of an illegally obtained jaguar, the Lacey Act would apply.

Issue 19: The Service has not analyzed, under section 7 of the Act, impacts to the ocelot, jaguarundi, Attwater's prairie chicken, and whooping crane that could result from the introduction of exotic jaguars from Mexico. How would the jaguar not impact prey sources of both ocelot and jaguarundi? What would keep the jaguar from preying on the previously mentioned species? How will exotic jaguars not introduce disease?

Service response: Section 7 consultations are not conducted for rules proposing or listing species as threatened or endangered under the Act. Section 7 of the Act applies to those actions that may affect listed species. Listing a species would not be expected to have an adverse affect on any other listed species. If any future Federal actions associated with a listed species may affect another listed species, such as a recovery activity, then a section 7 consultation would be required for that action at the time it is proposed. (See Issue 5 for further information on reintroduction.)

Issue 20: A commenter requested that an environmental impact statement

(EIS) be done before publication of a final rule and that the EIS consider site-specific areas, not the region as a whole. Another commenter stated that the Service needs to study how the listing may affect the social, economic, and human environment. The public involvement process should be designed to address concerns, to answer questions, and to exchange information. Legal, custom, and cultural concerns can be addressed only with adequate notice and time to prepare. Another commenter stated that public notification was not sufficient for the public hearings. Commenters requested that more hearings be held, especially in rural counties. Another commenter suggested a hearing be held in Dallas/Fort Worth or Austin based on the assumption that the wildlife of the United States belongs to all people, not just to those in the areas that are involved.

Service response: As the proposed and final rules state (see National Environmental Policy Act section), the Service has determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. Additionally, the Act precludes addressing the social, economic, and human environment when deciding to list a species.

The April 13, 1993 (58 FR 19216), notice announcing the 90-day finding on the petition to list the species requested public comments and biological data on the status of the jaguar from any and all interested or knowledgeable parties. On July 13, 1994, (59 FR 35674) the Service published a proposed rule to extend endangered status to the jaguar in the United States. Again, the Service sought biological data and comments from the public. In addition, as recounted in the Background section, three public hearings were conducted by the Service as another avenue to obtain relevant information. The Service believes that it has provided interested parties opportunity to present any relevant information.

Issue 21: Listing of the jaguar is not necessary since the conservation intent of the Act has been addressed through the CA. The Arizona Game and Fish Department and New Mexico Department of Game and Fish have coordinated the development of an interstate/intergovernmental "Conservation Assessment and Strategy for the Jaguar in Arizona and New Mexico" and "Memorandum of Agreement for the Conservation of the Arizona Jaguar." These documents, collectively referred to as the Conservation Agreement (CA), reflect the commitments of the agencies to expedite the development and implementation of conservation measures needed for the Arizona jaguar in the United States in order to meet the conservation intent of the Act and preclude the need for listing. The primary feature of the CA is the designation of the Jaguar Conservation Team and coordination and implementation of conservation measures through the cooperation of State, Federal, Tribal, and other governmental agencies, and partnerships with private landowners and organizations.

The CA addresses the fact that the conservation of the jaguar and its habitat in Arizona and New Mexico is linked to key Federal and private land ownership patterns, identifies both short and long-term objectives, and sets various time frames to complete species and habitat activities. The State wildlife agencies will reallocate funds and personnel to implement this CA, or will aggressively seek new funds for implementation. The CA addresses risks to the survival and recovery of the Arizona jaguar in the United States through a combination of measures. These measures include: (a) Gathering and disseminating information on status, biology (including habitat use), and management needs; (b) identifying habitat suitable for population maintenance or expansion in Arizona and New Mexico; (c) allowing for management flexibility; (d) creating strong private-public partnerships; and (e) developing stronger legal disincentives for unlawful take. The State wildlife agencies have committed to implementation of the CA regardless of the listing status of the species.

Service Response: The Service acknowledges the conservation benefits of the CA and the lead role of the State wildlife agencies in the conservation and recovery of wildlife species within their respective States. Through implementation of the CA there should be many positive benefits to jaguar conservation. However, the efforts under the CA are based on voluntary participation and it will take time to realize these benefits to the level in which the jaguar is no longer in danger of extinction through all or a portion of its range. As long as the species' status meets the regulatory definition of endangered, the Service has the statutory responsibility to list the species based on biological considerations and analysis of threats. The CA developed to this point in time will serve as the template for those protections that will be necessary for the conservation and recovery of the species subsequent to its listing.

Issue 22: Texas Parks and Wildlife Department evaluated the status of the jaguar in that State and determined that, due to habitat fragmentation, there was no longer any potential for the jaguar to exist in Texas. Therefore, Texas Parks and Wildlife stated there was neither the need to federally list nor to develop a CA for the jaguar in Texas.

Service Response: Extirpation of a species from an area lends evidence to a determination that a species' conservation status has declined range wide and that listing is appropriate.

Issue 23: The Act has not been reauthorized, therefore, the Act is no longer extant. Also, we live in a democracy. Do the majority of the people want the jaguar listed? Another commenter stated that there is no need for endangered species listings. They are a waste of time and money and are based on pseudo-science.

Service response: Although Congress has not reauthorized the Act, it continues to appropriate funds for its implementation. The Service, by authority of the Secretary of the Interior, is still responsible for implementing the Act. According to the Act, listing decisions are based on the best scientific and commercial information available.

Summary of the Opinions of Independent Peer Reviewers

Three independent reviewers were contacted by the Service during the comment period in order to obtain their comments, data, and opinions regarding the pertinent scientific or commercial data and assumptions relating to taxonomy, population status, and biological and ecological information on the jaguar. The reviewers were E. Lendell Cockrum (University of Arizona), David S. Maehr (Endangered Cats Recovery Team), and Michael E. Tewes (Caesar Kleberg Wildlife Research Institute, Texas A&M University). Responses were received from two of the three reviewers.

One reviewer stated that because they are secretive, the status of the jaguar in the United States is based largely on speculation. While some of this speculation suggests some low level of reproduction may have occurred in parts of the Southwest, it is more likely that most of these animals represented dispersers or only sporadic breeders. Such a pattern is to be expected at the fringe of a species' range where habitat conditions, by definition, are sub-optimal relative to the center of its range. That does not mean such

individuals are unimportant. They occupy habitat that serves as a buffer to zones of regular reproduction, and they are potential colonizers of vacant range. Such areas are important to maintaining normal demographics and allowing for the possibility of range expansion as environmental conditions improve.

Because knowledge of jaguar distribution and ecology involves much speculation, there is no way to ascertain key elements of its habitat. However, every effort should be made to describe the ecology of jaguars in northern Mexico in order to understand where some of the records originated and how individuals are finding their way to and from the United States. Corridors and other patches of forest cover may indeed be critical to the jaguar's continuance and possible range expansion in the United States. Work must begin on describing jaguar habitat requirements and dispersal characteristics through sign surveys and, eventually, telemetry studies of the breeding population closest to the United States. Enlisting the owners of significant tracts of private land supporting endangered cats will be essential to jaguar conservation if not all potential jaguar habitat is already on public land that can be managed for them. Involving property owners very early in the process will pay tremendous dividends down the road. Jaguar recovery has much to gain from ranch owners in the southwest.

Another reviewer commented that wide-ranging, large carnivores such as the jaguar travel long distances within their home range and often use a wide variety of habitats. Simple occurrence of a jaguar in a particular habitat does not necessarily convey information about the quality of that particular habitat type. Because there are no ecological studies indicating habitat preferences of jaguars within the United States, an accurate description of important habitats would be almost impossible.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the jaguar should be classified as an endangered species in the United States. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the jaguar (*Panthera onca*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Clearing of habitat, destruction of riparian areas, and fragmentation or blocking of corridors may prevent jaguars from recolonizing previously inhabited areas. Although there is currently no known resident population of jaguars in the United States, wanderers from Mexico may cross the border and take up residency in available habitat. (See Issue 10 for further information.)

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* In Arizona, the jaguar's gradual decline was concurrent with predator control associated with the settlement of land and the development of the cattle industry (Brown 1983, U.S. Fish and Wildlife Service 1990). Lange (1960) summarized the jaguar records from Arizona known up to that time. Between 1885 and 1959, the reports consisted of 45 jaguars killed, 6 sighted, and 2 recorded by evidence such as tracks and/or droppings.

Brown (1991) related that the accumulation of all known records indicated a minimum of 64 jaguars were killed in Arizona after 1900. When plotted at 10-year intervals, records of jaguars reported killed in Arizona and New Mexico between 1900 and 1980 demonstrated a "decline characteristic of an over-exploited resident population" (Brown 1983). Brown (1983) argued that if the jaguars killed during this period originated in Mexico, the numbers of killings should not suggest a pattern but should rather be irregular and erratic.

Bailey (1905) listed seven reports of jaguars killed in Texas between 1853 and 1903. Schmidly (1983) reported another jaguar shot in Mills County in 1904. Taylor (1947) mentioned a jaguar killed near Lyford, Willacy County, in 1912. Brown (1991) indicated jaguars were common in Texas until 1870. The last reports from Texas were of individuals killed in 1946 (San Benito, Cameron County) and 1948 (Kleburg County). Nowak (1975) identified killing of jaguars for commercial sale of their furs as a factor in the extermination of a substantial resident population in central Texas during the late 19th century.

Although the demand for jaguar pelts has diminished, it still exists along with the business of illegal hunting of jaguars. In 1992, Arizona Game and Fish Department personnel infiltrated a ring of wildlife profiteers. That operation resulted in the March 1993, seizure of three jaguar specimens, of which one was allegedly taken from the Dos Cabezas Mountains in Arizona in 1986. Two of the specimens had been covertly purchased from the suspects. During the investigation, several ties to Mexico jaguar hunting were discovered. Hounds bred and trained in the United States were sold to Mexican nationals for the purpose of hunting jaguars. Also, Mexican nationals prosecuted by the Service in 1989 for illegally importing jaguar pelts into the United States were continuing the practice of providing jaguar hunts in Mexico (Terry B. Johnson, Arizona Game and Fish Department, *in litt.*, 1993).

C. *Disease or predation.* The Service is unaware of any known diseases or predators that threaten the jaguar at this time.

D. *The inadequacy of existing regulatory mechanisms.*

State Regulations

Jaguars are being considered for inclusion on the Arizona Game and Fish Department's list of "Wildlife of Special Concern," and were included on its previous list of "Threatened National Wildlife of Arizona." In general, violations of Arizona Game and Fish Laws (Arizona Game and Fish Department 1991) are class 2 misdemeanors. The Arizona Game and Fish Commission may, through criminal prosecution, seek to recover a maximum of $750 for each endangered species unlawfully taken, wounded, or killed. Special depredation permits may be issued for jaguars.

Under the California Code of Regulations, it is prohibited to import, transport, or possess jaguars. According to California Fish and Game Code, Section 12011, such acts carry a maximum penalty of a $30,000 fine, 1 year in jail, or both.

In Louisiana the jaguar receives no official protection from the State (Fred Kimmel, Louisiana Department of Wildlife and Fisheries, pers. comm., 1993).

In New Mexico, the jaguar is considered a "restricted species" on the State's list of endangered species and subspecies. It is unlawful to take, possess, transport, export, process, sell, or offer for sale a jaguar in New Mexico. Violations are a misdemeanor and, upon conviction, a person shall be fined $1,000 and imprisoned from 30 days to 1 year.

The jaguar is listed as threatened by the State of Texas. It is unlawful to take, possess, transport, export, process, sell or offer for sale, or ship jaguars in Texas. However, some of the above actions may be allowed for zoological gardens, and scientific, commercial, and propagation

purposes with the proper permits. A first violation of the regulations or a permit is a Texas Parks and Wildlife Code C misdemeanor which carries a fine of $25 to $500 (Capt. Harold Oates, Texas Parks and Wildlife, pers. comm., 1994)..

In summary, although some States provide limited protection to the jaguar, illegal taking continues to occur. None of the State penalties for illegal taking are as stringent as the $50,000 fine and/or 1 year in jail provided for endangered species under the Act. Thus, listing the species under the Act results in protective measures beyond those provided by the States.

Federal Protection

Prior to this final rule, the jaguar was listed under the Act as an endangered species only from Mexico southward to include Central and South America. It was not listed in the United States. Jaguars which may have occurred in, or immigrated into, the United States were not protected by the Act.

On July 1, 1975, the jaguar was included in Appendix I of CITES. CITES is a treaty established to prevent international trade that may be detrimental to the survival of plants and animals. Generally, both import and export permits are required from the importing and exporting countries before an Appendix I species may be shipped, and Appendix I species may not be exported for primarily commercial purposes. CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not prohibit the act of taking, possessing, or transporting a jaguar within the United States and its territories.

The subspecies *Panthera onca veraecrucis*, with historical range in Texas and eastern Mexico, is designated by the United States government as a peripheral animal of concern in a provisional list for the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (Nowak, pers. comm., 1992). *Panthera onca arizonensis* is not so designated. This Convention, as implemented by Sections 2 and 8(A) of the Act, does not require the protection of species listed. Therefore, neither *P. o. veraecrucis* nor *P. o. arizonensis* are currently protected.

E. *Other natural or manmade factors affecting its continued existence.* M–44 ejector devices with cyanide capsules are used by the Animal Plant and Health Inspection Service, Animal Damage Control and may be of threat to the jaguar (Terry B. Johnson, Arizona Game and Fish Department, *in litt.*, 1993). Jaguars may also be victims of traps targeting other predators such as bears and cougars.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the jaguar (*Panthera onca*) as endangered throughout its range. The lack of protection under the Act for jaguars in the United States was due to an uncorrected technicality, rather than to any scientific information that jaguars do not require protection. A decision to take no action would exclude the jaguar in the United States from needed protection pursuant to the Act. A decision to extend only threatened status would not adequately express the drastic distributional decline of the species and the continued jeopardy of any individuals in the United States. Therefore, no action or listing as threatened would be contrary to the intent of the Act.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

As discussed in factor "B" above, a primary threat to the jaguar in the United States is from taking. Jaguars are still in demand for hunts and as trophies and pelts. A jaguar in Arizona was hunted and killed in 1986 approximately 1 year after it was known to be in the area and photographs confirmed another jaguar in New Mexico during 1996. Publication of detailed critical habitat maps and descriptions in the **Federal Register** would likely make the species more vulnerable to activities prohibited under section 9 of the Act. In addition, since the primary threat to the species in the United States is direct taking rather than habitat destruction, designation of critical habitat would not lessen, and may increase, the primary threat to the jaguar. Appropriate parties and landowners have been notified of the location and importance of protecting this species' habitat. Identification of this species' habitat preferences will be addressed through the recovery process. Therefore, it is not prudent to designate critical habitat for the jaguar.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. Federal actions that may affect the jaguar include clearing of habitat known to have been occupied by jaguars and trapping or animal control activities targeting the jaguar or other large predators.

The Act and its implementing regulations set forth a series of general trade prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass,

harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The prohibitions of section 9 will not apply to jaguars which were held in captivity or a controlled environment on December 28, 1973, or the date of this publication, provided that such holding and any subsequent holding of such jaguars was not in the course of a commercial activity. For clarification, the pre-Act date is the date of publication of the final rule listing the species; the jaguar will have two pre-Act dates depending upon its origin. The Service considers jaguars currently held in captivity in the United States to of originated from parental stock outside of the United States and, thus, their pre-Act date is December 28, 1973. Jaguars legally obtained in the United States from the wild could be considered to be pre-Act if obtained on or prior to the date of this rulemaking and not held in the course of a commercial activity.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the Service's Southwest Regional Office, P.O. Box 1306, Albuquerque, New Mexico, 87103 (505/248–6666).

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of listing on proposed or ongoing activities. The Service believes that, based on the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with any existing regulations and permit requirements:

1. Normal ranching activities, except predator control targeting large cats which results in inadvertent trapping or mortality of a jaguar.

2. Habitat clearing, except in areas where jaguars are known to exist or have been known to exist.

3. Fencing or other property delineation.

4. If, when using dogs to tree mountain lions, a jaguar is inadvertently chased and/or treed by the dogs, so long as the dogs are called off upon realization that a jaguar is being chased.

The following activities would likely violate section 9 of the Act:

1. Any activity specifically prohibited by the Act (e.g., shooting, hunting, trapping, etc.)

2. Intentional clearing or destruction of habitat known to be occupied by jaguars.

3. Any activities that fall within the definition of harass and harm. The Service has defined the terms harass and harm as follows: Harass means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm has been defined as an act which actually kills or injures wildlife. Such acts may include significant habitat modification or degradation when it actually kills or injures wildlife by significantly impairing essential behavioral patterns including breeding, feeding or sheltering.

4. Predator control activities targeting large cats that trap, kill, or otherwise injure jaguars.

Contacts have been identified to assist the public in determining whether a particular activity would be prohibited under section 9 of the Act. In Arizona, contact the Field Supervisor in Phoenix (see **ADDRESSES** section). In California, contact the Field Supervisor, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008 (619/431–9440). In Louisiana, contact the Field Supervisor, Lafayette Field Office, 825 Kaliste Saloom, #102, Lafayette, Louisiana 70508 (318/264–6630). In New Mexico, contact the Supervisor, Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, New Mexico 87113 (505/761–4525). In Texas, contact the Supervisor, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Hartland Bank Building, Austin, Texas 78758 (512/490–0057).

National Environmental Policy Act

The Service has determined that Environmental Assessments and EIS's, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein is available on request from the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section).

Author: The primary authors of this final rule are William Austin and Bruce Palmer of the Arizona Ecological Services Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by revising the entry for "Jaguar" under MAMMALS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Jaguar	*Panthera onca*	U.S.A. (AZ, CA, LA, NM, TX), Mexico, Central and South America.	Entire	E	5, 622	NA	NA
*	*	*	*	*	*	*	*

Dated: July 14, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–19208 Filed 7–21–97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 970129015–7170–04; I.D. 031997B]

RIN 0648–AI84

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

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

ACTION: Interim final rule.

SUMMARY: NMFS by this action establishes a take reduction plan, and issues an interim final rule implementing that plan, to reduce serious injury and mortality to four large whale stocks that occurs incidental to certain fisheries. The target whale stocks are: The North Atlantic right whale (*Eubalaena glacialis*), western North Atlantic stock, humpback whale (*Megaptera novaeangliae*) western North Atlantic stock, fin whale (*Balaenoptera physalus*) western North Atlantic stock, and minke whale (*Balaenoptera acutorostrata*), Canadian East Coast stock. Covered by the plan are fisheries: For multiple groundfish species, including monkfish and dogfish, in the New England Multispecies sink gillnet fishery; for multiple species in the U.S. mid-Atlantic coastal gillnet fisheries; for lobster in the interim final rule includes time and area closures for the lobster, anchored gillnet and shark drift gillnet fisheries, gear requirements, including a general prohibition on having line floating at the surface in these fisheries, a prohibition on storing inactive gear at sea; and restrictions on setting shark drift gillnets and drift gillnets in the mid-Atlantic. The plan also contains non-regulatory aspects, including recommendations for gear research, public outreach and increasing efforts to disentangle whales caught in fishing gear.

DATES: Except for §§ 229.32 (b), (c)(1), (d)(1), (e)(1), and (f)(1) (the gear marking requirements), the regulations are effective November 15, 1997.

Sections 229.32 (b), (c)(1), (d)(1), (e)(1), and (f)(1) (the gear marking requirements) are effective January 1, 1998. If the Office of Management and Budget gives approval for the information collection requirements in these sections at a later date, NOAA will publish a timely document in the **Federal Register** with the new effective date.

Comments on the plan, the interim final rule, and paperwork burden estimates must be received by October 15, 1997.

ADDRESSES: Comments should be sent to: Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the Environmental Assessment accompanying this interim rule can be obtained by writing to the same address. Comments regarding the burden-hour estimates or any other aspect of the collection of information requirements contained in the interim final rule should also be sent to the Office of Information and Regulatory Affairs, OMB, Attention: NOAA Desk Officer, Washington, DC 20503. Copies of the 1996 Stock Assessment Reports for northern right whales, humpback whales, fin whales and minke whales may be obtained by writing to Gordon Waring, NMFS, 166 Water St., Woods Hole, MA 02543.

FOR FURTHER INFORMATION CONTACT: Kim Thounhurst, NMFS, Northeast Region, 508–281–9138; Bridget Mansfield, NMFS, Southeast Region, 813–570–5312; or Michael Payne, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) requires commercial fisheries to reduce the incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate by April 30, 2001 (section 118 (b)(1)).

For some marine mammal stocks and some fisheries, section 118(f) requires NMFS to develop and implement take reduction plans to assist in recovery or to prevent depletion. Take reductions plans are required for each "strategic stock." A strategic stock is a stock: (1) For which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level; (2) that is declining and is likely to be listed under the Endangered Species Act (ESA) in the foreseeable future; or (3) that is listed as a threatened or endangered species under the ESA or as a depleted species under the MMPA. Fisheries primarily affected by take reduction plans are those classified as "Category I" or "Category II" fisheries under section 118(c)(1)(A) (i) or (ii) of the MMPA. Category I fisheries have frequent incidental mortality and serious injury of marine mammals. Category II fisheries have occasional incidental mortality and serious injury of marine mammals.

The immediate goal of a take reduction plan is to reduce, within 6 months of its implementation, the mortality and serious injury of strategic stocks incidentally taken in the course of U.S. commercial fishing operations to below the PBR levels established for such stocks. The PBR level is defined in the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The parameters for calculating the PBR level are described by the MMPA.

The long-term goal of a take reduction plan is to reduce, within 5 years of its implementation, the incidental mortality and serious injury of strategic marine mammals taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. Unlike PBR, the MMPA does not define how to calculate the "zero mortality rate goal" (ZMRG). For the purposes of this rule, NMFS intends to interpret ZMRG to be 10 percent of the PBR level for each stock until a formal definition is established.

Through this document, NMFS publishes an Atlantic Large Whale Take Reduction Plan (ALWTRP) and an interim final rule implementing that plan. The plan, in conjunction with the Offshore Cetacean Take Reduction Plan, currently being developed, is intended to meet the goals stated above for right whales, humpback, and fin whales, which are listed as endangered species under the ESA (and are thus considered strategic stocks under the MMPA). Although minke whales are not considered strategic at this time, the ALWTRP is also expected to reduce takes of minke whales. The plan may be amended in the future to take account of new information or circumstances.

The fisheries affected by this plan are: Anchored gillnet fisheries including the New England sink gillnet fishery, the Gulf of Maine/U.S. Mid-Atlantic lobster trap/pot fishery, the U.S. mid-Atlantic coastal gillnet fisheries, and the Southeastern U.S. Atlantic drift gillnet fishery for sharks. The New England Multispecies sink gillnet fishery is a Category I fishery that has an historical incidental bycatch of humpback, minke, and possibly fin whales. This gear type has been documented to entangle right whales in Canadian waters. Additionally, entanglements of right whales in unspecified gillnets have been recorded for U.S. waters, although U.S. sink gillnets have not been conclusively identified as having entangled right whales. The Gulf of Maine/U.S. mid-Atlantic lobster trap/pot fishery is a Category I fishery that has an historical bycatch of right, humpback, fin and minke whales. The mid-Atlantic coastal gillnet fisheries are considered a Category II fisheries complex that has an historical incidental bycatch of humpback whales. The Southeastern U.S. Atlantic drift gillnet fishery for sharks is a Category II fishery that is believed to be responsible for bycatch of at least one right whale.

The pelagic drift gillnet fishery is a Category I fishery which has recorded takes of large whales. Those interactions will be addressed in the Atlantic Offshore Cetacean Take Reduction Plan.

Other fisheries operating on the U.S. Atlantic Coast have a low level of historical bycatch of large whales but some may potentially take large whales, because the gear is similar to that used by the four fisheries regulated by this rule. These fisheries include the tuna hand line/hook-and-line fishery, groundfish (bottom) longline/hook-and-line fishery, surface gillnet fishery for small pelagic fishes, pot fisheries other than lobster pot, finfish staked trap fisheries, and weir/stop seine fisheries. Currently, these fisheries are either classified as Category III or are unclassified. NMFS will continue to assess the appropriateness of these classifications and may recommend a reclassification in the future if evidence is found that any fishery contributes significantly to the overall entanglement problem.

Some waters are exempt from this plan. The basic rule for the exempted water boundaries is that all waters landward of the first bridge over any embayment, harbor or inlet will be exempted. Some bays that do not have bridges over them are also exempted, including Penobscot Bay, Casco Bay, Long Island Sound, Delaware Bay and Chesapeake Bay. South of the Virginia/North Carolina border, all waters landward of the demarcation line of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS line) are exempted. These are all areas where large whale occurrences are so rare that NMFS believes gear requirements will have no measurable effect on reducing entanglements. For a precise definition of the exempted areas, see the regulation section of this document.

Current Entanglement Rates and Future Targets

The information in this section is from the 1996 Stock Assessment Reports (Waring *et al.*, 1996) compiled by NMFS as required by the MMPA. Additional information about the population biology and human-caused sources of mortalities and serious injuries is included in the Stock Assessment Reports, which are available from NMFS (see **ADDRESSES**).

Some entanglements of large whales were observed by the NMFS sea sampling program; however, most records come from various sources such as small vessel operators. Limitations on the use of the available entanglement data include: (1) Not all observed events are reported; (2) most reports are opportunistic rather than from systematic data collection; consequently, conclusions cannot be made regarding actual entanglement levels; (3) identifying gear type or the fishery involved is often problematic; and (4) identifying the location where the entanglement first occurred is often difficult since the first observation usually occurs after the animal has left the original location.

North Atlantic Right Whales—Most of the measures in this plan focus on ways to reduce the risk of serious injury and mortality to right whales, both because the right whales' population status is more critical than that of any other large whale and because right whales are the only endangered large whale in U.S. Atlantic waters for which the PBR level is known to be exceeded. The North Atlantic right whale is one of the most endangered species in the world, numbering only around 300 animals. The 1996 stock assessment compiled by NMFS estimates that a minimum of 1.1 right whales from the western North Atlantic stock are seriously injured or killed annually by entanglement in U.S. fishing gear from 1991 through 1996. The reports available to NMFS often do not contain the detail necessary to attribute an entanglement to a particular fishery or location. However, lobster pot gear and pelagic drift gillnet gear are known to have contributed to these entanglements. Longer-term records held by NMFS include entanglements of right whales in other gillnets, including gillnets in Canada and in the southeastern United States. Unobserved entanglements are also known to occur, based on observed scarred animals. More than half of all right whales bear scars that appear to be from entanglements. NMFS is unable to estimate the rate of these unobserved events.

The overall rate or serious injuries or mortalities of right whales by commercial fisheries must be reduced from 1.1 animals per year to less than the PBR level of 0.4 animals per year to meet the 6-month goal set by the MMPA.

Humpback Whales—The 1996 Stock Assessment Reports estimate that rate of serious injury and mortality of humpback whales due to fishery interactions is 4.1 animals per year. Of this value, 0.7 animals per year were observed by NMFS observers. The remaining 3.4 animals per year are from known entanglements not directly observed by NMFS. The PBR level for this stock is 9.7 whales per year. Therefore, NMFS has determined that a reduction in take for the western North

Atlantic stock of this species is not required for these fisheries to meet the 6-month goal.

Fin Whales—Although serious injury and mortality due to entanglement has been documented for this stock of fin whales over the 1991–1995 period, none of those events can be conclusively attributed to any of the four fisheries groups covered in this plan. The total known fishery-related mortality and serious injury rate for this stock is less than 10 percent of the PBR level, which is calculated to be 3.4 fin whales per year. Therefore, NMFS has determined that a reduction in take for the western North Atlantic stock of this species is not required for these fisheries to meet the 6-month goal. The 1996 Stock Assessment Report concludes that the known fishery-related mortality and serious injury for this stock is less than 10 percent of the PBR level and can be considered to be approaching the ZMRG. This assessment may change in the future. NMFS has records of fin whale entanglements that have not been analyzed, however, and intends to complete the analysis of these records soon. It should be noted that known entanglements of fin whales are rare. The number of entangled fin whale sightings is likely to be negatively biased, because carcasses usually sink and are therefore less likely to be observed.

Minke Whales—The 1996 NMFS stock assessment report estimates that 2.5 minke whales are seriously injured or die from fishery-related encounters. This level does not exceed the PBR level of 21 for this stock. Therefore, NMFS has determined that a reduction in take for the western North Atlantic stock of this species is not required for these fisheries to meet the 6-month goal. This species is not listed as threatened or endangered under the ESA or as depleted under the MMPA. Measures implemented to reduce the entanglement rate of right and humpback whales may reduce the entanglement rate for minke whales, facilitating progress of that stock toward ZMRG.

Atlantic Large Whale Take Reduction Plan

As stated above and as required by the MMPA, the plan has two goals. The first goal is to reduce serious injuries and mortalities of right whales in U.S. commercial fisheries to below 0.4 animals per year by January 1998 in conjunction with the Atlantic Offshore Cetacean Take Reduction Plan. The second goal is to reduce by April 30, 2001 entanglement-related serious injuries and mortalities of right whales, humpback whales, fin whales, and minke whales to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fisheries, the availability of existing technology and existing State and regional fishery management plans.

Achieving these goals will be difficult, particularly for right whales. NMFS has identified two approaches for reducing the risk of serious injury or mortality to right whales to achieve the PBR level and reducing that risk still further to achieve ZMRG. One approach is through extensive closures of large areas of the ocean to lobster and gillnet fishermen. This approach would guarantee reduction of entanglements causing serious injury and mortalities but only at a high cost to many fishermen.

The second approach is to close critical habitat areas only and to modify fishing practices in a manner designed to create a realistic potential of achieving MMPA objectives without sacrificing large parts of a vital fishing industry. This approach does not carry the guarantee of the first approach but it is calculated to have a reasonable chance for success. This approach emphasizes cooperation with the fishermen and takes advantage of their presence on the water to improve the disentanglement effort and to enlist their aid in developing gear modifications that will reduce bycatch while minimizing costs to the fishery. Disentanglement efforts may work with large whales, which can live for months or years carrying entangling gear, whereas they would not work for small cetaceans such as harbor porpoises, which tend to drown when entangled. The current estimate of serious injury and mortality to right whales is 1.1 animals per year. If one additional right whale is saved each year through fishermen's efforts to call in sightings of entangled whales and to stand by to assist in disentanglement efforts, this would go a long way to minimizing the bycatch problem. Likewise, if four additional humpback whales are disentangled per year, the entanglement rate might be below ZMRG. Furthermore, the fishing industry is the best source of new ideas for gear modifications to reduce bycatch and having the cooperation of the industry could have 10,000 more vessels involved in sighting and reporting entanglement events to the disentanglement network. Such ideas are more likely to be forthcoming if cooperation is emphasized.

In this plan, NMFS adopts the second approach. In essence, the plan encourages the fishing industry to take responsibility for reducing takes of large whales, through measures that are designed to foster cooperation with NMFS and the Atlantic Large Whale Take Reduction Team (TRT), a group of stakeholders convened by NMFS to advise it on ways to reduce serious injuries and mortalities to large whales due to entanglements in fishing gear. Adopting a cooperative approach and emphasizing disentanglement and gear research does not preclude adopting additional measures later should that be necessary to meet the standards of the MMPA. Steps to achieve the short-term goal.

NMFS believes that the plan and the interim final rule, plus measures earlier this year and other measures to be taken under other take reduction plans, including the upcoming Atlantic Offshore Cetacean Take Reduction Plan, will reduce serious injury and mortality of right whales to below the PBR level within 6 months.

This plan is expected to achieve the necessary take reductions within 6 months through: (1) Closures of critical habitats to some gear types during times when right whales are usually present; (2) restricting the way strike nets are set in the southeastern U.S. driftnet fishery to minimize the risk of entanglement; (3) requiring that all lobster and sink gillnet gear be set in such a way as to prevent line from floating at the surface; (4) requiring all lobster and anchored gillnet gear to have at least some additional characteristics that are likely to reduce the risks of entanglements; (5) requiring that drift gillnets in the mid-Atlantic be either tended or stored on board at night; (6) improving the voluntary network of persons trained to assist in disentangling right whales; and (7) prohibiting storage of inactive gear in the ocean.

The degree of risk reduction achieved by each of these measures cannot be quantified in advance. An analysis of whether the PBR level may have been achieved can only be made after the fact.

Right whales are typically found in the Cape Cod Bay Critical Habitat from January 1 through May 15 and in the Great South Channel critical habitat from April 1 through June 30. This interim final rule closes the Cape Cod Bay Critical Habitat to sink gillnet fishing during the high right whale use period (January 1 through May 15) until modified gear or alternative fishing practices that reduce the incidence or impact of entanglements are available. Lobster pot gear in that area will be allowed but will have to be substantially modified to minimize the risk of

entangling right whales. Lobster pot gear will be prohibited during the high right whale use months in the Great South Channel (April 1 through June 30), most of which will also be closed to gillnet fishing, until modified gear or alternative fishing practices that reduce the incidence or impact of entanglements are available.

Sink gillnets may be set during the April through June high right whale use period in a "sliver area" of the Great South Channel critical habitat. The sliver area is comprised of the waters in the Great South Channel critical habitat west of the LORAN C 13710 line. Only three percent of right whale sightings have occurred in that area, and it was determined that a closure is not necessary to reduce likelihood of entanglements.

Although not allowing lobster pot gear in the area west of the Loran C 13710 line from April 1 through June 30 may appear inconsistent with allowing sink gillnet gear in this area, NMFS believes that lobster pot gear poses a greater threat to right whales than does sink gillnet gear in this area. The offshore location generally requires that gillnetters tend their gear, whereas lobster pot gear in this area is often not checked for extended periods especially if there is bad weather.

NMFS is closing the Great South Channel critical habitat to lobster pot gear during the high right whale use period but will allow fishing with strict gear requirements in the Cape Cod Bay critical habitat over the comparable period. The rationale for this difference is that there is a higher likelihood that an entangled whale in Cape Cod Bay will be sighted and reported, due to the high level of vessel traffic and more research efforts in that area. Potential whale entanglements in Cape Cod Bay are considered more likely to be observed and reported to the disentanglement network. In addition, NMFS believes that disentanglement efforts may be more effective in reducing the potential for serious injuries and mortalities in these relatively shallow, near-shore waters than in offshore waters. The Great South Channel critical habitat is further offshore and little whale-watching or survey effort exists there. The likelihood of observing an entangled whale offshore is lower, and offshore disentanglement efforts are subject to greater logistical impediments.

An area from Sebastian Inlet, FL, to Savannah, GA, out to 80° W long. is closed to all shark driftnet fishing, except for strikenetting, each year from November 15 through March 31. This closed area includes the southeastern U.S. right whale critical habitat, which is a nursery area for mothers and calves.

Strikenetting in southeast waters is permitted during the high risk period only if: (1) No nets are set at night or when visibility is less than 500 yards (460 m), (2) each set is made under the observation of a spotter plane, (3) no net is set within 3 miles of a right, humpback or fin whale, and (4) if a whale comes within 3 miles of set gear, the gear is removed from the water immediately. A distance of 3 miles was selected because it is believed to allow sufficient time (half an hour) for gear to be pulled from the water before a whale reached a net. NMFS believes these measures will minimize the risk of entangling any large whale.

This rule also requires that all lobster and anchored gillnet gear be rigged in such a way as to prevent the buoy line from floating at the surface at any time. All large whales are vulnerable to entanglement in any line floating on the surface of the water. Right whales are particularly vulnerable to this entanglement threat, since they are known to "skim feed" by swimming slowly at the surface with their mouths open.

NMFS is also establishing lists of gear characteristics that are expected to decrease the risks of entanglement (see below for lists). Lobster pot gear and anchored gillnet gear used in low risk areas will be required to have at least one of the characteristics. Similar gear set in high risk areas are required to have at least two of these characteristics. There are slightly different requirements for inshore and offshore lobster fisheries because of the much heavier gear requirements for fishing offshore. The lists published in this interim final rule are based on public comments and the recommendations of the Gear Advisory Group and reflect current general fishing practices.

The main purpose of this measure is to help achieve the long-term goal by initiating a flexible process of gear modification over the next 4 years (see discussion under "steps to achieve ZMRG" below). To achieve the short-term goal, NMFS is relying primarily on closures, disentanglement, and other mandatory gear restrictions, not on the use of options from the gear lists. The Take Reduction Technology Lists contain gear specifications that have been shown to be stable in the water and catch fish, but that represent a reduction in entanglement risk over other gear that is also currently in use. Many fishermen may already be using gear that complies with the current list, but some fishermen will have to modify their gear to comply with this regulation; hence, there will be a small immediate risk reduction from this requirement.

This rule also requires that mid-Atlantic drift gillnet gear be either removed from the water each night or be attached to the vessel. The purpose of this measure is to reduce the chances that a whale will encounter gear that is not anchored. This provision is in effect from December 1 through March 31 of each year, during the time when whales, primarily right and humpback whales, are most frequently seen in the mid-Atlantic.

Disentangling a whale can reduce the seriousness of an injury or prevent death due to entanglement. NMFS continues to commit funds to support and improve the disentanglement effort to help meet both the six month and the long-term goal (see discussion under "steps to achieve ZMRG" below).

Steps to Achieve the Zero Mortality Rate Goal

The plan has the realistic potential to reach the 5-year goal by continually reducing the number of entanglements causing serious injury and mortality to a level of 10 percent of the PBR level. If the plan succeeds in reaching 10 percent of the PBR level, this would be equivalent of achieving the most conservative estimate of ZMRG. The likelihood of succeeding in reducing such entanglement to 10 percent of the PBR level depends on many factors. Progress toward the ZMRG is expected to be achieved primarily through continued improvements to the disentanglement response teams and through gear research that identifies appropriate gear modifications that further reduce either the likelihood or the seriousness of an entanglement. This effort will only succeed with the willing participation of the fishing industry, especially in reporting and assisting in disentanglement efforts and in developing gear that will reduce the risks of entanglement. Accordingly, the plan emphasizes outreach and education efforts to share information between NMFS and fishermen, research on gear modifications, and active involvement of interest groups through the take reduction team process. This does not rule out the possibility of further closures if gear modifications and disentanglement do not appear able to achieve ZMRG.

The steps in this ALWTRP designed to facilitate continued reductions in entanglements include: (1) A commitment to improve public involvement in take reduction efforts, including consulting with the TRT and the Gear Advisory Group and

conducting outreach and educational workshops for fishermen; (2) instituting "Take Reduction Technology Lists" from which fishermen must choose gear characteristics that are intended to decrease the risks of entanglement; (3) facilitating further gear modification research; (4) continuing to improve the disentanglement effort, including encouraging more cooperation from fishermen; (5) prohibiting "wet storage" of gear; (6) implementing a gear marking program, (7) developing contingency plans in cooperation with states for when right whales are present at unexpected times and places; (8) working with Canada to decrease entanglements in its waters; (9) improving monitoring of the right whale population distribution and biology, and (10) an abbreviated rulemaking process (codified in this document) to allow NMFS to change the requirements of the plan through notification in the **Federal Register**, thereby improving the responsiveness of NMFS.

NMFS intends to make active use of the TRT to review progress and make recommendations on how to continue to decrease serious injuries and mortalities due to entanglements. As a first step in that process, NMFS will convene the TRT in the fall of 1997 to review this plan and its associated interim final rule. NMFS may modify the plan if it receives a consensus recommendation from the team to do so. In addition, NMFS plans to reconvene the TRT in 1998 to review the progress made during the first 6 months of the plan.

NMFS is developing fishermen outreach and education programs. These programs will have two main goals: (1) To inform fishermen of the status of whales, the requirements of the MMPA and this plan and to improve cooperation with disentanglement efforts, and (2) to exchange views and solicit advice from fishermen on appropriate gear modifications for their area or other take reduction methods.

The use of gear modifications to minimize the risks of entangling large whales will be a key to the long-term success of this plan. As a first step in that direction, NMFS will require that by January 1998 all lobster and anchored gillnet gear, including sink and coastal gillnet gear, have some characteristics that reduce the risks associated with entanglement. Because fishing conditions vary throughout the Atlantic, NMFS will not require specific modifications to be applied to all gear at this time. Instead, this interim rule contains lists of acceptable gear characteristics based on information received from public comments, including discussions of the Gear Advisory Group. Vessels fishing in low risk areas will be required to ensure that their gear has at least one of the listed characteristics. Those fishing in areas where the risk of entanglement is high (i.e., Stellwagen and Jeffreys Ledge and in northern critical habitats during periods of relatively low right whale use) are required to ensure that their gear has at least two of the listed characteristics. Because fishing conditions require heavier gear offshore, for the time being there are different breaking strengths for offshore and inshore lobster pot gear.

The lists of acceptable gear characteristics from which fishermen may select to comply with the regulations in this plan are as follows:

Lobster Take Reduction Technology List

1. All buoy lines are 7/16 inches in diameter or less.
2. All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lb. Weak links may include swivels, plastic weak links, rope of appropriate breaking strength, hog rings, or rope stapled to a buoy stick.
3. For gear set in offshore lobster areas only, all buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 3780 lb.
4. For gear set in offshore lobster areas only, all buoys are attached to the buoy line by a section of rope no more than 3/4 the diameter of the buoy line.
5. All buoy lines are composed entirely of sinking line.
6. All ground lines are made of sinking line.

Gillnet Take Reduction Technology List

1. All buoy lines are 7/16 inches in diameter or less.
2. All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lbs. Weak links may include swivels, plastic weak links, rope of appropriate breaking strength, hog rings, or rope stapled to a buoy stick.
3. Gear is anchored with the holding power of a 22 lb danforth-style anchor at each end.
4. Gear is anchored with a 50 lb dead weight at each end.
5. Nets are attached to a lead line weighing 100 lbs or more per 300 feet.
6. Weak links with a breaking strength of up to 1100 lbs are installed in the float rope between net panels.
7. All buoy lines are composed entirely of sinking line.

The above lists may be modified in the future if new gear is developed and tested in field trials or if any of the characteristics on the list published with this interim final rule are determined by NMFS to be insufficient to reduce entanglement risks. NMFS intends to seek the advice of the TRT and the Gear Advisory Group, and to seek public comment, before adding items to the lists.

The Gear Advisory Group also made several suggestions for gear characteristics that are not included in the lists above. Specifically, the Group recommended that light-colored line be used, because it might increase visibility, and that sections of buoy lines be joined with a splice rather than a knot, because a splice is smoother and is less likely to snag on a whale. NMFS recommends that fishermen adopt these techniques, because they may help reduce entanglements. NMFS is not including these measures on the Take Reduction Technology Lists at this time, however. NMFS has no scientific evidence that the color of the line has any effect on entanglements, and, although NMFS believes that spliced line will generally be smoother than lines with knots in them, fishermen have developed some knots that are almost as smooth as splices (in order to pass through the hauler more easily). Knotted line is also weaker than spliced line and may part more easily if a whale is entangled in it.

NMFS is also supporting research and development of gear modifications that may reduce the risk of entangling large whales. The Gear Advisory Group identified several techniques that might be effective with further development. NMFS has committed funds this year to study several of these. NMFS expects to continue to provide funding for this kind of research in the future. NMFS expects to reconvene the Gear Advisory Group to review progress on gear research and development and to continue to suggest future research directions. Note that NMFS can authorize experimental fisheries to test gear that does not comply with the gear requirements set forth in this rule.

Since 1984, NMFS has authorized the Center for Coastal Studies (CCS) disentanglement team to conduct whale rescue in the southern Gulf of Maine. Since 1995, NMFS has contracted with CCS to expand the disentanglement effort to other areas of the northeast. A first response network has been established for most of the Gulf of Maine/Bay of Fundy and the Georgia/Florida right whale critical habitat area, and collaborators will be identified in other areas of the northeast. With increased involvement from the U.S. Coast Guard and Canada's Department of Fisheries and Oceans, the

disentanglement network can now respond to entanglements on most areas of the U.S. east coast and the Scotia/Fundy region. NMFS and the CCS team have also been working with the State of Maine and the Commonwealth of Massachusetts to involve the fishing industry in the disentanglement network by providing information and assisting the CCS team with reporting and monitoring entanglements. NMFS is also funding and/or working cooperatively with other groups to expand the current survey effort to better monitor at-risk areas. These surveys will increase opportunities for sighting entangled whales, as well as warning ships of the presence of right whales in an area.

The removal of lost or unused gear from the water will also help reduce the risk of entanglement. This rule contains a prohibition on "wet storage" of lobster pot gear—the practice of storing gear in the water—through a requirement that gear be hauled at least every thirty days. (Note that this provision was characterized in the proposed rule as a 30-day "inspection" requirement, a term which caused confusion.) NMFS does not know the extent of the practice of wet storage of gear, and solicits comments on the number of persons affected by this provision.

To further reduce "ghost gear", NMFS will notify all Atlantic fisheries permit holders of the importance of bringing gear back to shore to be discarded properly, as called for under 33 U.S.C. 1901 *et seq.* and the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships (MARPOL Protocol). In addition, NMFS, in coordination with the U.S. Coast Guard, will review regulations currently in place that concern fishing gear or fishing practices that may increase or decrease the amount of ghost gear to determine what additional measure may be useful in reducing the potential for whale entanglement by such gear.

Through the gear marking requirements, NMFS hopes to obtain more data regarding where entanglements occur and what gear types need further attention. NMFS will require marks on six categories of gear—inshore and offshore lobster pot gear, anchored gillnets in northeast and mid-Atlantic waters, mid-Atlantic driftnet gear and shark driftnet gear. Because inshore and offshore lobster pot gear have different requirements, these types must be marked differently.

The gear marking measure is still under review by the Office of Management and Budget for compliance with the Paperwork Reduction Act, and it will not become effective until a notice is published in the **Federal Register**. Note that this measure will not in itself reduce entanglements, but may provide useful information for designing future bycatch reduction measures to achieve ZMRG.

Although NMFS can predict where some right whales will be found at some times of the year, right whales have been sighted in virtually all coastal and offshore waters from Florida to Maine. Generally these sightings are of small, transient groups or individuals. On occasion, however, larger groups of right whales are resident at times and in locations that are unexpected, including times when large amounts of fishing gear may be deployed in the area. Under these circumstances, the risk of entanglement is higher. For example, all right whale entanglements in U.S. lobster pot gear where the location was known occurred either outside critical habitat or outside the peak season in critical habitat. There may be a number of ways to decrease that risk, including continuous monitoring of the whales' movements to alert a disentanglement team immediately in the event that a whale happens to get entangled. NMFS will work with states and fishermen's associations to develop quick response networks to these unusual right whale distribution patterns.

NMFS will continue to cooperate with the Canadian Department of Fisheries and Oceans (DFO) regarding take reduction efforts for large whales. NMFS will share data with DFO scientists and will continue to invite DFO's participation on the Team as a means of promoting effective bycatch reduction measures for large whales throughout western North Atlantic waters.

The regulations implemented through this notice contain a section (§ 229.32(g)(2)) that allows the Assistant Administrator (AA) of NMFS to make changes to the requirements through an abbreviated rule-making process. The process would allow the AA to modify the regulations implementing this plan through a notification in the **Federal Register**. The purpose of this measure is to allow NMFS to respond more quickly to make necessary adjustments to the requirements of the plan. This may be particularly important if necessary to extend a closure because right whales are still in an area or to open an area if NMFS determines that right whales have departed early.

Monitoring Strategies

NMFS estimates annual serious injury and mortality rates based on a 5-year period, as a part of its requirement to develop annual marine mammal Stock Assessment Reports. Expected rates of entanglement during any 6-month period may vary from the 5-year annual average. This variation may be most pronounced where the sample size is particularly small, as is the case with right whale entanglements. Consequently, it will be impossible to prove within 6 months that the goal of reducing incidental takes of right whales to below the PBR level has been achieved. Under some circumstances, however, it may be possible to prove that the PBR level has not been reached. For example, the PBR level for right whales is 0.4, if more than two serious injuries or mortalities incidental to commercial fishing operations are observed within 5 years after the plan is promulgated, then it will be known that the PBR goal will not have been achieved.

NMFS will continue to monitor entanglements of all large whale species. Assessment of the success in bycatch reduction measures will be based on reports from the NMFS observer program, examination of stranded whales, abundance and distribution surveys, fishermen's reports and opportunistic reports of entanglement events. NMFS will expand field survey efforts to assess population abundance and distribution, particularly in the Great South Channel. The effectiveness of implemented take reduction measures may be most apparent through monitoring the entanglement rate for humpback whales, since this species has the highest known entanglement rate of the large whales on the U.S. Atlantic coast. A decrease in entanglements of humpback whales will be taken as supportive but not conclusive evidence that the risk of entangling right, fin and minke whales has been reduced.

NMFS will also continue to gather information on how and where entanglements occur. For the duration of this plan, NMFS will form a repository for gear removed from entangled whales.

In the proposed plan, NMFS suggested a gear marking system that was intended to provide information about where entanglements occur and what gear is causing the entanglements. Knowing this information would be important to help devise any further take reduction measures. However, the proposed system was considered too cumbersome by many commenters and questions were raised about whether marked gear retrieved from a whale would determine definitively where that whale was entangled. Furthermore, some marking of lobster pots, gillnets and associated surface gear is currently

required or being considered under Federal or state fishery management plans for the four groups of fisheries covered by this plan. In this plan, NMFS intends to implement a simplified gear-marking requirement as soon as Paperwork Reduction Act approval is obtained from OMB. NMFS will also consult with State governments, the Take Reduction Team, and members of the Gear Advisory Group with a view to improving the gear marking system by 1999.

Fishery Specific Measures

American Lobster Trap/Pot Fisheries

Except for gear set in the exempted areas mentioned above, all lobster pot gear must be set in such a way as to avoid having line floating at the surface at any time. Floating line is allowed between two buoys on the same buoy line and between a buoy and a high flyer.

Lobster pot gear is prohibited from the Great South Channel critical habitat area from April 1 through June 30, until the AA determines that alternative fishing practices or gear modifications have been developed that reduce the risk of serious injury or mortality to whales to acceptable levels. From July 1 through March 31, lobster pot gear set in the Great South Channel critical habitat must have at least two characteristics from the Take Reduction Technology List. Note that, although portions of the Great South Channel critical habitat would be considered offshore, NMFS believes that the weaker maximum breaking strengths allowed for inshore gear are more appropriate in the critical habitat, since right whales may return to the area when not expected. Therefore, the Great South Channel critical habitat is not considered "offshore" for the purposes of this plan. Lobster pot gear set in this area must comply with the inshore gear characteristics.

From January 1 through May 15, lobster pot gear may only be set in the Cape Cod Bay critical habitat if it meets certain criteria. All lobster pot gear set during that time must have all four of the following characteristics. (1) All buoys must be attached to the buoy line with a weak link with a maximum breaking strength of up to 1100 lb. (2) All pots must be set in trawls of four or more pots. (3) All buoy lines must be made of sinking line, except for the bottom third of the line, which may be floating line. (4) All ground lines between pots must be made of sinking line. These measures conform to the current requirements set by the State of Massachusetts for its portion of the critical habitat during that period. From May 16 to December 31, lobster pot gear set in the Federal portion of the Cape Cod Bay critical habitat must have at least two characteristics from the Take Reduction Technology List.

For either critical habitat, if NMFS determines that the right whales have departed from that area for the season, the AA may allow lobster pot gear to be set, provided that the gear meets the requirements for lobster gear set in the Stellwagen Bank/Jeffreys Ledge area.

The Stellwagen Bank/Jeffreys Ledge (SB/JL) area is defined as all Federal waters in the Gulf of Maine that lie to the south of the 43°15′ N lat. line and west of the 70° W long. line, except right whale critical habitat. Note that the boundaries of the Stellwagen Bank/Jeffreys Ledge Area have been changed from what NMFS proposed in April. State waters are no longer included, and the northern boundary has been changed. The new boundaries more accurately reflect the area where the risk of whale/fishery interactions is high, based on the frequency of right whale and humpback whale sightings.

In the Stellwagen Bank/Jeffreys Ledge area, lobster pot gear must always have at least two characteristics from the Lobster Take Reduction Technology list. Fishermen should be aware that humpback and/or right whales are present in this area most months of the year. Entanglements of both species are above the ZMRG. If the gear modifications are not sufficient to reduce serious injury and mortality to right and humpback whales to achieve the 6-month PBR goal or the 5-year ZMRG goal, additional restrictions or closures of certain portions of this area may be necessary. A decision to close any portion of this area would be made in consultation with the TRT, and after public comment.

In all other areas, lobster pot gear must be set with at least one characteristic from the Lobster Take Reduction Technology list. This requirement applies year-round in the inshore and offshore lobster fishery north of 41°30′ N lat. and from December 1 through March 31 in the inshore and offshore lobster fishery south of 41°30′ N lat. Some of the gear characteristics are only applicable to offshore lobster fishing because conditions offshore require heavier gear. However, fishermen using offshore gear are encouraged to use the inshore standards.

Anchored Gillnet Fisheries

Except for gear set in the exempted areas mentioned above, all sink gillnet gear and other anchored gillnet gear must be set in such a way as to avoid having line floating at the surface at any time. Floating line is allowed between two buoys on the same buoy line and between a buoy and a high flyer attached to the same buoy line.

Sink gillnet gear is prohibited from most of the Great South Channel critical habitat area from April 1 through June 30, until the AA determines that alternative fishing practices or gear modifications have been developed that reduce the risk of serious injury or mortality to whales to acceptable levels. Sink gillnets may be used year-round in the "sliver area" and may be used from July 1 to March 31 in the Great South Channel critical habitat provided that such gear has at least two characteristics from the Gillnet Take Reduction Technology list.

From January 1 to May 15, the Federal portion of the Cape Cod Bay critical habitat is closed to sink gillnet gear, except that if NMFS determines that the right whales have departed from that area for the season, the AA may allow gillnet gear to be set, provided that it meets the requirements for gillnet fishing for Stellwagen Bank and Jeffreys Ledge. From May 16 to December 31, gillnet gear set in the Federal portion of the Cape Cod Bay critical habitat must have at least two characteristics from the Gillnet Take Reduction Technology List.

Gillnet gear in the Stellwagen Bank/Jeffreys Ledge area (as defined above for lobster pot gear) must always have at least two characteristics from the Gillnet Take Reduction Technology List. Fishers should be aware that humpback and/or right whales are present in the SB/JL area most months of the year. If the gear modifications are not sufficient to reduce serious injury and mortality to right and humpback whales to achieve the 6-month PBR goal or the 5-year ZMRG goal, additional restrictions or closures of certain portions of the SB/JL area may be necessary.

In all other "northeast waters" (defined as Federal and state waters east of 72°30′ W long.), gillnet gear must be set with at least one characteristic from the Gillnet Take Reduction Technology List at all times. Mid-Atlantic gillnets (gillnets set west of 72°30′ W long. and north 33°51′ N lat.) must have at least one characteristic from this list from December 1 to March 31.

Mid-Atlantic Drift Gillnet Fishery

From December 1 to March 31, all vessels using driftnets in the mid-Atlantic gillnet area are required to haul all such gear and stow all such gear on the vessel before returning to port. If driftnets are set at night they must remain attached to the vessel.

Southeast U.S. Driftnet Fishery

The area from 27°51′ N lat. (near Sebastian Inlet, FL) to 32°00′ N lat. (near Savannah, GA) extending from the shore outward to 80°W long. is closed to driftnet fishing, except for strikenetting, each year from November 15 to March 31. Strikenetting is permitted under certain conditions set forth in the rule. In addition, observer coverage is required for the use of driftnets in the area from West Palm Beach (26°46.5′ N lat.) to Sebastian Inlet (27°51′ N lat.) from November 15 through March 31 and for the use of strikenets in the area between West Palm Beach, FL and Savannah, GA for the same time period. Vessel operators intending to use these gear types in these areas must notify NMFS at least 48 hours in advance of departure to arrange for observer coverage. In addition, shark drift gillnets must be marked, as directed in the implementing regulations for this rule, to identify the fishery and region in which the gear is fished.

Other Entanglement Reduction Measures Not Part of This Plan

Other measures under the Magnuson-Stevens Fishery Conservation and Management Act that are expected to decrease the risk of entanglement of whales in sink gillnets are either currently in effect or under consideration. Reductions in allowable days at sea and seasonal or year-round area closures to protect groundfish will also reduce the risk of entangling right whales. Additionally, area closures for harbor porpoise conservation are in effect for Massachusetts Bay, the Gulf of Maine "mid-coast" and "northeast" areas, and southern New England. With the exception of the harbor porpoise closure in southern New England, all of these closures coincide with times that right whales are also present in the area, further decreasing the likelihood of entanglement. Effort reduction measures under Framework Adjustment 20 to the Northeast Multispecies Fishery Management Plan are expected to reduce total sink gillnet effort by 50 to 80 percent. This measure is expected to also reduce the risk of large whale entanglement associated with this gear.

New England sink gillnetters that fish "day trips" are now limited in the number of nets they can set. This limit may further reduce the risk of entanglement of right whales in sink gillnet gear.

Some level of lobster pot gear effort reduction may occur under gear conflict management measures such as those recommended by the New England Fisheries Management Council (NEFMC) in Southern New England. Gear conflict reduction measures are also expected to decrease the amount of lost gear, which should reduce the risk that whales would become entangled in "ghost" gear. Further, the Atlantic States Marine Fisheries Commission is currently considering reducing effort in the lobster fishery. Any effort reduction measures implemented for the lobster fishery are likely to reduce the risk of entanglement of whales in that gear.

Changes From the Proposed Rule

This interim final rule has been substantially modified from the rule proposed by NMFS on April 7, 1997. In the proposed rule, NMFS specifically solicited comments on many of the issues discussed below. Public comments have clarified several issues presented in the proposed rule and have substantially shaped this interim final rule. Major changes have been made to boundaries of affected areas, gear and marking requirements, and contingency measures. Because the changes from the proposed rule are so significant, NMFS is issuing these regulations as an interim final rule to allow comments on this version of the ALWTRP. Except for the gear marking requirements, this rule will become effective on November 15, 1997, unless it is superseded by a notice in the **Federal Register** prior to that date. The gear marking requirements will become effective on January 1, 1998 or on the date that OMB gives approval for this collection of information, whichever is later. Note that right whales tend to be in Canadian waters from July until November, so the risk of entanglements in U.S. fishing gear is relatively low until November 15.

Changes in Boundaries and Area Designations

The Stellwagen Bank/Jeffreys Ledge restricted area is defined in this rule as all Federal waters in the Gulf of Maine south of 43°15′ N lat. line and west of the 70°W long. line. The proposed rule contained waters where the frequency of right whale sightings was quite low, especially in state waters. The northern boundary (43°15′ N lat.) was proposed by the TRT and other groups. North of this line right whale sightings are also quite low. The eastern boundary remains the same as in the proposed rule.

NMFS has also changed the dividing line between northern and southern lobster waters to be 41°30′ N lat. This allows all waters south of Cape Cod to be managed on the same seasonal basis, which is consistent with the usual large whale distribution patterns.

NMFS includes a new boundary in this interim final rule. This divides lobster waters into inshore and offshore components. The boundaries of the offshore lobster area are the same as for the areas sometimes known as Lobster Area III. Because offshore lobster pot gear is generally heavier than inshore gear, many commenters advised that the offshore gear have different requirements. In addition, because of the heavier gear used offshore, which might be harder for a whale to break, there is a specific marking code for offshore lobster pot gear. If offshore gear is found to pose a significant risk to whales, additional restrictions can be imposed.

In response to public comments, NMFS has exempted a number of areas from regulation that would have been covered by the proposed rule. NMFS analyzed the overall distribution data for right, humpback, fin and minke whales. It is clear that these species are rarely found within the bays, harbors, or behind barrier beaches in the Southeast and Mid-Atlantic areas. These are areas where right whale sightings are so low that NMFS believes regulation of fishing activity will have no practical benefit for right whale conservation. Exempted areas include all waters landward of the first bridge over any embayment, Long Island Sound, Delaware and Chesapeake Bays, some coastal areas in the Gulf of Maine and, in the southeast region, waters landward of the demarcation line of the International Regulations for Preventing Collisions at Sea, also known as the 1972 COLREGS line.

Changes to Proposed Gear Modifications

In its April 1997 **Federal Register** notice, NMFS proposed to mandate a number of specific modifications to lobster and gillnet gear that were intended to reduce the risk of entangling large whales. For example, NMFS proposed to require that buoy lines be made entirely or mostly of sinking line. It also proposed that buoys be attached with a weak link and sought comments on whether the breaking strength of that link should be 150 lb, 300 lb, 500 lb or any other breaking strength. In addition, NMFS proposed to require a suite of modifications to sink gillnets, including requiring weak links between nets on both the lead-line and the float-line.

NMFS has subsequently determined that some of these proposed modifications would not work under any circumstances. For example, field testing, since publication of the proposed rule, has shown that the 150-lb breaking strength would be too weak to keep a buoy attached to a line under the normal range of working conditions.

Requiring weak links between both the lead-line and the float-line would not have allowed gillnetters to haul their nets without high risk of loss. Both proposed modifications, if implemented, would have created additional lost gear, thereby perhaps increasing the risks of entanglement rather than decreasing them.

Other proposed modifications have worked in some areas but would not work elsewhere where fishing conditions are different. For example, sinking ground line or buoy lines can work and are used in some places but cannot work where the bottom is rocky.

Fishing conditions and practices differ widely throughout the range of this plan. Therefore a uniform application of gear requirements is not likely to be practical. NMFS has therefore decided that one set of regulations applying to all areas affected by this plan is not appropriate. Instead, in this interim final rule NMFS is establishing a "menu" of gear characteristics that are expected to reduce the risk of entanglements, based on the advice of the Gear Advisory Group and other public comments. Fishermen are required to comply with some of these characteristics but are allowed to select the characteristic or characteristics that are most appropriate for their region. This requirement contributes to achieving the goals of the plan in two ways. First, some fishermen will need to change their gear immediately; hence, there will be an immediate risk reduction, although NMFS believes that this will be only a small contribution. Second, these lists can be modified over time to help achieve the ZMRG. As new technology becomes available, it can be added to the list. If items on the list do not appear to reduce the risk of entanglements, they can be dropped.

Some of the proposed modifications are still in the development stage. For example, NMFS suggested that a weak buoy line, when developed, might substantially reduce the risk of entanglements. Other concepts for gear development were discussed by the Gear Advisory Group. NMFS noted in the proposed rule that further research on gear modifications were necessary, and it committed to funding research on this topic. NMFS intends to modify the gear "menus" when new take reduction technology is demonstrated to be operational on the water.

Changes to Gear Marking Proposal

The proposal to place identifying marks on gear met with generally favorable reviews, although a number of requests were made for a simpler system. There was general agreement that it would be useful to know what type of gear was entangling whales and where that gear was set, although several commenters warned that it might be difficult to interpret data from marked gear. A chief concern was that the proposed system of marking was too complicated and time-consuming.

In this interim final rule, NMFS implements a simpler, quicker method of marking gear. The marking system keeps the general concept of identifying anchored gillnet, lobster and driftnet gear, but it substantially reduces the number of areas that are to be designated. This allows the use of only two color marks instead of three. The NMFS marking system incorporates two specific suggestions made in the public comment period. First, marking gear with paint is acceptable, provided the mark is refreshed when faded. Second, there were suggestions that marking the ground lines between lobster pots would be time consuming and expensive and the marks would not last long. NMFS has decided to defer the requirement to mark groundlines and will seek the advice of the TRT on the value of this measure.

Changes to Lobster Restrictions in Cape Cod Bay Critical Habitat

NMFS proposed a series of gear restrictions for lobster pot gear set in the Cape Cod Bay critical habitat during the period when right whales are likely to be present (January 1 through May 15). These were based on requirements instituted by the State of Massachusetts. Of the proposed requirements, two are not implemented in this interim final rule. These are: (1) The requirement that all buoy lines be sinking line and (2) the requirement that the buoy be attached with a 150-lb weak link. The purpose of the sinking buoy line requirement was to avoid having a loop of rope floating in the water column when tides were slack. (When there is a tidal current, all buoy lines are likely to be straight.) However, buoy lines made entirely of sinking line rest on the ocean bottom. They will chafe more quickly than buoy lines with some floating line at the bottom and are more likely to be caught on rocks. This requirement would have led to more lost gear. NMFS believes that the increased gear loss creates a larger risk to whales than the benefit of avoiding loose line in the water at slack tide conveys. Therefore, these regulations allow up to one third of the bottom portion of the buoy line to be made of floating line. This is consistent with the current requirements of the State of Massachusetts for this area.

The purpose of the 150-lb breaking strength was to minimize the chance that a buoy would get caught on a whale. Tests in Cape Cod Bay have shown definitively that 150 lbs is too weak to keep buoys on during storms. This requirement would also increase ghost gear. For the time being, instead of a 150 lb weak link, NMFS will require that all buoys in the Cape Cod Bay critical habitat have weak links of a maximum strength of up to 1100 lb. This breaking strength is based on the advice of the Gear Advisory Group, which believed that a weak link with a breaking strength of 1100 lb will allow gear to be effectively deployed under all normal inshore conditions, including some areas where currents and other oceanic conditions are more difficult that in Cape Cod Bay. Right whales can exert a pull stronger than 1100 lb, although the gear attached to the weak link would have to weigh more than 1100 lb, or be anchored or snag on the bottom for a weak link of that breaking strength to actually break. If ongoing research shows that weaker breaking strengths can be used in the Cape Cod Bay critical habitat without an increase in lost gear, this requirement will be revised.

Changes to Contingency Closures

NMFS proposed that if four or more right whales are present in an area for two or more consecutive weeks, that area would be closed to lobster and gillnet gear until the right whales had left the area. NMFS does not intend to implement this regulation at this time, although it will seek the advice of the TRT on whether this would be a useful measure. There are two reasons for not including this in the interim final rule. First, fishermen said that if forced to move gear, they would tend to set it just on the periphery of the closed area. This would create a denser area of gear around the right whales, increasing the risk that the whales would encounter gear on leaving the area. Second, NMFS has not identified a process for closing an area that can be put in place quickly enough to take into account the movements of the animals. If NMFS were to decide to close an area 2 weeks after four or more right whales were seen, it would take at least a week to publish a **Federal Register** document after which it could take a week or more for fishermen to move their gear. Thus, it would be difficult to close an area on account of unusual right whale movements in a timely way before the whales moved out of an area. There would be a high likelihood of closing an area after the departure of the whales. NMFS would still have authority to take

emergency measures, including area closures, under the MMPA and Endangered Species Act if it is deemed necessary for the protection of the whales.

NMFS initially proposed authorizing a suite of specific gear requirements which, if used, would allow a person to fish in critical habitat. NMFS further proposed that if a right whale were entangled in a critical habitat by such authorized gear, NMFS would close that area. Because this interim final rule does not authorize any specific gear, this measure is not included in the regulations. However, if a right whale is entangled in any gear in any critical habitat during the high right whale use periods, NMFS will close that critical habitat to that gear.

Comments and Responses

Over 13,000 comments (including form letters, postcards and signatures on petitions) were received on the proposed rule. Comments came from state and Federal agencies, Congressional offices, State legislature representatives, towns, conservation groups, industry associations, businesses, fishermen and other private individuals. Oral testimony was received at twelve public hearings held from Maine through Virginia.

1. Comments in Favor of Approval of the Large Whale Take Reduction Plan

Comment 1: Numerous letters were received from members of conservation groups urging NMFS to implement the Large Whale Take Reduction Plan as proposed. Most of those letters advocated involving the fishing industry in developing solutions to the entanglement problem. In addition, several comments were received expressing support for the flexibility in the proposed rule which would allow NMFS to respond quickly to the need for increased protection for large whales, or to relax certain restrictions, and to recognize improvements in gear technology.

Response: NMFS acknowledges this support of its mandates under the Marine Mammal Protection Act and will continue to work with both the fishing industry and other stakeholders to carry out its responsibilities. The ALWTRP contains measures to mitigate future interactions with large whales through disentanglement efforts, early warning monitoring systems, gear research, and outreach efforts that are designed to implement the best available fishing practices. NMFS believes these efforts will accomplish the ALWTRP goal while setting in place the infrastructure to identify and mitigate the causes for entanglements and actively searching for better gear answers to the issue. The ALWTRP contains adequate contingencies to protect the severely endangered species involved while allowing the affected fisheries to seek to improve their entanglement performance.

2. General Opposition to the Proposed Plan

Comment 2: Many letters and much testimony at public hearings were received which did not provide comment on any specific measures contained in the proposed rule but expressed opposition to the plan itself or to the approach taken by NMFS. One conservation group stated that the proposed measures for protecting endangered whales are inadequate to either prevent the extinction of Northern Right Whales or adequately protect other whale species.

Response: NMFS acknowledges the interest of the public in this issue and has considered the public's concerns in developing this interim final rule. The task of preventing the extinction of right whales and protecting other whales is not solely the responsibility of this plan, although the NMFS has conducted an ESA Section 7 consultation on this matter that concludes that the ALWTRP is not likely to jeopardize the continued existence of any endangered or threatened species, including the right whale. Other measures are in place, or under development, under the Endangered Species Act and the MMPA to provide protection to those species and as noted in Response to Comment #1 above, are explained in the interim final rule and the Environmental Assessment (EA). NMFS believes this plan initiates the development of solutions to the large whale entanglement problem to the full extent possible given the current knowledge of whale biology and fishing gear technology.

3. Need for Action and Scientific Basis for the Determination of Need for Take Reduction Measures

Comment 3: Several comments were received questioning the need to reduce takes of humpback, finback, and minke whales, especially the need to reduce takes of these species within the first 6 months of the plan.

Response: The ALWTRP presents a strategy to address this issue, and has identified two major goals. The first goal is to reduce serious injuries and mortalities of right whales in fishing gear to below the PBR level by January 1998. The second goal is to reduce by April 30, 2001, entanglement-related serious injuries and mortalities of right whales, humpback whales, fin whales and minke whales to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fisheries, the availability of existing technology and existing State and regional fishery management plans.

Comment 4: An analysis of offshore lobster fishing effort will demonstrate that the risk to whales from the offshore lobster fishery is minimal.

Response: NMFS agrees that the quantity of gear in the offshore fishery is much less than that in the inshore fishery. However, NMFS believes that the risk imposed by this fishery is real and that risk reductions must be achieved. The fishery operates in areas of whale migration and possible concentration, and entanglements of humpback and right whales have recently been documented in this gear type. In addition, it is likely that injuries sustained during entanglement in this gear type are more serious because the gear is heavier. Since whales are known to become entangled in the groundlines of lobster pot trawls, the larger, heavier offshore trawls may pose a greater risk of injury or death.

Comment 5: A gillnet industry association questions the reasoning why the U.S. sink gillnet fishery is required: (1) to be considered for regulatory action under this proposed rule, and (2) to be considered for excessively restrictive action with regards to gear modification or closures when there is lacking empirical evidence and science for this gear type to be involved in incidental estimated serious injury and mortality exceeding the PBR level.

Response: Although takes of right whales in U.S. sink gillnet gear were not recorded during the 1991–1995 period chosen for analysis in developing this plan, the data clearly indicate that takes of humpback whales and minke whales have been recorded in sink gillnet gear during that period, and all four whale species have been recorded entangled in the gear type. The fishery in the U.S. also overlaps distribution of all four whale species and the potential for takes continue to exist.

Comment 6: There needs to be more accountability for the proposals in the plan. While it states that the risk of entanglement must be reduced by 67 percent, the document has been unable, by its own admission, to offer any indication of the amount of risk reduction which would occur from the imposition of any one of these proposals.

Response: Because it is not known where or when entanglements occur, it

is not possible to quantify risk reductions at this time. Even a two-thirds reduction in effort by all affected fisheries may not be sufficient to achieve a two-thirds reduction in entanglements of right whales if the areas where entanglements occur are not affected. On the other hand, such huge effort reductions may be much more than necessary. The measures being implemented are believed to have a realistic potential of achieving the necessary reductions in entanglements causing serious injury or mortality. Determining whether the goals of this plan are achieved can only be made after the fact.

Comment 7: Many comments were received that stated that ship traffic, not entanglements, is the real problem for the right whales. One commenter noted that the information available in the Stock Assessment Report suggests that interactions with fishing gear are just as responsible for right whale deaths as ship strikes. However, other available sources of information summarizing data over longer periods, including reports prepared by NMFS, suggest that collisions with ships are a greater cause of whale mortalities. Does the information reflect an increase in the incidence of fishing-related mortalities or is there simply some statistical anomaly, due to, for example, the small sample size.

Response: The difference in the two sets of numbers is the inclusion of serious injuries. NMFS is required to assess and reduce the number of serious injuries as well as mortalities. Ship collisions are rarely observed as injuries while injuries from fishery interactions are commonly observed. Available data suggest that the level of serious injuries and mortalities due to entanglement is significant relative to the level due to ship strikes. The 1996 Stock Assessment Report estimates that from 1991 to 1996 there were 1.1 cases of serious injury and mortality to right whales from gear entanglements and 1.4 such cases of ship strikes per year.

Comment 8: One scientist disagreed that the TRT was presented with the best available data on large whale distribution and abundance patterns in the Atlantic.

Response: NMFS agrees that it is preferable to have distribution and abundance plots that are corrected for sighting effort. However, because such plots were not available at the time of the TRT deliberations, NMFS maintains that the TRT was presented with sighting plots that represented the best available data.

Comment 9: One commenter expressed the opinion that NMFS had not met at least one requirement of the Marine Mammal Protection Act because the stock assessment reports do not describe the rate of serious injury and mortality in units of fishing effort. The commenter presented calculations relative to the amount of gear in the water and stated that the rate of serious injury and mortality to right whales in the lobster fishery is approaching a zero mortality and serious injury rate.

Response: The MMPA does not require entanglement rates *only* be expressed relative to fishing effort. This is only one measure. It is not possible to express entanglement rates relative to a unit of fishing effort for the lobster fishery because catch-per-unit-effort is unknown. This calculation is only possible when a systematic sampling program is available. This is not the case for most large whale entanglement records. Therefore, NMFS uses the annual rate of entanglement based on the known events reported from opportunistic sources. Because the entanglement rate cannot be extrapolated to a total serious injury and mortality estimate, the known annual rate is considered to be a minimum. Furthermore, it is the responsibility of NMFS to assess rates of interaction relative to the PBR of each marine mammal stock, not to the amount of gear in the water.

Comment 10: NMFS is only picking on fishermen because they are less able to defend themselves than shipping and military interests and trying to make the fishing industry the scapegoat for historical mismanagement of the right whale population or to transfer the fishery to large corporations or to destroy the Maine economy so that fishery-dependent communities are forced to close down and move to big cities.

Response: NMFS disagrees. The reason for this action is that section 118 of the MMPA specifically requires NMFS to produce a plan to reduce serious injuries and mortalities of marine mammals due to commercial fishing operations. In other actions, NMFS is carrying out other aspects of its responsibilities under the MMPA. For example, we have taken action with respect to civilian and military ship activities to reduce risks to whales.

Comment 11: The proposed plan does not adequately define or discuss the PBRs. It is important that the term be defined and the methods of how it is calculated discussed. Like other scientific parameters, there needs to be confidence intervals for this metric and a formula given for calculating the mean and confidence intervals.

Response: The PBR levels for the affected species are given above (see Current Entanglement Rates and Future Targets). The MMPA defines PBR as the product of the following: (A) The minimum population estimate of the stock; (B) one half the maximum theoretical or estimated net productivity rate of the stock at a small population size; and (C) a recovery factor of between 0.1 and 1.0. The MMPA does not specify a confidence interval for the PBR level.

Comment 12: It is unclear why NMFS has chosen to use the minimum value of 1.2 for the number of right whales taken per year. This number biases viewpoints, calculations and the resultant management plans against the whales. In the case of right whales, it is expected that about one-half to two-thirds of the whales disappear each year without being sighted. It is likely that some portion of these whale injuries are caused by fishing activities and have simply gone unreported and unnoticed. Therefore, takes caused by entanglements could be much higher than the assumed 1.2. The known gaps in available entanglement data should be accounted for in making a realistic estimate of takes caused by entanglements.

Response: NMFS agrees that entanglements could be greater than the current estimate. However, NMFS cannot extrapolate data such as entanglement reports, and thus recognizes them as minimum estimates of interactions, serious injuries, or mortalities. The ALWTRP calls for enhanced disentanglement efforts, early warning monitoring systems, and outreach efforts to be implemented that will provide more accurate and consistent reporting of future such events.

Comment 13: One commenter questioned the differences in entanglement rates for right and humpback whales in comparing information presented to the take reduction team and in the proposed rule with that in the current draft 1996 stock assessment report.

Response: There were a number of inconsistencies between the documents. This has been rectified by deriving all stock assessment information from a single source, the MMPA-mandated Stock Assessment Report. The 1996 Report is now being finalized and is available on request (see **ADDRESSES**).

Comment 14: One commenter noted that the proposed rule does not appear to include serious injury and mortality data from entanglements in fishing gear for right whales in Canadian waters and stated that these data must be included

and assessed against the overall PBR level.

Response: NMFS interprets the MMPA as requiring a reduction in serious injury and mortality of marine mammals through interactions with U.S. fisheries. Canadian takes are monitored by NMFS in order to understand the status of the population and the overall effects of human-induced serious injury and mortality, but the PBR goal of this plan does not need to be reduced by such takes.

Comment 15: One whale research group noted that incidental takes of humpback whales in commercial fisheries are also currently near the PBR level, despite a paucity of sightings of juvenile whales in the northeast in the past four years. Previous data indicate that juvenile whales are those most likely to be seen entangled. If juvenile sighting levels in the northeast overall return to the levels seen from 1980–1990, it is possible the PBR level could be exceeded fairly rapidly. NMFS should plan for what they will do in the event this takes place.

Response: NMFS appreciates the information on juvenile humpback whales. If the entanglement rate of humpback whales is not reduced during the course of the implementation of this plan, further adjustments will be necessary. The available entanglement information will be reviewed by the TRT during periodic evaluations.

Comment 16: One commenter stated that the description of the fin whale stock in the proposed rule lacks sufficient detail and recommended that NMFS elaborate on this stock assessment and include the PBR estimate for this stock in the final rule.

Response: NMFS has included the PBR estimate for fin whales from the 1996 Stock Assessment Report. Further information is available in the Stock Assessment Report.

Comment 17: Minke whales, because of their smaller size and lower energetic requirements, are more likely to be found outside major identified whale concentration and gear modification areas, including inshore waters. As such, their protection from the right whale measures might be lower than that for other species.

Response: NMFS agrees. However, this plan institutes some measures in all regulated waters, including waters outside right whale critical habitats and other areas which have high concentrations of large whales. Minke whales do occur in areas where more stringent measures are being required. Therefore, some protection is expected for minke whales through this plan. Note that the entanglement rate of minke whales appears to be substantially below the PBR level for this stock. No reduction is necessary in the rate of serious injury or mortality of minke whales to meet the 6-month PBR goal, although some bycatch reduction may be necessary to achieve the ZMRG.

Comment 18: There are three hundred right whales now known to exist; the sustainable goal is 6,000; at which time the incidence of right whale/gear conflicts can reasonably be projected to be twenty times the current rate, which will seriously impact on fixed gear fishermen, especially trap and pot fisherman who will be subject to regulation by the ALWTRP.

Response: NMFS agrees that the rate of interaction could increase when a marine mammal population increases. However, if a stock increases substantially, the PBR level would also increase. Therefore, the rate of interaction relative to the stock's PBR would not necessarily increase.

Comment 19: The proposed conservation measures are useless and not founded on scientific fact or analysis. This was proven through the entanglement of a northern right whale just prior to May 20, 1997, when the proposed management measures were already in effect as implemented emergency regulations. This whale was identified as one seen earlier on February 24, 1997, in Cape Cod Bay and not entangled. The irrefutable conclusion was that this whale became entangled after February 24, 1997, in fishing gear deployed in the northeast under NMFS emergency regulations. These regulations did not work because they were too little done, too late.

Response: The emergency regulations were only effective in right whale critical habitat in Cape Cod Bay during that period. NMFS is not aware of any documentation either that the right whale entanglement occurred in Cape Cod Bay or that the gear involved was from any fisheries deploying gear in Cape Cod Bay. Furthermore, the time elapsed between the two sightings (approximately 51 days) indicates that the whale could have traveled some distance in the interim. Information from satellite tracking indicates that right whales are capable of traveling from Maine to New Jersey and back in 3 weeks.

4. Marine Mammal Protection Act Sections 101 and 118, and the Take Reduction Team Process

Comment 20: On August 31, 1995, a NMFS 101(a)(5)(E) determination stating no allowable takes of fin, humpback, northern right, and sperm whale species requires that the ALWTRP achieve that goal. NMFS denial at that time to issue any small take permits or exemptions to allow entanglements of these species in fishing gear only underscores the necessity for the ALWTRP to work and prove itself. The ALWTRP must significantly and demonstrably prove that it will reduce entanglements to levels required under Section 118 of the MMPA. The August 31, 1995, finding would then require actions be taken to eliminate this risk to the whale. By proposing untested gear modifications and only limited seasonal closures, the ALWTRP limited restrictions fail to do so by allowing for and in fact, assuming entanglements will continue to occur. Therefore, reliance on gear modifications and limited closures creates a plan that does not afford the recovery of northern right whales or other marine mammals, and creates a violation of NMFS's own August 31, 1995 finding, Section 118 of the MMPA, and the Section 9 Take Prohibitions of the ESA.

Response: The purpose of the ALWTRP is to "assist in the recovery or prevent the depletion of each strategic stock." It is intended to reduce the likelihood of a take; it should not be viewed as authorizing any take of endangered species under the ESA. NMFS believes the closures, surveillance and disentanglement efforts, gear modifications, outreach and other aspects of this plan have a realistic potential of achieving the goals of the MMPA in the required time frame. If the goals are not achieved, NMFS will seek the advice of the TRT on next steps.

Comment 21: Why is NMFS waiting until now to deal with this issue if the MMPA has been a law since 1972? NMFS is only responding to an artificial deadline.

Response: The take reduction plan process was initiated with passage of the 1994 amendments to the MMPA. The final regulations implementing Section 118 of the MMPA were not published until August 30, 1995. The Atlantic Large Whale Take Reduction Team was established in August 1996. Once the team was established, a rigid timetable prescribed in the MMPA was set in motion.

Comment 22: Several comments were received questioning the placement of the lobster pot fishery in Category I on the MMPA List of Fisheries. Some commenters believed that NMFS had only put the fishery in Category I because of an entanglement of a right whale in Canadian gear.

Response: NMFS has several records of entanglements that have occurred in the lobster fishery and as such, believes that the fishery is appropriately

categorized. No records of entanglements of whales in Canadian gear were used to classify the fishery.

Comment 23: Several comments were received in objection to flaws in the take reduction team process which included: (1) Insufficient time frame to deal with the broad scope of unfamiliar issues, (2) insufficient data on the whale entanglement problem, (3) lack of systematic and comprehensive facilitation at meetings, (4) inconsistent guidance from NMFS regarding the scope of the charge to the team and the nature of acceptable take reduction recommendations, and (5) arbitrary decision by NMFS to end the take reduction team deliberations prematurely.

Response: NMFS acknowledges this critique of the take reduction team process, which was received largely from TRT members, and hopes that the experiences of the TRT members and the agency during the promulgation of the proposed and interim final rules will help to increase the productivity of the TRT process in the future.

Comment 24: The basis of the decision used to support this rulemaking activity should be formally brought before the TRT. The Administrative Procedures Act is specific in its requirements on rulemaking, and the record of information necessary to avoid "arbitrary and/or capricious" decision making. NMFS did not follow the recommendations of the team it assembled to study the problem of whale take reduction. In addition, NMFS admits that it will not be able to determine if its proposed regulations will achieve the goal of reducing incidental whale deaths. Accordingly, since the proposed rules are not based upon available scientific data, and because NMFS does not have the ability to modify its decision based upon observable data collected after it implements the proposed rules, the only rational conclusion is that NMFS is acting in an arbitrary and capricious manner in advancing the proposed rules. How can rules go forward with reference to gear restrictions if NMFS has not conducted any detailed assessment of gear technology?

Response: Section 118 of the MMPA sets forth strict guidelines for implementing a take reduction plan. Despite the fact that a consensus plan was not provided by the TRT, NMFS is mandated to implement a plan based on its own findings and available data within the timetable prescribed by the MMPA. NMFS has considered all of the deliberations of the TRT in deciding what should be included in the interim final rule. In addition, NMFS convened the Large Whale Gear Advisory Group in early June and received additional input from the fishing industry. Precisely because gear modification requirements as contained in the proposed rule had not been fully tested in all areas under all operating conditions, NMFS has decided to reduce or eliminate many of those requirements unless or until there is more evidence that the gear modification in question has a reasonable chance of reducing the impact of entanglement without unduly compromising the ability of a fishing vessel to operate its gear. The measures in the interim final rule are based on the best scientific data available and are reasonably calculated to result in a reduction in fishing gear interactions and to meet MMPA objectives. Members of the public will have the opportunity to further comment on this rule because it is being published as an interim final rule. NMFS has the opportunity to modify this plan based on observable data on entanglements, which it will collect during the implementation of this rule. NMFS will reconvene the TRT to review the effectiveness of this rule, based on those data, and to provide additional recommendations.

Comment 25: There needs to be a clear definition of "serious injury." Even the best designed breakaway gear could result in line or net fragments remaining on the animals, or within a whale's mouth. These fragments might eventually cause injury. Without a clear definition of "serious injury," the industry remains vulnerable to closures even if fishermen develop and accept radical gear modifications.

Response: NMFS agrees. On April 1–2, 1997, NMFS held a workshop to receive advice from experts on developing a system to assess serious injury. NMFS intends to publish draft guidelines for determining serious injury in the fall of 1997. For additional information, see description above.

Comment 26: Several comments were received urging NMFS to move quickly toward adopting a final quantitative definition for ZMRG.

Response: NMFS issued a proposed definition for the ZMRG, which has subsequently been reviewed by a panel of population biologists. Based on their recommendations and public comment, NMFS is currently preparing the final rule outlining the quantitative definition and expects to publish that rule in August 1997.

Comment 27: Since any adopted ALWTRP, along with its implementing regulations, amounts to a *de facto* permit to take whales through entanglement, NMFS should not allow any said regulations and plan to be implemented until a sufficient monitoring program has been adopted and funding guaranteed that can detect when any entanglement of a northern right, and other endangered whales, has occurred. This conservation group also requests that NMFS detail the ALWTRP's monitoring program and certify its effectiveness and commitment for its funding, before adopting the ALWTRP and its implementing regulations.

Response: NMFS is mandated to implement a ALWTRP within the time period prescribed in the 1994 amendments of the MMPA. The ALWTRP and its implementing regulations are not intended to permit the taking of whales entangled in fishing gear. The ALWTRP and implementing regulations establish measures designed to reduce the likelihood of entanglements and mitigate the damage caused by entanglements to below PBR levels. All applicable take restrictions remain in effect. Further, monitoring will be on-going activity and, if necessary, the ALWTRP can be modified to address any appropriate circumstances.

Comment 28: The MMPA requires the Secretary of Commerce to consider the effect of regulations on "the economic and technological feasibility of implementation." (16 U.S.C. 1373(b)(5)). In presenting the proposed rules, the Secretary has failed to comply with the express requirements of the MMPA. Economic considerations of a fishery are to be taken into account under the MMPA, including not only development of a long-term goal under section 118(f)(2), but also the short-term PBR standard, as defined and applied in the Act. In the PBR standard, the Act implicitly acknowledges that any attempt to achieve a "true zero" figure is too costly given the economic considerations relevant to the cost of avoiding the "improbable situation" of incidental mortality or serious injury caused by commercial fisheries. In the development of a PBR value, there is a clear recognition that the expenditure of unlimited resources towards the avoidance of a single marine mammal take is unacceptable.

Response: Section 118 (16 U.S.C. 1387) of the MMPA, not Section 103 (16 U.S.C. 1373), governs the promulgation of the interim final rule. Nevertheless, NMFS is required to consider the economic and technological feasibility of implementation. This was accomplished in the Environmental Assessment and the Regulatory Flexibility Analysis. The final rule has

been substantially changed in part due to public comments on the economic and technological feasibility of the proposed rule. NMFS disagrees that the calculation of the PBR level requires that economic considerations be taken into account. NMFS acknowledges that the MMPA requires that in implementing measures to achieve incidental take levels approaching zero mortality and serious injury rates, it must take into account the economics of the fishery, among other considerations. As discussed above, such economic considerations have been considered in developing this rule.

Comment 29: The proposed rules will cause an increase in the number of vertical lines used by lobstermen in Maine. An increase in the number of vertical lines would lead to an increase in the incidents of Atlantic whales becoming entangled in lobster gear, thus resulting in a greater number of incidental deaths of Atlantic whales. Accordingly, since NMFS's proposed rules would increase the number of Atlantic whale deaths, the implementation of the regulations would violate the ESA by effectively taking an endangered species. Even if NMFS were to argue taking of Atlantic whales, there can be no question that the regulations would add significantly to the endangerment of the right whale population.

Response: The interim final rule is substantially changed from the proposed rule. The interim final rule has eliminated requirements that arguably could have resulted in an increase of vertical lines used by lobster fishers in Maine.

Comment 30: What is the definition of U.S. vessels? Do MMPA regulations apply to vessels that do not have Federal permits or to vessels in state waters? Does Section 118 apply only to commercial fishing vessels? Commercial fisheries licensed and regulated by state governments in areas under their state jurisdiction are not "commercial fisheries" as used in Section 118. It is unlawful for NMFS to consider the taking of marine mammals by state fisheries to be allowed any of the take exemptions provide under Section 118. Only federally licensed and regulated marine fisheries are regulated by Section 118 of the MMPA. The NMFS here attempts to regulate state marine fisheries out of a political desire to protect the state fisheries from the enforcement of the prohibition of the Endangered Species Act and the MMPA for their entanglement of whales in their fisheries operations.

Response: The MMPA grants legal authority to NMFS to regulate any vessel allowed to engage in commercial fishing in all U.S. waters, including both state and Federal waters. This interim final rule, promulgated under authority of the MMPA, applies to any person or vessel in the fisheries and areas encompassed by the rule, regardless of whether the person or vessel has a Federal permit, and regardless of whether the person fishes exclusively in state waters, unless otherwise specified in the rule. The MMPA's legal authority applies without regard to whether a fishery occurs in state waters or Federal waters. Section 118 of the MMPA does not make a distinction between Federal or state fisheries but applies to any fishery that interacts with marine mammal stocks.

5. Comments on Geographic Scope of Regulations

Comment 31: One conservation group requested that NMFS require in the ALWTRP, and implementing regulations, the elimination of all vertical lines in lobster gear and complete banning of gill nets, both fixed and drift, in the northeast.

Response: NMFS disagrees that measures of this severity are necessary to meet either the initial PBR goal, or the long term goal.

Comment 32: Numerous comments were received objecting to what appeared to be "one-size-fits-all" regulations for huge areas and requesting that measures be fine-tuned for different geographical areas.

Response: In acknowledging the comment, NMFS has devised a system of choosing 1 or 2 options from separate gear modification lists for lobster pot gear (with specialized options for inshore and offshore gear) and gillnet gear that allows fishers the flexibility to choose gear modifications appropriate for their region.

Comment 33: Comments were received regarding both the need to implement restrictions equally from the southernmost points of the migratory pathway up through the northernmost points up in Canada, as well as questioning whether protective measures were necessary in various areas along the U.S. East Coast because of an apparent lack of right whale sightings in those areas.

Response: Because fishing operations are tremendously diverse and variable, it is not possible to require similar modifications in every area. Furthermore, the measures in this plan must address entanglement of humpback, finback, and minke whales as well as right whales. However, NMFS does not believe it necessary to require gear modifications where there is no clear overlap between whales and gear. This interim final rule considers those comments and establishes a plan that covers the full range of the species (Florida to Maine) while exempting certain near-shore, shallow areas where whales do not overlap with gear. Therefore, the plan adequately addresses all areas which represent significant overlap between the fisheries and whales considered in the large whale take reduction plan.

Comment 34: One conservation group supported the need for gear modification of lobster gear as described for use in the Stellwagen Bank/Jeffreys Ledge area, but felt that the area was inappropriately defined. Requirement for these types of gear modifications extending to the beach and northward to a point north of where the bulk of right whales sightings have occurred seems unduly restrictive. Another commenter supported the definition as proposed.

Response: Based on examination of whale sighting information, the definition of the Stellwagen Bank/Jeffreys Ledge (SB/JL) area has been modified in this interim final rule. The northern boundary has been changed from 43°30'N lat. to 43°15'N lat. to reflect whale concentrations, and the area only relates to Federal waters to reflect the lack of near-shore whale sightings. It should be noted that the waters no longer included in the SB/JL area are not exempted, but are part of the other northeast waters area which require certain gear modifications.

Comment 35: NMFS intends to include all state and Federal waters. It would be better to allow States to address this issue as needed in their waters. The Commonwealth of Massachusetts, which has a critical habitat within its waters, already has a plan on line for that area. The State needs to be able to make adjustments and improvements in a timely fashion, which it can do as needed. This would be difficult if Federal rules are in the way for the same area.

Response: NMFS is aware of the difficulties of having both state and Federal regulations in the same area. The Federal Government has the responsibility of implementing the MMPA. However, NMFS intends to work actively with the Commonwealth of Massachusetts, with which NMFS has a cooperative agreement under the Endangered Species Act, to ensure that both sets of regulations are consistent and responsive. The requirements in this interim final rule mirror the current regulations of the Commonwealth.

Comment 36: Many comments were received stating that the 41°N lat. line boundary designation used to separate

the lobster fishery appeared to be arbitrary and created problems in southern New England, particularly western Long Island Sound.

Response: NMFS has moved the line north to 41°30'N lat. and has exempted certain near-shore waters, including Long Island Sound.

Comment 37: As a portion of the migratory route of the northern right whale is in the waters of Canada, Greenpeace urges the NMFS to commence bilateral talks with Canada to encourage the implementation of similar fishing restrictions by Canada in order to protect the northern right whale throughout its migratory range.

Response: NMFS agrees with the importance of working with Canada to reduce marine mammal bycatch problems in both countries. Bilateral discussions with Canada are ongoing. The Northeast Implementation Team has DFO as a member to consider recovery action for both right and humpback whales. Canada will also remain an advisor to the Large Whale TRT and thus be part of that process. The Regional Administrator meets regularly with Canada and other counter parts on issues of regional importance of which marine mammal issues are always a part. NMFS will forward this plan to DFO officials and urge Canada to take similar steps.

6. Comments on the Process

Comment 38: One commenter urged that the emphasis be shifted to those measures that are measurable and more likely to succeed without jeopardizing the industry. Above all, the commenter urged NMFS to immediately invest more resources for surveillance and monitoring to increase the likelihood of detecting the rare entanglement. Surveillance and monitoring will provide critically important data regarding right whale biology and movements, and information needed for stock assessments.

Response: NMFS intends to continue and expand the surveillance in the New England Early Warning System (EWS) instituted in January 1997. NMFS will have access to additional information on scarification analysis and population biology once results of studies that are already underway or completed are available. We will be working with the States and USCG on ways to increase disentanglement efforts, monitoring systems, and outreach and education programs designed to determine where whales and fishing gear overlap on a timely basis.

Comment 39: The State of Maine recommended that the Take Reduction Plan should be implemented as an interim plan for one year.

Response: The MMPA directs NMFS to publish a 5-year plan; therefore, a 1-year interim plan would not meet the standards in the MMPA. However, the plan is being published as an interim final rule allowing a further public comment period, and calls for the phasing in of many of the gear requirements. Furthermore, the plan will be reviewed periodically in consultation with the TRT and adjusted as necessary.

Comment 40: Maine proposes that a Coordinator position for a Whale Response team be established. This position will be contracted with the Center for Coastal Studies, Provincetown, MA, and funded in full by the NMFS. This position will have three primary areas of responsibility: Outreach and Education, Surveillance/Sighting reporting, and First Response and Disentanglement.

Response: Although NMFS cannot guarantee that it can contribute funds for such a position, it will be working with the States and USCG on ways to increase disentanglement efforts, monitoring systems, gear research and outreach and education programs and will be coordinating these efforts with the States.

Comment 41: Several commenters requested that NMFS hold additional public hearings, with an increased level of advertisement, because adequate notice was not given for the hearings that were held. One commenter also noted that the first round of public hearings were held prior to the availability of the economic analysis data and recommendations of the Large Whale Gear Advisory Group. Another commenter requested that hearings be held after gear specifications are finalized.

Response: NMFS held 12 public hearings and extended the comment period to obtain more public input. In addition, NMFS convened the Gear Advisory Group specifically to gather more advice on the difficult issue of gear modifications. Therefore, NMFS believes that adequate notice of the public hearings was given as evidenced by the large turnout at many of the public hearings, and that every opportunity was given for public comment and input to be provided to this administrative process even for those who did not participate in the first round of public hearings. NMFS is taking public comment on this interim final rule prior to its effectiveness. NMFS will attempt to ensure maximum public participation in all future deliberations concerning the Take Reduction Plan and its implementing regulations.

Comment 42: The proposed rule has caused fishermen to become unwilling to assist in efforts to save whales. The proposal will alienate fishermen. NMFS needs the cooperation of fishermen for a take reduction plan to work.

Response: NMFS agrees that cooperation of the fishing industry is essential. NMFS has substantially modified the proposed rule in response to the public's concerns to stimulate continued industry cooperation and participation in solving the problem.

Comment 43: NMFS rulemaking authority under MMPA should not provide a basis to relieve NMFS of concurrent federal responsibilities as mandated under provisions of the National Environmental Policy Act of 1969 (NEPA–42 U.S.C.A. 4321 to 4370D) and the Administrative Procedures Act (APA—5 U.S.C.A. Chapter 5).

Response: NMFS has fully complied with NEPA and the APA.

Comment 44: One commenter requested that before any implementation of the final rule, NMFS provide documentation of compliance with the provisions of the Regulatory Flexibility Act and the Small Business Growth and Administrative Accountability Act.

Response: NMFS has complied with all applicable law. (See the Classification section of this rule).

7. Gear Marking

Comment 45: The proposal to place identifying marks on gear met with generally favorable reviews. There was general agreement that it would be useful to know what type of gear was entangling whales and where that gear was set, although several commenters warned that it might be difficult to interpret data from marked gear. A chief concern was that the proposed system of marking was too complicated, too costly and time consuming. Also, many comments were received stating that marking ground lines were too costly, time consuming and the marks would not last long because of chafing.

Response: NMFS agrees that there is great value in marking gear, for it will eventually help document where and in what fishery entanglement are occurring. However, NMFS also recognizes that there are many unanswered questions concerning the accuracy of the data that can be obtained and the technology involved with marking gear. As a result of the these concerns, the interim final rule calls for a simpler, quicker method of marking gear that will keep the general

concept of identifying anchored gillnet, lobster and driftnet gear, but it substantially reduces the number of areas that are to be designated. Also, NMFS has decided to defer implementation of the requirement to mark groundlines and will seek the advice of the TRT and the Gear Advisory Group.

Comment 46: Several commenters stated that Canadian gear should be marked.

Response: NMFS does not have authority to require marking on Canadian gear. Information on the U.S. marking system will be provided to Canadian managers for their information in considering a system. Canada already requires some marking of gear, such as lobster trap tags.

Comment 47: In order to determine if whales are endangered by Maine fishermen, all lines should be marked by a color-coded piece of twine no less than 6" long attached within 6' of the buoy or marker. The state lobster fishery is divided into seven in-shore zones and seven off-shore zones. Each fisherman should mark their gear with the color code assigned to the area in which they are fishing.

Response: NMFS acknowledges this suggestion and will discuss this with the TRT, Gear Advisory Group, and the state of Maine.

8. 30-Day Inspection Requirement

Comment 48: Numerous comments were received questioning the feasibility of requiring all fishing vessels to bring their gear to shore for inspection every 30 days and the capability of NMFS to enforce such a measure.

Response: The proposed regulation was widely misunderstood. The intention was to eliminate the practice of "wet storage" of gear by requiring that all vessels tend all their gear at least once every 30 days. The provision has been clarified in this rule.

9. Comments on Closures and Effort Reduction Measures

Comment 49: One conservation group supported NMFS emphasis on gear modification as a major means of reducing the severity and number of entanglement events on the following grounds: The only way to be sure that a whale will not become entangled in fishing gear is to remove interacting gear from the water. However, because of the low entanglement rate, uncertainties as to where entanglements actually occur, and the whereabouts of most of the right whale population during most of the year, a mitigation strategy based on fishing closures seems insupportable. The exception to this would be designated critical habitat areas during high use times (as proposed by NMFS). However, measures such as the closure of critical habitats are, by themselves, insufficient.

Response: NMFS agrees with this approach particularly since measures in the Large Whale Take Reduction Plan are intended to reduce takes of humpback, finback, and minke whales as well as right whales.

Comment 50: The Marine Mammal Commission recommended that: (a) the proposal to close Cape Cod Bay to gillnet gear during the area's peak right whale season (1 January through 15 May) be expanded to include lobster gear, which is now used only at extremely low levels at that time of year; and (b) the proposal to close all of the Great South Channel critical habitat to lobster gear and most, but not all of that area to gillnet gear during the area's peak right whale season (1 April through 30 June) be changed to include the "sliver area" within the critical habitat that NMFS proposed to exclude from the closure for purposes of gillnet fishing. Eliminating entangling gear at times and in areas that right whales are known to be present will not only reduce entanglement risks for this species, but also will assure that fishing effort at those critical times does not increase in the future.

Response: NMFS believes that the current plan will reduce serious injuries and mortalities of large whales to below the PBR levels, and therefore does not believe this step is necessary at this time. However, NMFS will consider it in future deliberations and will urge the TRT to discuss these options as steps to continue progress toward ZMRG.

Comment 51: The most effective management measure for the Studds-Stellwagen Bank Sanctuary would be closure during the months of January through April or May, with a contingency for longer closures when the whales remain in the area, as they did in 1986. However, it is also recognized that the Sanctuary, because of its considerable observer effort, history of entanglements, and proximity to trained disentanglement teams could be a very appropriate site for testing fishing gear modified to reduce the threat of entanglement, provided that appropriate safeguards are put in place to insure that if an animal becomes entangled in modified gear, disentanglement teams could be deployed to free the animal from that gear. Therefore, perhaps somewhat paradoxically, closure may not be in the best interest of the long term recovery of either right whales or humpbacks.

Response: NMFS appreciates the understanding of the complexity of this issue.

Comment 52: One commenter felt that the proposed time-area closures did not address the actual risk to the whales, because they ignored the fact that whales are often found in the critical habitats during other times when the level of fishing effort in the area is substantially greater. The commenter recommended a year-round ban on all fishing in critical habitat or in marine sanctuaries. Another commenter suggested that the Jeffreys Ledge area be closed to fixed gear to reduce entanglement risk.

Response: NMFS agrees that in the Gulf of Maine there is a year-round risk to large whales from fishing gear and that critical habitat and the Stellwagen Bank/Jeffreys Ledge area are of higher risk than other waters and should be treated more carefully. However, NMFS does not believe that year-round closures are required. During the summer months in the Cape Cod Bay critical habitat and in the Stellwagen Bank/Jeffreys Ledge area, the opportunities are particularly good for sighting entangled whales and for getting a team out to disentangle a whale, so risk is not necessarily a direct relationship to the number of lines and whales in an area. NMFS will forward the commenter's suggestion to the TRT for further consideration.

Comment 53: Several commenters indicated that they did not support area closures until more information is available about the effectiveness of gear marking and the impact of using modified gear.

Response: NMFS maintains that closures in high risk areas for right whales are still necessary at this time and that the need to protect the species cannot wait for more information from gear marking and modified gear use.

Comment 54: One commenter concurred with the proposed area of closure of Sebastian Inlet, FL, to Savannah, GA, from shore out to 80° W long., but recommended the area north of Sebastian Inlet remain closed from November 1 through April 15.

Response: An Early Warning System is in place to reduce ship strikes of right whales off the coast of Florida and Georgia. Daily surveillance flights are used to locate whales in the area, and any whale sightings are transmitted to warn vessels transiting the area to keep a close look-out for the whales. These daily reconnaissance flights are currently conducted by The New England Aquarium from December 1 through March 31 and have provided detailed information on whale

abundance and distribution in the areas and times covered. The Georgia Department of Natural Resources surveys coastal waters off Georgia for right whales prior to the December start of the EWS in the SEUS. Very few whales have been recorded in the area before late November or after mid-March. Therefore, NMFS proposes to close this area from November 15 through March 31.

Comment 55: A net ban put into place in Florida has improved the health of the ecosystem in marine waters there. This would also help the whales if such a ban were put into place where the whales exist.

Response: NMFS has proposed to restrict the use of certain types of nets in areas considered high use areas by right whales off the coast of Florida and Georgia. It is expected that these restrictions will reduce the potential for entanglement of large whales in fishing gear in these areas.

Comment 56: Several commenters stated that NMFS did not recognize the legitimacy and timeliness of fishing effort control measures being considered in other plans as effective, logical whale entanglement risk reduction measures. Suggestions were provided for expansion of the vessel buy-back program to include Category I fisheries, moratoria on new entrants into the fisheries of concern, trap limits, gillnet caps, and buoy caps.

Response: NMFS acknowledges that other efforts to control gillnet and lobster fishing effort may be beneficial in reducing entanglements (see section on "other entanglement reduction measures not part of this plan"). However, the MMPA requires that NMFS produce a plan to reduce serious injuries and mortalities to below the PBR level within 6 months. NMFS cannot plan on the completion of any of these other effort reduction measures within that time frame, although they may be useful in achieving the long-term goal of the plan.

Comment 57: The State of Maine was concerned that NMFS, while acknowledging that current and anticipated fishery management effort control measures will significantly reduce likelihood of an entanglement of whales, would proceed to propose the rule subject to this proceeding without first ascertaining the degree to which entanglement is reduced by the ancillary management measures above.

Response: The MMPA set a strict timetable for producing a draft plan, which was developed based on the information available in the 1996 Stock Assessment report. That report shows that current measures have not yet reduced bycatch to below the PBR level. While the measures referred to by the State of Maine are expected to help achieve the ZMRG, they cannot be counted on to achieve the 6-month goal. There are currently no effort reduction measures in the lobster fishery for both state and Federal waters though they have been under discussion for several years and strongly advocated by NMFS.

Comment 58: The offshore lobster industry recommended that Groundfish Management Closure Area I be similarly closed to fishing with lobster gear that poses a threat of entanglement to whales from April through June as a means to avoid the development of a lobster fishery in close proximity to the Great South Channel Critical Habitat.

Response: Except for the portion of Groundfish Management Closure Area I that lies within the Great South Channel critical habitat, there is little evidence that an additional closure is needed at this time, since right whales are rarely seen in the area proposed to be closed. However, NMFS will ask the TRT to discuss this option.

Comment 59: A gillnet industry association recommended that NMFS close the critical habitat area east of the LORAN line with a northwest boundary at 13710/43950 and a southwest boundary of 13710/43650 to all gillnetting and lobster gear from March 1—May 31.

Response: NMFS appreciates this suggestion. As with the closure proposed by the lobster industry of Groundfish Management Area I, this measure does not seem necessary at this time, but could be useful in the future if adjustments to the ALWTRP are determined to be necessary to meet ZMRG.

Comment 60: Discussion in the proposed plan indicates that the rationale for excluding the sliver area from the proposed Great South Channel spring gillnet closure is that only three percent of the historical right whale sightings in the critical habitat have occurred in the sliver area. It also notes that, unlike lobster traps that would be excluded from the sliver area in spring because of their potential to entangle whales, gillnets must be tended regularly. The statement implies that this would significantly reduce entanglement risks compared to lobster traps, presumably because of a greater likelihood of detecting and avoiding whales. Finally, the discussion notes that the area is economically important to the sink gillnet fishery. Data and analyses in support of these points are not provided and, in some cases, the conclusion seems questionable.

Response: Data on where whales are entangled and what factors reduce the risk of entangling whales are scant. It is not possible to demonstrate conclusively in advance that the NMFS risk assessment is correct. NMFS will monitor this situation closely, including having regular surveys in this area throughout the high right whale use time. NMFS will present the survey data and entanglement data to the TRT for its review.

Comment 61: The Marine Mammal Commission noted that the sliver area excluded from the closure has a higher proportion of right whale sightings than other parts of the right whale critical habitat that the NMFS proposes to include in the closure.

Response: NMFS agrees that there are other areas that could be excluded from the closure on strictly biological grounds. However, the gillnet industry has only expressed interest in the sliver area. NMFS will continue to monitor the sliver and other areas to determine if other measures are necessary.

10. Dynamic Management

Comment 62: The Commonwealth of Massachusetts supports surveillance-based management. For example on May 7, 1997, the Massachusetts Division of Marine Fisheries suspended gear restrictions within the Cape Cod Bay critical habitat nine days prior to the May 16, 1997, scheduled date, because whales were well-documented to have departed the area. NMFS is urged to establish a process where changes to the regulations or actions taken under a surveillance-based management plan could be enacted without inordinate delays.

Response: NMFS has the flexibility to lift the closure or other restrictions if warranted based on surveillance in the New England Early Warning system. However, consideration must be given to effects on the other three whale species protected by this plan. The regulations implemented by NMFS this Spring were intended for right whale protection. The Great South Channel is part of right whale critical habitat; however, it is also a high-use area for other whale species protected by this plan.

Comment 63: Because unpredictable combinations of oceanographic conditions can cause whales to congregate unpredictably in areas of previously low use, support was given in principle for the provision of the NMFS regulations calling for identification of, and local action in these areas of short term, localized concentrations of whales. The risk evaluation and the decision on an

appropriate course of action should involve fishermen who work in the region, and scientists familiar with whales in the region, rather than allowing this decision to the discretion of Federal officials remote from and unfamiliar with the region. This will help to assure that the measures taken are most likely to be effective, and by including the fishing community in the decision process, the compliance will be high.

Response: NMFS agrees that it is desirable to involve local expertise in designing flexible management for small areas that must be implemented quickly and efficiently, and it will work with the States to develop contingency measures for unusual right whale distributions. The final decision as to measures to be taken must reside with the agency by law.

Comment 64: Many comments were received suggesting that NMFS use radio beacons, sonar, or other acoustic deterrent devices or fences to exclude whales from areas of the coast where they might become entangled in gear.

Response: Large scale exclusion of whales from their habitat is not an option for reducing incidental takes in fishing gear. NMFS must find solutions to the entanglement problem that involve a minimum of disruption to the whales. Acoustic deterrent devices on a smaller scale (i.e., at the level of each piece of gear) have been proposed as an option for research and development, as such a system has proven effective to reduce entanglements of harbor porpoise in sink gillnets in certain times/areas.

11. Other Right Whale Critical Habitat Measures

Comment 65: Several comments were received in support of NMFS proposed gear modification measures for lobster gear in the Cape Cod Bay right whale critical habitat during the January 1–May 15 period and proposed closure measure for the Great South Channel during the April 1–June 30 period.

Response: NMFS has retained most of the critical habitat measures. However, some of the gear modification requirements have not been included due to insufficient information on operational feasibility.

Comment 66: Given the need to reduce entanglement risks for humpback whales as well as right whales, the Marine Mammal Commission recommends that the NMFS require the same gear restrictions proposed for Cape Cod Bay between 16 May and 31 December (i.e., Type 2 lobster gear) for at least the Stellwagen Bank portion of the area. Much of Stellwagen Bank has a sandy bottom where sinking line should pose a minimal risk of chafing or snagging on rocks. Requiring Type 2 gear for the area would avoid different sets of restrictions for people who fish in both Cape Cod Bay and adjacent Stellwagen Bank areas, provide right whales with protection comparable to that in Cape Cod Bay, and offer an added measure of protection for at least one key humpback whale habitat during a peak humpback whale occurrence period.

Response: NMFS agrees that sinking groundline has the potential to decrease entanglement risk in certain areas and has included this modification as an option in the lobster gear technology list.

Comment 67: One commenter stated support for the special provision for strikenets in the proposed rule, but recommended that observers be required to be on board vessels operating with strikenets in the SEUS restricted area during the closed period.

Response: A correction to the regulatory text regarding the special provisions for strikenets is warranted. Section (e)(3)(iii) Special provision for strikenets now reads: "Fishing with strikenet gear is exempt from the restriction under paragraph (e)(3)(i) of this section if:

(A) No nets are set at night or when visibility is less than 500 yards (457.2 m);

(B) Each set is made under the observation of a spotter plane;

(C) No net is set within 3 nautical miles of a right, humpback or fin whale; and

(D) If a right, humpback or fin whale moves within 3 nautical miles of the set gear, the gear is removed immediately from the water." This correction allows for an exemption from the closed areas, provided the special provisions are met, but will not allow an exemption for strikenets from the observer requirement in Section (e)(3)(ii).

Comment 68: One commenter supported excluding the shark driftnet fishery in designated right whale habitat areas during high use times of the year and recommended that NMFS extend the critical habitat areas based on current aerial data.

Response: NMFS is currently funding additional surveys to assess the necessity of extending currently designated right whale critical habitat. Current data suggest that the critical habitat expansion to the south and east may be warranted. However, insufficient data preclude a decision at this time.

Comment 69: The preamble to the rule states that the restriction of the shark fishery in the southeast extends to the east to the 80° W long. line. However, in the implementing regulations, the restrictions appear confined to critical habitat. This is not appropriate and is less restrictive than was agreed to by the Atlantic Large Whale Take Reduction Team.

Response: NMFS agrees. The regulatory text has been amended to reflect that the restricted area extends out to the 80°00′ W long. line.

12. Contingency Measures

General Comments

Comment 70: The State of Maine questioned several aspects of the proposed rule concerning operational aspects of the fisheries subject to the plan. The State was not confident that the NMFS would exercise sound judgement in assessing an entanglement, selecting an appropriate and reasonable response to an entanglement, or in determining what constitutes an appropriately sized area to close in the event of an atypical assemblage of right whales. Therefore, the State insisted that this measure be modified to ensure that contingency measures, closures or other restrictions be made jointly by the NMFS and the affected state or states, that advice and guidance from affected fishermen, marine mammalogists familiar with the species and its behavior, and gear technologists.

Response: As noted above, NMFS will work with the States to develop contingency measures for quicker responses to entanglements and unexpected entanglement risks. However, the MMPA does not contain provisions to allow NMFS to confer decision-making authority to States or affected fishermen.

Unusual Right Whale Distribution Contingency

Comment 71: Several commenters recommended that NMFS establish a protocol to evaluate and verify sighting information to be used as the basis of a contingency closure. There were concerns about the size of a closure that could come into effect in the case of unusual right whale distributions. (The boundaries of such a closure were not specified in the proposed plan.) Where or when appropriate, modifications to gear or fishing practices should be considered as an alternative to closures. Additionally, NMFS should develop a clear procedure for reopening areas.

Response: NMFS agrees that a clear protocol for implementing and lifting contingency closures would be necessary in order to expedite their use.

The proposed contingency closure based on unusual right whale distributions is not included in the final plan, however. Further, the interim final rule contains measures to reopen any closed area. As better gear technology is available it will be placed on the gear technology list.

Comment 72: Offshore lobster gear is hauled about every 8 to 12 days; by the time a fisherman is notified that his gear must be moved due to the presence of right whales, (and he can get to the gear to do so), it is likely that the whales will have moved on. This may have the undesired result of putting gear back in the whales' path in an attempt to avoid them. Also, the most likely place to move gear will be around the perimeter of the closure, creating a more condensed gear area through which the whales will have to pass in order to leave.

Response: NMFS agrees that the timely closing of an area would have been difficult. This is one of the reasons why this measure was not implemented.

Gear Modification Failure Contingency

Comment 73: One commenter supported the proposal to either close areas during restricted periods or impose additional gear modifications or alternative fishing practices in the event of an entanglement, serious injury, or mortality of a right whale in an interaction with modified gear in critical habitat and recommended that NMFS convene or consult with the TRT after each such event.

Response: NMFS has retained this category of contingency in this rule. It will inform the TRT of any such event.

Comment 74: The Commonwealth of Massachusetts suggested that the threat of closures based on entanglements in modified gear would discourage fishermen from reporting sightings of entangled whales. It also cautioned that injuries and mortalities are so rare that reacting to the next one by instituting a closure will not provide the conservation benefits that are implied.

Response: NMFS agrees that the possibility of a fishery being closed is a strong disincentive to report entanglements. It has not retained that contingency in this plan, except in critical habitats. In critical habitat surveillance efforts and research cruises may compensate for any decrease in reporting by fishermen.

Comment 75: That the NMFS reserved for the Federal Government the sole judgment as to whether an entanglement was "attributable to modified gear" or the failure thereof to perform as expected was patently offensive to the State of Maine.

Response: NMFS is aware that it is not sole expert on entanglements or on any aspect of whale conservation. As it has in the past, it will seek advice of the TRT (on which the State of Maine had two representatives) and of the Gear Advisory Group (on which the State of Maine had one representative) on matters relating to gear and entanglements of large whales. As stated before, final authority for implementing the MMPA rests with NMFS and cannot be delegated.

13. Gear Modifications

General Comments

The vast majority of the comments submitted addressed the proposed gear modifications and specifically stated that the proposed regulations would have resulted in gear that was too weak to withstand the normal operational needs of the fishing industry. Additional concerns were raised regarding increased potential for entanglement that could result from changes in fishing practices in response to the proposed modifications or from increased ghost gear. As proposed, NMFS created a Large Whale Gear Advisory Group (LWGAG) that met June 4–5, 1997, in Peabody, Massachusetts. Twenty members of the fishing industry, four representatives of states, three researchers, and nine NMFS employees attended all or part of the meeting. NMFS provided the LWGAG with summaries of written and oral public comments, which had been received to date regarding gear modifications. After an update on gear studies and a brief discussion of whale entanglement, three teams were formed to brainstorm ways to reduce the possibility of entanglement. The participants divided themselves into teams representing inshore lobstermen, gillnetters and offshore lobstermen. The inshore lobster team had representatives from Rhode Island to downeast Maine. Gillnetters included fishermen from New Jersey to Maine, while offshore lobstermen from southern New England, the mid-shelf, and east to the Hague Line were represented. Each group produced a list of suggested options, broken down into immediate and future options, and an extensive list of research and development needs. These recommendations were considered in the drafting of this final rule.

Numerous comments were received on specific aspects of the gear modifications proposed in the proposed regulations. The following comments are representative of the comments received and address the concerns raised by the commenters. NMFS acknowledges the practical limitations of the proposed gear modifications raised by the public and believes that this interim final rule recognizes different hydrological conditions that affect fishing practices and gear and provides measures more compatible with commercial fishing practices, while still achieving mandates under the MMPA. NMFS intends to continue this cooperative effort by involving the Large Whale Gear Advisory Group and Large Whale Take Reduction Team in future development of gear modifications and research.

Comment 76: The NMFS LWGAG Inshore Lobster subgroup recommended the following options for immediate implementation in the inshore (i.e., inside Lobster Management Area 3) lobster fishery: (1) Prohibition on buoy lines greater than 7/16", (2) prohibition on line floating on the surface, (3) requirement for breakaways (at buoy; all within 1100 lb; breakaways can consist of swivels, 6 thread line (min. 1 fathom), plastic weak-links, staples, or hog rings; (4) recommend remove ban on poly/floating line from proposed rule; (5) light colored buoy lines; (6) require gear tending at least every 30 days (to ensure no wet storage); (7) credit given for use of fewer vertical lines; and (8) fewer knots.

Response: Many of the suggestions that were provided to NMFS at the Gear Advisory meeting have been included in the interim final rule. Other suggestions that were given need further evaluations and in subsequent meetings of the LWGAG and the TRT. These will be discussed and if determined to be effective measure to reduce entanglements they will be added to options list for use by fishermen.

Comment 77: The NMFS LWGAG Offshore Lobster subgroup recommended the following measures to be required for immediate implementation in the offshore (i.e., outside Lobster Management Area 3) lobster fishery: (1) Vessels fishing south of 41° N lat. are exempt from these regulations except during the months of December through March; (2) the Great South Channel Critical habitat area will be closed to lobster gear during the months of April through June; (3) there shall be no line floating at the surface of the water; (4) there shall be a weak link at the top of the buoy line. The maximum strength of the weak link shall be no more than that of 1/2" polypropylene rope or 3/4 the diameter of the buoy line; (5) there shall be no knots in the buoy line except above the weak link (to tie on surface gear); and (6) there shall be no more than 2 buoy lines per trawl.

Response: See response to comment 76.

Comment 78: The LWGAG offshore lobster subgroup also recommended the following options as suggested, not mandatory, fishing practices: (1) Buoy lines should be no more than 2.5 times the water depth; (2) traps should be no more than 25 fathoms apart on the groundlines; (3) fishers should make their trawls as long as legally possible to reduce the number of buoy lines within their strings of gear; and (4) gear should be tended no less than once a month.

Response: See response to comment 76.

Comment 79: The NMFS Large Whale Gear Advisory Group Gillnet subgroup recommended the following options for immediate implementation in the gillnet fishery: (1) Anchor the gear with the holding power of a 22 lb danforth style anchor, or a 50 lb dead weight at each end, or rig net with greater than 100 lb lead line; (2) the buoy line will not be rigged to float on the surface (excluding the tide ball & high flyer); (3) top buoy line breakaway system not to exceed 1100 lb, resulting in a bitter end not exceeding 1.5 inches in diameter;

Response: See response to comment 76.

Comment 80: Several commenters suggested that the current fishing practices might be sufficient to keep entanglement rates at acceptable levels and questioned whether proposed gear modification requirements might increase entanglement rates. A particular concern raised was the potential for increased amounts of ghost gear in which whales could become entangled.

Response: NMFS disagrees that current practices are sufficient to reduce risk to whales. Although there is no evidence to suggest that entanglements, particularly those which result in serious injury or mortality, involve ghost gear, NMFS agrees that the increase in ghost gear is a concern not only for whales but also for other marine life. NMFS agrees that the requirements of the proposed rule may have resulted in substantial amounts of lost gear. It believes that the potential for increased ghost gear which could result from this interim final rule is minimal.

Comment 81: Devices should not have to be proven to reduce whale entanglement prior to widespread use, but they should be able to meet reasonable expectations for substantially reducing risk (e.g., a decrease in breaking strength that resulted in the gear retaining 75 percent of its original characteristics would not constitute a substantial reduction in the risk of entanglement).

Response: NMFS appreciates this suggestion of a standard for risk reduction.

Comment 82: The minimal gear modifications proposed for the Studds-Stellwagen Bank National Marine Sanctuary area may not be sufficient to insure that further entanglements are avoided. While a rare event, two (possibly three) northern right whale entanglements, and a considerable number of entangled humpbacks, have been observed within the Sanctuary since 1985. While one cannot be sure that these entanglements actually occurred in the Sanctuary, neither can one say with any certainty that they occurred elsewhere.

Response: NMFS had proposed extensive modifications for this area that are calculated to provide a realistic potential of reducing serious entanglement to levels required by the MMPA. NMFS agrees that the Sanctuary is a high risk area, however, and that it is important to provide adequate protection for all four whale species in the area, particularly right and humpback whales.

Comment 83: NMFS should work toward long-term gear solutions that might include developing new gear types or shifting fishermen over to existing gear that would be less risky to marine mammals. For example, if bottom longlining proves to be an acceptable alternative for the harvest of certain groundfish species (groundfish: cod, haddock, pollock) and spiny dogfish, then gillnetters should be encouraged to shift to this gear type in areas of high risk to large whales. The three-month closure in the Great South Channel and the 4.5 month closure in Cape Cod Bay could provide opportunities for fishermen to shift to other gear types, and this should be encouraged.

Response: NMFS appreciates this suggestion. It will continue to examine alternative measures and ask the TRT to consider ways to encourage alternate fishing practices that may pose less risk of marine mammal entanglements.

Comment 84: Since the disbanding of the Take Reduction Team, concerns have been raised by right whale scientists that a top breakaway in the buoy line may be less appropriate than a bottom breakaway, but clearly both should be tested operationally. It may be that a phased approach to implementation would accommodate the need for field testing before requiring broad use of breakaways throughout the EEZ.

Response: NMFS agrees that a bottom breakaway could be useful in mitigating certain types of entanglements. The function of top breakaways versus bottom breakaways are different and would address different aspects of entanglement. The operational constraints on bottom breakaways are much greater than breakaways at the buoy, thus technological solutions would require extensive testing. Some progress has been made in developing a bottom breakaway (see next comment), but NMFS does not have any information at this time on feasibility of this device for implementation in fixed gear fisheries.

Comment 85: A conservation group suggested that failing to require a breakaway link at the bottom of buoy lines ensures that potential solutions will not be developed. This group suggests that NMFS require the development and use of such a link as soon as it becomes operationally feasible. Gear without such a device would still represent a significant entanglement risk to whales, and such gear should not be allowed into sensitive areas such as critical habitat. A device that could be used as a bottom breakaway is being developed.

Response: NMFS acknowledges this information on progress toward developing a bottom weak link and will consider such recommendations for future evaluation. NMFS will ask the TRT and LWGAG to evaluate innovative technological solutions that are presented for consideration to add to the Take Reduction Technology Lists.

Comment 86: One conservation group suggested that a weak link with a breaking strength of 400 lb might work in Cape Cod Bay critical habitat, based on operational testing. Alternatively, to make the use of weaker link devices more acceptable to industry, NMFS might explore the development of a stronger accessory device that could be placed on gear when severe storms are predicted for an area.

Response: NMFS acknowledges this timely information. However, concern remains that, although 400 lb may be promising for Cape Cod Bay, this breaking strength may not be sufficient for all areas where gear is deployed. Therefore, NMFS has used a 1100 lb breaking strength as proposed by the Large Whale Gear Advisory Group until further testing can be conducted to determine the lowest breaking strength that can be used in particular areas. It will seek a discussion in the TRT and LWGAG about the feasibility of developing an alternative device that could be placed on gear when storms are predicted, although it would be

difficult to regulate the use of such a device.

Comment 87: Splicing is not likely to make a difference in saving whales.

Response: Splicing is no longer required in the interim final rule, although NMFS encourages its use, on the grounds that a splice is less likely than a knot to snag on a whale.

Comment 88: Floating line is preferred in many fishing areas to reduce chafing caused by contact with pots or with the bottom and the actual degree to which line floats between pots is unknown. Nevertheless, to reduce the potential for a high profile in the groundline and therefore reduce the risk of entanglement, this conservation group supports requiring sinking groundline in areas identified as high-use areas for large whales.

Response: NMFS agrees that sinking groundline has the potential to decrease entanglement risk in certain areas and has maintained this modification as an option in the lobster gear technology list.

Comment 89: One commenter suggested that a workable alternative to requiring sinking groundline would be to require vessels to set lobster pot trawls in the direction of "fair tide", or down tide with the current pushing the vessel, to keep ground lines taut and low between traps. This was also discussed by the LWGAG.

Response: NMFS acknowledges this suggestion of an alternative fishing practice but further research is necessary to determine if this practice is consistent in different types of hydrological conditions.

14. Comments on Strategies for Implementing Gear Modifications

Comment 90: One commenter stated that the measures in the NMFS proposed plan may be appropriate as emergency measures for critical habitat and some high risk habitats, but that it is premature to require major, untested gear modifications over large areas outside of the highest risk areas. In particular, these modifications could cause unforeseen problems for whales, such as the increase of ghost gear. Other commenters recommended that any modifications implemented should be phased in and should be operationally sound, enforceable, and affordable.

Response: NMFS agrees with these concerns given the current lack of technological solutions and has substantially revised the proposed rule in response to these concerns.

Comment 91: One conservation group suggested that expensive modifications should have an economic phase-in period. This group suggested a system of phasing in gear modifications beginning in the right whale critical habitat areas in 1997 and ending with the wider areas in 2002, proceeding in annual increments of 1/3 of the gear each vessel has in each area. Modifications required in each of the succeeding years would be consistent with technology current at that time. The commenter suggested that existing and proposed gillnet and trap tag programs would facilitate enforcement of this strategy.

Response: The changes in this final rule reduce the costs significantly. Flexibility has been built into the interim final rule to adopt a phased-in approach for gear modification as they are developed. As new gear is determined to be operational and effective in reducing entanglements it will be added to the gear technology list described in this rule for use by fishermen.

Comment 92: One conservation group recommended that gear modifications not be allowed in closed or restricted areas until they could be demonstrated to reduce the risk of serious injury or mortality to whales to levels approaching zero.

Response: It is not clear how any management measure could be demonstrated to reduce the risks of entanglements to levels approaching zero. It will be the combinations of all the parts of the plan that will reduce the risk of entanglements. In general, hypotheses can be disproved but not proved. However, as new technology is developed, NMFS will seek advice of the TRT and the LWGAG as to whether it appears a feasible for reducing entanglement risk to deploy.

Comment 93: The NMFS should develop criteria for certifying individuals and institutions as qualified to design, evaluate, and approve modifications for use consistent with the ALWTRP. The basis for approval of any given technique or technology should be that it is judged to be equal to or superior to current practice.

Response: The design of gear modifications could be done by anyone with a good idea. No concept should be rejected just because a person is not certified. Evaluation will be done by NMFS gear specialists, the LWGAG and the TRT and by fishermen involved in testing the gear. NMFS cannot delegate authority to individuals or institutions to approve gear for use.

Comment 94: Any examination or review of gear modifications must fully address the issue of HOW whales become entangled in fishing gear. Pending the availability of scientific research that explains this phenomena, no gear modifications can or should be tested in the natural environment on endangered or other whales.

Response: NMFS agrees that knowledge of the mechanics of entanglement is important to resolve the entanglement problem. However, since so few entanglements have been witnessed, NMFS believes it is unreasonable to require this standard for allowing the use of certain gear modifications.

Comment 95: Several commenters requested that NMFS subsidize the fishing industry for modifying their gear.

Response: At this time, NMFS has no authority or funding from Congress to subsidize the fishing industry for gear modifications.

Comment 96: Several members of the fishing industry offered to test experimental gear provided by NMFS rather than be asked to experiment with gear that they need to make a living.

Response: The suggestion is appreciated and will be discussed with the Gear Advisory Team.

15. Comments on the Social and/or Economic Impact and Associated Analyses

Comment 97: Numerous comments were received expressing the opinion that the proposed rule would have a devastating effect not only on the fishing industry, but also on the entire coastal community, and that the economic impact outweighed the potential benefit to right whales.

Response: NMFS has responded to these concerns and believes that this interim final rule represents a plan that will achieve the goals established in the MMPA with an economic impact substantially reduced from that which would have resulted from the proposed rule.

Comment 98: The economic analysis should include the costs of labor that it would require to paint and rig the gear.

Response: The economic analysis did not ignore labor costs. The labor costs were acknowledged to be substantial in several instances throughout the Environmental Assessment prepared for the proposed rule. At the time, however, insufficient information was available to provide a quantitative estimate of labor costs. To the extent practicable, NMFS included labor costs in the final EA for the ALWTRP.

Comment 99: Economic analysis is an underestimate.

Response: The economic analysis was conducted with the best scientific and commercial data available at the time, and when data were lacking, qualitative assessments were made about the likely costs.

Comment 100: The State of Maine prepared an alternative economic analysis to challenge implementation of the ALWTRP on grounds of severe economic impact to the Maine lobster fishery.

Response: NMFS agrees in concept with the State of Maine's overall conclusion that the proposed regulations would have imposed a substantial economic impact on the Maine lobster fishery. NMFS has responded to this concern in developing a final rule that provides maximum flexibility to affected Maine lobster fishermen in meeting the gear modification requirements as a way to significantly reduce the economic impact. In the majority of instances, the suite of options in the lobster take reduction technology list are consistent with fishing practices commonly used by Maine lobstermen and serve to minimize compliance costs with the ALWTRP. Consequently, the original economic analysis is no longer valid for this interim final rule. Nevertheless, NMFS is not, in agreement with several assertions made by the State of Maine, nor is it in agreement with several aspects of its economic analysis. NMFS will provide a discussion of the Maine analysis upon request.

16. Regulation of Other Fisheries Which May Pose an Entanglement Risk to Large Whales

Comment 101: Several comments were received regarding NMFS's proposal to regulate several fisheries other than the four proposed to be regulated by the ALWTRP based on the fact that those other fisheries either have or may entangle large whales. Comments were received recommending that NMFS consider revising the classification of these fisheries from Category III to Category II and consider imposing gear marking requirements on these fisheries. Other comments recommended against imposing additional gear requirements or restrictions until such time as NMFS has evidence indicating that these fisheries pose an entanglement threat to large whales.

Response: A summary of historical entanglement information for the "other fisheries" was presented in the Draft Take Reduction Team Plan submitted by the TRT. Several of the other fisheries listed have documented takes of one or more of the four whale species protected by this plan. Therefore the potential for take in the future exists. In addition, as explained in the proposed rule, the other fisheries for which take has not yet been documented may represent a similar threat because gear types are similar. For example, all gear types which use vertical lines in areas where whales occur may represent an equal entanglement threat. The proposed list of fisheries for 1998 is currently out for public comment and NMFS solicits comments on the reclassification of these "other fisheries". Note that section 118 of the MMPA gives the AA the authority to classify a fishery based on analogy with similar fisheries.

17. Comments on Expansion of Disentanglement Effort

Comment 102: One commenter cited a case where a whale was seen entangled and not disentangled because the entanglement did not appear to be life threatening. That whale eventually died, and the cause of death was attributed to the entanglement. The commenter contended that this case demonstrates that disentanglement efforts could help resolve the problem and regulators should put stock in the efforts to reduce serious injury and mortality, especially since this may convince fishermen to cooperate with government to report right whale sightings.

Response: NMFS agrees that disentanglement can be an effective measure for reducing the chances of serious injury or mortality from those entanglements that have already occurred and happen to be seen and reported in time to maximize the chances of a successful disentanglement. This is a major aspect of the plan. NMFS believes that measures are necessary, both to prevent whales from becoming entangled in the first place and to minimize the impacts on those whales that become entangled and are never disentangled.

Comment 103: Several comments were received supporting the expansion of the disentanglement effort while stating that disentanglement does not substitute for the need to modify or restrict gear. One conservation group noted the lack of any data to show that disentanglement has contributed to the long term survival of any animal (particularly right whales) that has been entangled in fishing gear.

Response: NMFS agrees that measures other than disentanglement must be taken. Although no research on long term survival of disentangled animals has been conducted, analyses are underway that may provide information on this issue. Several years of data are available, since organized disentanglement has been conducted in the northeast since 1984.

Comment 104: Several comments were received indicating that the fishing industry must be involved in the disentanglement network for it to have any hope of succeeding. One commenter noted that it is vital to get the most possible benefit from "first responders". Often they are the only ones in the position to act effectively, and are able to provide valuable information on the particulars of the entanglement.

Response: NMFS agrees that the commercial fishing industry is a vital component of the disentanglement network. In fact, many whale entanglement records received by NMFS have originated from reports by commercial fishers. The chances of a successful disentanglement are maximized when the individuals monitoring an entangled whale are familiar with the needs of the disentanglement team and can stay with the whale to feed information to the primary team and assist the primary team on scene. NMFS hopes to increase the network of individuals trained to provide first response.

Comment 105: One commenter stated that well-intentioned but untrained and uninformed boaters and fishermen might unnecessarily injure either themselves or the whales they are attempting to help and suggested that fishermen and other interested boaters receive training in identifying whales and evaluating entanglements, as well as the basic do's and don'ts of disentanglement. Another commenter suggested that hotline telephone numbers be established and the numbers given to fishermen to expedite help for whale entanglements/problems.

Response: NMFS agrees that this is a concern. Information on how to report an entanglement, including hotline numbers, and on what not to do, has been provided to vessel operators in the past. NMFS is working with Sea Grant to develop an outreach and education program that will provide information to the commercial fishing industry on these and other issues. As a result of a meeting at the Maine Fishermen's Forum this spring, NMFS, the authorized disentanglement team (led by the Center for Coastal Studies) the State of Maine, and the Commonwealth of Massachusetts have developed outreach materials which will be distributed to the fishing industry and other small vessel operators over the coming months.

Comment 106: One lobster fisherman suggested that NMFS provide a $1,000,000 life insurance policy for fishers to release whales and a $1,000 reward for successful releases.

Response: No funds have been appropriated for NMFS for such purposes. NMFS cautions all boaters that releasing an entangled whale

requires expertise about the whale's behavior and is extremely dangerous. NMFS is not convinced that it would be in the whales' interest or the fishermen's interest to encourage fishermen to conduct disentanglements on their own.

Comment 107: Because there are no whales in Maine waters, disentanglement teams are obviously not necessary and are a waste of taxpayers' money.

Response: NMFS disagrees. Entanglements of all four whale species protected by this plan have occurred in Maine's near-shore waters. In addition, sightings of entangled whales for which original point of entanglement is unknown have also occurred in Maine waters and satellite tracking studies have documented right whale migratory paths through nearshore and offshore waters of Maine and the other New England states.

18. Legal Issues Regarding Whale Entanglement and Compliance with the Take Reduction Plan Regulations

Comment 108: Several commenters stated concern about a fisherman's legal liability in connection with reporting entanglements of whales in his/her gear. Some commenters believed that without immunity from legal liability there would be no incentive to report. Other commenters believed that immunity from liability would not increase likelihood of reporting entanglements. Most commenters on this subject encourage NMFS to exercise judicious prosecutorial discretion in deciding whether to hold a fisherman liable for entanglements in his gear if he/she reports such entanglements.

Response: NMFS is sensitive to concerns raised in this comment. This rule does not provide immunity to fishermen whose gear entangles whales and who report the entanglement because NMFS believes that such a provision would inappropriately dilute its enforcement responsibilities under the MMPA and ESA. Moreover, as one commenter suggested, neither the ESA or the MMPA provide explicit authority to provide such immunity without issuing incidental-take permits which cannot be issued as discussed in a response in an earlier comment. The agency intends to exercise prosecutorial discretion on a case by case basis for reported entanglements, taking into account factors such as the unavoidability of the entanglement, the fisherman's compliance with this rule and other applicable law and the cooperativeness of the fisherman.

19. Comments on Enforcement of the Plan

Comment 109: Several commenters stated that the proposed rules would be unenforceable or difficult to enforce, at least at sea, particularly with respect to gear requirements such as breaking strength.

Response: As with any regulation, the agency recognizes that certain measures within the interim final rule may, in limited instances, prove difficult to enforce. However, the agency believes that overall compliance with these measures will be high, because they generally reflect current fishing practices and are drafted with sufficient precision to enable effective enforcement in the event of a violation.

20. Comments on Education and Outreach to the Fishing Industry

Comment 110: One commenter suggested that outreach and awareness programs detailing species identification and cetacean specific problems should be mandatory for all commercial fishermen. Other commenters suggested that outreach materials be made available prior to January 1, 1998.

Response: NMFS will consider this recommendation in developing the education and outreach program. NMFS staff are currently exploring alternatives for conducting education and outreach for all take reduction plans on the U.S. Atlantic coast. NMFS agrees that it is desirable to conduct education and outreach prior to the implementation of the Take Reduction Plan regulations. The outreach program is scheduled to begin this fall.

21. Comments on Monitoring of the Plan

Comment 111: How will NMFS demonstrate, with varying time frames, the success of the act in reducing the mortality of whales, especially when a frequent occurrence is defined as an event that occurs once every 5 years? What scientific evidence is necessary to support these measures? What is relevant data, the source of this data, and is it peer-reviewed?

Response: NMFS will publish annually a Stock Assessment Report that provides estimates of serious injuries and mortalities of each species of large whale for the most recent year for which data are available and for the five-year period ending with that year. Estimates of serious injuries are compiled from data supplied by fisheries observers and by stranding and entanglement reports submitted to NMFS by those who observe such events. The Stock Assessment Reports are peer reviewed and are submitted for public comment before finalizing them as well.

Comment 112: NMFS states that "it will be difficult to establish whether the goal of reducing incidental takes of right whales to below the PBR level is achieved within 6 months of when the plan is implemented." NMFS's rationale for this statement is "if more than two serious injuries or mortalities incidental to commercial fishing operations occur within 5 years after the plan is promulgated, then the PBR goal will not have been achieved." This logic is baffling. The MMPA establishes two goals: (1) To reduce the serious injury and mortality in commercial fishing operations to levels less than the PBR level within 6 months of implementation of a take reduction plan; and (2) to reduce the serious injury and mortality to levels approaching a zero mortality and serious injury rate in 5 years. It makes absolutely no sense to monitor serious injury and mortality for 5 years and use this data to evaluate the immediate 6-month PBR goal. This commenter contends that if there are no serious injuries or mortalities incidental to commercial fishing operations during the first six months to a year after implementation, then the plan has met its first goal. The logic NMFS describes is more appropriate in evaluating the 5-year ZMRG goal.

Response: NMFS agrees that if no serious injuries or mortalities incidental to commercial fishing operations occur during the first six months of the plan, the plan will have met its short-term goal. Because not all entanglements are observed, it will be impossible to establish with surety that the 6-month goal has been met. The MMPA implies that the level of serious injuries or mortalities should not only reach the PBR level in 6 months but should be maintained at or below that level as efforts to further reduce bycatch continue. Therefore, NMFS will continue to evaluate the rate of serious injury or mortality from entanglements relative to the PBR level over the course of this plan.

Comments 113: The proposed rule states that because of the small population size of right whales and the current procedure for calculating the PBR level over five years, it will be difficult to know if the 6-month goal is met. Although this may be true if no right whales die, it is not true if one does die. If one right whale suffers serious injury or mortality incidental to commercial fishing in the first six months, then the 6-month goal of less than 0.4 takings per year is simply not

met. At that rate, more than 2 mortalities can be projected per year. Given the precariousness of the right whale species, NMFS must err on the side of protection in determining whether its goals are being met.

Response: NMFS agrees.

Comment 114: It will be impossible to determine whether the Zero Mortality Rate Goal has been reached in 5 years.

Response: NMFS agrees that it will be impossible to determine with surety that ZMRG has been met. However, NMFS will assume ZMRG is met if the frequency of known cases of serious injuries or mortalities meets the ZMRG criteria.

Comment 115: Since witnessed entanglements will most likely continue to be rare, it will probably be necessary to rely on scarification data to verify success. If true, it will be especially important for NMFS to a) assess current scarification levels in humpback whales as a baseline for comparison; and b) start a series of annual or biennial reviews of new scarification rates, especially among juvenile humpback and right whales. This data, combined with other research suggested in the notice, will be important in furthering our knowledge of when and where entanglements may and/or do take place.

Response: An analysis of scarification could provide useful information about rates of entanglement, but it is unlikely to be sufficient to verify success in achieving the PBR level or ZMRG. First of all, such analyses will take considerable time and may not be available quickly enough to allow modification of the plan if it is not working. In addition, determining the rate of acquiring new scars is likely to be difficult, and interpretation of the analysis will be complicated by questions about what percentage of scars represent serious injuries.

Comment 116: Several commenters, as well as the TRT and Gear Advisory Group supported the proposal of maintaining a central repository for gear removed from whales for gear identification and to evaluate any information on the performance of modified gear and/or implications for future gear modifications.

Response: NMFS has taken action on this recommendation and has collected gear taken off whales beginning in 1994 and up to the present and intends to make some form of the materials available to the LWGAG and TRT and the public. In some cases, gear is returned to vessel owners once the gear is photographed and/or described in detail.

Comment 117: NMFS states that: "A decrease in entanglements of humpback whales will be taken as supportive evidence that risk of entangling right, fin, and minke whales has been reduced." Discussion during the Take Reduction Team deliberations indicated that NMFS must evaluate more than the entanglement rate. NMFS must also assess the severity of the entanglement, the amount of gear entangling the whales, and the whale's survivorship. This assessment is necessary because whale entanglements may actually increase if whales encountering gear are more successful, due to gear modifications, in breaking free from gear rather than merely drowning and going undetected. A reduction in the severity of entanglement or injury, the amount of entangling gear, and the presence of entanglement scarring in juveniles may be a better indicator as to whether gear modifications and fishing effort reduction have reduced the incidence of entanglement resulting in scars (it is assumed that if an animal can break away before getting wrapped in the gear, there should be little to no evidence of scarring).

Response: NMFS appreciates this analysis and intends to consider these factors in evaluating future entanglement events.

Comment 118: The proposed monitoring plan is inadequate, because it does not include a component relating the amount of sampling to a statistical model for evaluating whether the goals of the plan are being achieved.

Response: NMFS will determine whether the goals of the plan are being achieved based on known cases of serious injury or mortality due to entanglements. This is not a controlled sampling regime, and the analysis may be complex. NMFS will use the best scientific information available to evaluate the plan.

Comment 119: There is no time table presented specifying when proposed analyses will be completed, except the general statement that evaluations will occur at future team meetings. At a minimum, the plan should require that the TRT meet annually. It should also specify clearly what data will be reviewed.

Response: The interim final rule discusses this concern and NMFS will reconvene the TRT to discuss the interim final rule and possible modifications. No date has been set for this meeting but it is expected that the TRT will be reconvened before the end of the comment period. NMFS expects to reconvene the TRT at least once each year for the duration of the plan.

Comment 120: Although the plan acknowledges the need for additional data collection, there is no concomitant acknowledgment of the increase in resources needed to complete the analyses of the data, such as advanced image recognition software and personnel to do the identification and scarring rate analysis. Such details should be included in the ALWTRP.

Response: NMFS places high priority on carrying out this plan, but it cannot commit resources in advance of budget allocations. The value of advanced image recognition software and scarring rate analyses has not yet been determined.

Comment 121: Any monitoring program for the northern right whale, by NMFS own requirements, must be able to tell if a single entanglement of a northern right whale even occurs. Yet NMFS' proposal for a monitoring program is the *status quo,* which by its own admission comes nowhere close to meeting this goal. The proposed monitoring program comes down to nothing more than a token effort. The Draft ALWTRP plan for the monitoring programs for the other listed species of whales are similarly deficient.

Response: NMFS disagrees. In the past year NMFS has created the Early Warning System which monitors whale activities in the Critical Habitat area. NMFS will be expanding that program by inviting states, the commercial fishing industry, whale watch vessels to participate in the network and broaden the area of surveillance to other high use areas. NMFS will also be establishing an outreach and education program that should help significantly in reporting sightings of large whales.

Comment 122: Considering the seriousness of the regulatory actions and extremes that are mentioned within the proposed rules this gillnet industry association feels that promulgating regulations of this magnitude should be based on entanglement recording from irrefutable sources. The ability to recognize cetaceans species and the gear associated with an entanglement is critical in considering actions to be taken.

Response: NMFS agrees that these are essential elements to interpreting entanglement reports. Even though the number of entanglement reports received is considered to be a minimum, many of these reports are excluded from analysis due to insufficient information on species identification and/or gear type.

Comment 123: The Take Reduction Team's report also recommends that whale photographs collected as part of population studies continue to be

analyzed for evidence of fishing gear interactions. This analysis is not mentioned explicitly among the NMFS's proposed list of monitoring actions and, if the NMFS is not already planning to do so, the Marine Mammal Commission (MMC) recommends that NMFS include such analyses in its monitoring strategy. The proposed plan also notes that NMFS is considering expanding field surveys to assess the population abundance and distribution of the relevant whale stocks. Given that such surveys are the principal source of photographs for analyzing entanglement scars, the Marine Mammal Commission recommends that the Service expand the discussion in this section to identify the priority areas and approaches where expanded population survey efforts would be most helpful with regard to assessing entanglement rate trends.

Response: NMFS intends to continue monitoring the large whale populations as it has in the past. As noted above, analyzing whale photographs for evidence of fishing gear interactions could provide useful information on entanglement rates. NMFS is not yet convinced that this should be a part of the plan, however, as there are questions about the gathering, analysis and interpretation of the data. NMFS intends to seek a fuller discussion of these points at the TRT.

Comment 124: Because of the need to consider the anatomy, behavior, and ecology of large whales in evaluating potential fishing techniques and gear modifications that would reduce entanglement risks, the MMC recommends that the NMFS expand the proposed membership of the gear advisory group to include whale biologists with direct knowledge of the whale species of concern. Because of the need to consider the conservation benefits of potential gear modifications, we also believe the group should include a representative of environmental organizations.

Response: The Gear Advisory Team membership already includes three whale biologists. NMFS will consider adding a fourth.

Comment 125: The State of Maine and the Maine lobster fishing industry expressed a willingness to place on-board observers aboard our vessels, as is required under the law for any Category I Fishery.

Response: NMFS appreciates the assistance offered by the State of Maine and the Maine lobster fishing industry, and will discuss this option once the outreach and education program is operational.

Comment 126: A gillnet industry organization recommended continued observer coverage on all fixed gear vessels operating in the Great South Channel critical habitat from March 1–June 30. This additional month for observer coverage is to determine if whales are sighted and if entanglements do occur.

Response: NMFS appreciates this suggestion and will try to arrange additional observer coverage in this area if extra observer days are available when the allocations of observer effort are made.

Comment 127: Several commenters recommended that NMFS incorporate a system of gear loss reporting into the monitoring of the entanglement problem. If reporting were instant, disentanglement teams would have information on whether gear loss was reported in an area where an entangled whale was seen. In addition, gear lost to gear conflicts or user-group conflicts would be appropriately identified as ghost gear in the event that same piece of gear was found on a whale.

Response: NMFS appreciates this suggestion, which will be considered in future evaluations.

Comment 128: Several commenters supported the need to expand field surveys to determine differential use of the area by right whales and humpback whales. Additional effort directed to surveys in and around critical habitat may also assist in efforts to implement dynamic management measures.

Response: NMFS will further expand field surveys as funding is available. It is committed to continuing the Early Warning System, which may provide information useful for dynamic management.

Comment 129: Concern over the need to assess the efficacy of gear modifications and to correctly assign cause of mortality in whales underscores the need to prioritize examination of carcasses to determine cause of death.

Response: NMFS agrees that an examination of whale carcasses can provide important information on how entanglements occur and on the cause of death of a whale.

Comment 130: An active right whale patrol should be established on a daily basis probably in conjunction with other United States Coast Guard activities.

Response: NMFS has instituted a right whale Early Warning System in cooperation with numerous state and Federal regulatory agencies, including the Coast Guard, first in the southeast and more recently in the northeast. These surveys focus on right whale critical habitat areas and disseminate timely information on right whale movements to the marine community.

22. Comments on Market Incentives to Reduce Bycatch

Comment 131: One conservation group stated that they support NMFS's decision to postpone the designation of a team to investigate the development of market incentives.

Response: This comment reflects NMFS's position at this time. This option was discussed by the TRT, and additional information on their recommendations can be found in the TRT report.

23. Comments on Definitions

Comment 132: With regard to gillnet modifications, incorrect terminology has been used. Gillnets have "lead line", not "foot ropes"; and they have "float lines" not "head ropes". The terms "foot rope" and "head rope" refer primarily to draggers (trawlers) and the use of these terms is inappropriate when referring to gillnets.

Response: NMFS had used these terms to avoid confusion between surface buoys (also called "floats") and net floats and between the buoy line (sometimes called "lead line", i.e., by the alternate pronunciation of the word) and the weighted line at the bottom of the string of nets. However, in response to the industry's request for clarification, the definitions have been changed in this rule.

Comment 133: It was recommended that the term "modified sinking buoy line" be defined to include sinking line, or polypropylene line with lead sinkers hammered on, as is the practice in many areas to sink buoy line.

Response: In this interim final rule, the term "modified sinking buoy line" is not used. NMFS will ask the TRT to discuss the appropriateness of using lead sinkers to cause polypropylene rope to sink.

Comment 134: The definition of a buoy should also be clarified. Lobstermen commonly "stack" buoys together to form a "float" for one buoy line. A buoy could also be comprised of two buoys separated by a length of line, one at the surface and one subsurface.

Response: This interim final rule clarifies that if more than one buoy is attached to a buoy line, or if a buoy and a high flyer are attached to a buoy line, the weak link, if used, should be between the buoy line and the buoy closest to the fishing gear.

Comment 135: NMFS should specify whether "breaking strength" refers to tensile strength or safe working load.

Response: The breaking strength described in the proposed rule refers to ultimate tensile strength, not safe working load. The term "breaking

strength" is defined in the interim final rule.

Classification

This rule has been determined to be significant for purposes of E.O. 12866. In formulating this rule, NMFS considered a number of alternatives, including no action, wide-spread closures, requiring specific gear modifications as in the proposed rule, and the current rule.

Inaction would have entailed no cost to the industry but would not reduce the serious injury or mortality to right whales from commercial fishing gear to below the Potential Biological Removal Level and therefore was deemed insufficient to comply with the MMPA. While it is impossible to quantify the benefit of protecting endangered species, protecting one of the rarest species in the world, the northern right whale, is a goal that would appear to have high value. Protecting species from extinction may convey significant future benefits in terms of maintaining the balance of an ecosystem or in valuable biological insights. Furthermore, protecting a species for its own sake is of high value to many people. For example, in an effort to quantify the value of a related marine mammal species, a recent study of households in Massachusetts found that they would be willing to pay between $176 to $364 per household to eliminate the deaths by entanglement of 1000 harbor porpoises. If these numbers are applied to the total population of Massachusetts households, the lower bound of the total value households in Massachusetts alone would be willing to pay for harbor porpoise conservation is $395 million. Harbor porpoises are not endangered species. Economic theory would predict that people would be willing to pay even more to protect right whales.

Widespread closures, although they might achieve the goals of the MMPA, would be economically costly. Such huge economic costs would not be necessary if disentanglement efforts and gear modifications are successful in reducing bycatch to MMPA standards.

This document presents a number of reasons why the original rule proposed by NMFS on April 7 was not acceptable (see "Changes from the proposed rule"). In brief, the original proposal contained a number of untested ideas that would have entailed significant costs to the industry. Although these costs would have been less burdensome than a full-scale closure, the expected costs would have been in the tens of millions of dollars. While this level of expenditure might be justifiable if the conservation benefits to large whales could be determined, there was no guarantee that these costly measures would achieve the stated goals. In some cases, the proposed regulation might have made the situation worse for whales. For example, there may have been an increase in the amount of lost gear in the water that would also pose an entanglement threat.

The estimated maximum ten-year costs for this proposal in present value terms, using a 7% discount rate, is $20.7 million. This is based on the assumption that vessels will use the costliest alternative (i.e., whipping) to meet their gear marking requirements. The year-one cost based on the same assumptions is $10.3 million. If paint is used to apply marks, the costs will be substantially less. While the cost of these measures is substantial, the benefit they are expected to bring is reducing serious injuries and mortalities to large whales to a more sustainable level (i.e., below the potential biological removal level) within six months and to insignificant levels within 5 years. These measures are expected to assist in the recovery of endangered species of large whales in the North Atlantic, a goal that would seem to have intrinsic biological and social value, since marine mammals have proven themselves to be resources of great international significance, esthetic and recreational as well as economic.

The gear marking requirements in section 229.32 (b), (c)(1), (d)(1), (e)(1), and (f)(1) constitute a collection of information. Each gear mark referred to below consists of a two-color code. This collection of information is being submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act. Estimates shown below do not include any estimates of the time burden required for the recreational lobster fleet because the amount of gear fished by this sector is unknown. The analysis also does not include additional time required by vessels that may switch between different fishing areas during the year, such as shifting from inshore to offshore lobster fishing. Therefore, the estimates below are likely to be a lower bound on the actual time required to comply with the gear marking requirements.

The time it takes a vessel to comply with the gear marking requirements depends on the method they choose. Painting is estimated to take 30 seconds per mark, and whipping is estimated to take 10 minutes per mark. Assuming these are the minimum and maximum times required per mark, a range of values will be reported. The average reporting requirements for painting these marks is estimated to be 0.067 hours per trawl or gillnet string. This would equal a total of 4,127 hours to place the required marks, or 1.38 hours per firm. For whipping, the average reporting requires 1.33 hours per string or trawl. This would equal a total of 477,200 hours to place all the required marks, or 153 hours per firm. Marks that are whipped will last 3 years, while painted marks are expected to last one year. Firms will pick the method which minimizes their costs, which makes it likely that the vast majority will paint their lines because of the lower labor costs.

Driftnets used in the shark driftnet fishery operating in the Southeastern U.S. Atlantic waters may be up to 6493 feet (2000 meters) in length. An average net with 2 buoy lines and 4870 feet (1500 meters) in length would require approximately 100 marks that could be placed in approximately 2.5 hours per vessel. In most years, 12 vessels participate in the shark driftnet fishery, therefore there would be a total of approximately 1200 marks equaling approximately 30 hours of reporting for the entire fishery. After 1999, marks must be renewed as they deteriorate. Annual replacement or repair of gear is anticipated in the shark driftnet fishery, therefore the estimate of marking time given above is likely to reflect the annual reporting burden.

An increase in the gear used or a decrease in the life expectancy of the markings would result in a linear increase in the total hours.

Send comments regarding these burden estimates or any other aspect of the collection of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of 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 Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

NMFS prepared an Initial Regulatory Flexibility Analysis that described the impact the proposed rule was expected to have on small entities, but changes to that proposed rule contained in this interim final rule are expected to minimize those impacts. NMFS prepared a Regulatory Impact review for this interim final rule and concluded that a Final Regulatory Flexibility Analysis was unnecessary. NMFS standards for Regulatory Flexibility Analysis determinations are: five percent loss of revenue for 20 percent of the participants; 10 percent increase in

operations costs for 20 percent of the participants; and two percent of participants cease operations.

The need for, and objectives of this interim final rule and a summary of the significant issues are described elsewhere in this preamble. The American lobster pot, New England multispecies sink gillnet, Mid-Atlantic coastal gillnet, and Southeast driftnet fisheries are directly affected by the proposed action and are composed primarily of small business entities. The number of state and Federal permit lobster holders is estimated to be 13,000. The numbers of vessels in the New England multispecies sink gillnet, Mid-Atlantic coastal gillnet, and Southeast shark driftnet fisheries are estimate to be 350, 650, and 12, respectively. However, about 4,500 lobster firms and about 320 gillnet firms will be affected by this interim final rule. This interim final rule includes reporting or recordkeeping requirements, since it requires that fishing gear be marked. It also requires that gear be modified in various ways to reduce potential interactions with large whales. In certain cases, area closures are required. No special skills are required beyond those necessary to conduct the above fishing operations.

Currently, the American Lobster Fishery, the New England Multispecies Fishery, the weakfish and striped bass portion of the mid-Atlantic coastal gillnet fishery, and the Atlantic shark fishery are subject to Federal regulations under 50 CFR Part 649, Subpart F of Part 648, Part 697, and Part 678, respectively. This interim final rule is designed to complement those existing regulations and fishery management objectives by reducing the bycatch of large whales in these fisheries. A variety of regulatory alternatives were considered, including no action, area closures, and various gear modifications and restrictions as discussed above. With respect to some critical habitat areas, area closures are being initiated in order to provide the necessary level of protection for the critically endangered northern right whale. In most cases, however, gear modifications represent the preferred alternative; the plan was designed to achieve the goals of the MMPA while minimizing the economic impact on small entities.

In this interim final rule, NMFS has taken the following steps to minimize the significant economic impact on small entities: (1) It has exempted waters where the risk of entangling right whales is low. This action eliminates any economic cost for a large portion of the coastal lobster industry. (2) It will not require any untested gear to be deployed. This will eliminate costs for lost gear beyond usual wear and tear. (3) It will not require any expensive gear modifications at this time. NMFS will allow fishermen to choose from a menu of gear characteristics that have been tested in the field and which are thought to be helpful in reducing entanglements. Most of the items currently on the menus represent current best fishing practices, which many fishermen already use. (4) Some possible closures have been eliminated, such as the closure contingent upon the unusual presence of four or more right whales in an area. This will allow fishermen to plan better and will eliminate the potential cost of lost revenue should such a closure have been instituted. (5) It has devised a simpler, quicker and less expensive system for marking gear. Painting line is now allowed, which should minimize the time and cost required to mark gear. A discussion of the reasons for selecting these alternatives and a review of other significant regulatory alternatives can be found in the EA prepared for this action.

As a result of this analysis, NMFS has determined that no Regulatory Flexibility Analysis was required. The costs of the measures required by this interim final rule have been determined to be relatively low on a per firm basis, and none of the NMFS standards for Regulatory Flexibility Analysis determinations are anticipated to be met. Therefore, NMFS believes that this interim final rule will not have a significant impact on a substantial number of small entities.

The Assistant Administrator for Fisheries, NOAA, prepared an environmental assessment (EA) for this interim final rule under the National Environmental Policy Act. The EA concludes that this plan is not likely to have a significant impact on the human environment. In addition, NMFS has prepared a Biological Opinion to review this action for compliance with Section 7 of the Endangered Species Act. The Biological Opinion concludes that implementation of the plan and continued operation of fisheries conducted under the American Lobster and Multispecies Fishery Management Plans and the Southeastern shark gillnet component of the Shark Fishery Management Plan, may adversely affect, but are not likely to jeopardize the continued existence of any species of large whales or sea turtles listed under the Endangered Species Act. A copy of the EA and the Biological Opinion is available upon request (see **ADDRESSES**).

References

Waring, G.T. *et al.* 1996. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments. In preparation.

Team Report. 1997. Draft Atlantic Large Whale Take Reduction Report. Report prepared by the Atlantic Large Whale Take Reduction Team and submitted to the National Marine Fisheries Service February 4, 1997. 79pp.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: July 15, 1997.

Rolland Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is amended to read as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.2, definitions of "American lobster or Lobster", "Anchored gillnet", "Assistant Administrator", "Breaking Strength", "Bridle", "Buoy line", "Driftnet, drift gillnet or drift entanglement net", "Fish with or fishing with", "Float-line", "Gillnet", "Groundline", "Inshore lobster waters", "Lead-line", "Lobster pot", "Lobster pot trawl", "Mid-Atlantic coastal waters", "Northeast waters", "Offshore lobster waters", "Operator", "Sink gillnet", "Sinking line", "Southeast waters", "Spotter plane", "Stellwagen Bank/Jeffreys Ledge area", "Strikenet or to fish with strikenet gear", "Tended gear or tend", "U.S. waters", and "Weak link" are added in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

American lobster or lobster means *Homarus americanus.*

Anchored gillnet means any gillnet gear, including sink gillnets, that is set anywhere in the water column and which is anchored, secured or weighted to the bottom.

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.

* * * * *

Breaking strength means the highest tensile force which an object can withstand before breaking.

Bridle means the lines connecting a gillnet to an anchor or buoy line.

Buoy line means a line connecting fishing gear in the water to a buoy at the surface of the water.

* * * * *

Driftnet, drift gillnet, or drift entanglement gear means gillnet gear that is not anchored, secured or weighted to the bottom.

Fish with or fishing with means to use, set, or haul back gear or allow gear that is set to remain in the water.

* * * * *

Float-line means the rope at the top of a gillnet from which the mesh portion of the net is hung.

Gillnet means fishing gear consisting of a wall of webbing or nets, designed or configured so that the webbing or nets are held approximately vertically in the water column designed to capture fish by entanglement, gilling, or wedging. Gillnets include gillnets of all types such as sink gillnets, other anchored gillnets, and drift gillnets.

Groundline, with reference to lobster pot gear, means a line connecting lobster pots in a lobster pot trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor or buoy line.

* * * * *

Inshore Lobster waters means all state and Federal waters between 36°33′00.8″N lat. (the Virginia/North Carolina border) and the U.S./Canada border that is shoreward of the area designated below as "offshore lobster waters."

* * * * *

Lead-line means the rope, weighted or otherwise, to which the bottom edge of a gillnet is attached.

* * * * *

Lobster pot means any trap, structure or other device that is placed on the ocean bottom and is designed to or is capable of catching lobsters.

Lobster pot trawl means two or more lobster pots attached to a single groundline.

Mid-Atlantic coastal waters means waters bounded by the line defined by the following points: The southern shoreline of Long Island, New York at 72°30′W, then due south to 33°51′N lat., thence west to the North Carolina/South Carolina border.

* * * * *

Northeast waters means those U.S. waters east of 72°30′W and north of 36°33′00.8″N lat. (the Virginia-North Carolina border).

* * * * *

Offshore lobster waters includes all U.S. waters seaward of the following lines except for waters in the Great South Channel critical right whale habitat: Beginning at the international boundary between the U.S. and Canada; thence southerly along the boundary to the LORAN C 9960–Y–44400 line; thence southwesterly along the 44400 line to 70°W long.; thence south along the 70° meridian to the LORAN C 9960–W–13700 line; thence southeasterly to the intersection with the LORAN C 9960–Y–43700 line; thence westerly to the intersection with the LORAN C 9960–W–14610 line; thence southerly along the 14610 line to the intersection with the LORAN C 9960–Y–43700 line; thence southwesterly to the intersection of the LORAN C lines 9960–Y–43500 and 9960–X–26400; thence southerly to the intersection of the LORAN C lines 9960–Y–42600 and 9960–X–26550; thence southerly to the intersection of the LORAN C lines 9960–Y–42300 and 9960–X–26700; thence southerly to the intersection of the LORAN C lines 9960–Y–41600 and 9960–X–26875; thence southerly in a line toward the intersection of LORAN C lines 9960–Y–40600 and 9960–X–26800 but stopping at 36°33′00.8″N lat. (the North Carolina/Virginia border); thence due west to the shore.

Operator, with respect to any vessel, means the master, captain, or other individual in charge of that vessel.

* * * * *

Sink gillnet has the meaning specified in 50 CFR 648.2.

Sinking line means rope that sinks and does not float at any point in the water column. Polypropylene rope is not sinking line unless it contains a lead core.

Southeast waters means waters south of a line extending due eastward from 33°51′N lat. (the North Carolina/South Carolina border).

Spotter plane means a plane that is deployed for the purpose of locating schools of target fish for a fishing vessel that intends to set fishing gear on them.

Stellwagen Bank/Jeffreys Ledge area means all Federal waters in the Gulf of Maine, except those designated as right whale critical habitat, that lie south of the 43°15′N lat. line and west of the 70° W long. line.

* * * * *

Strikenet or to fish with strikenet gear means a gillnet, or a net similar in construction to a gillnet, that is designed so that when it is deployed, it encircles or encloses an area of water either with the net, or by utilizing the shoreline to complete encirclement, or to fish with such a net and method.

* * * * *

Tended gear or tend means active fishing gear that is physically attached to a vessel or to fish so that active gear is attached to the vessel.

U.S. waters means both state and Federal waters to the outer boundaries of the U.S. exclusive economic zone along the east coast of the United States from the Canadian/U.S. border southward to a line extending eastward from the southernmost tip of Florida on the Florida shore.

* * * * *

Weak link means a breakable device that will part when subject to a certain tension load.

3. In § 229.3, paragraphs (g) through (j) are added to read as follows:

§ 229.3 Prohibitions.

* * * * *

(g) It is prohibited to fish with lobster pot gear in the areas and for the times specified in § 229.32 (c)(4) through (c)(10) unless the lobster pot gear meets the marking requirements specified in § 229.32(c)(1) and complies with the closures, modifications, and restrictions specified in § 229.32 (c)(2) through (c)(10).

(h) It is prohibited to fish with anchored gillnet gear in the areas and for the times specified in § 229.32 (d)(3) through (d)(8) unless that gillnet gear meets the marking requirements specified in § 229.32(d)(1) and complies with the closures, modifications, and restrictions specified in § 229.32 (d)(2) through (d)(8).

(i) It is prohibited to fish with drift gillnets in the areas and for the times specified in § 229.32(e)(2) unless the drift gillnet gear meets the marking requirements specified in § 229.32(e)(1) and complies with the restrictions specified in § 229.32(e)(2).

(j) It is prohibited to fish with shark driftnet gear in the areas and for the times specified in § 229.32(f) (2) and (3) unless the gear meets the marking requirements specified in § 229.32(f)(1) and complies with the restrictions and requirements specified in §§ 229.32 (f)(2) and (f)(3).

4. A new § 229.32 is added to subpart C to read as follows:

Subpart C—Take Reduction Plan Regulations and Emergency Regulations

§ 229.32 Atlantic large whale take reduction plan regulations.

(a)(1) *Regulated waters.* The regulations in this section apply to all U.S. waters except for the areas

exempted in paragraph (a)(2) of this section.

(2) *Exempted waters.* The regulations in this section do not apply to waters landward of the following lines:

Maine and New Hampshire

44° 49.52′N 66° 56.10′W TO 44° 48.90′N 66° 57.00′W
44° 38.60′N 67° 11.50′W TO 44° 36.26′N 67° 15.70′W
44° 36.26′N 67° 15.70′W TO 44° 27.80′N 67° 32.85′W
44° 27.80′N 67° 32.85′W TO 44° 26.48′N 67° 36.00′W
44° 26.48′N 67° 36.00′W TO 44° 21.75′N 67° 51.85′W
44° 21.75′N 67° 51.85′W TO 44° 19.60′N 68° 03.00′W
44° 19.45′N 68° 02.00′W TO 44° 14.40′N 68° 11.55′W
44° 14.15′N 68° 11.90′W TO 44° 13.25′N 68° 20.20′W
44° 13.25′N 68° 20.20′W TO 44° 13.71′N 68° 28.31′W
44° 13.21′N 68° 28.92′W TO 44° 10.48′N 68° 35.80′W
44° 10.48′N 68° 35.80′W TO 44° 08.80′N 68° 40.80′W
44° 08.80′N 68° 40.80′W TO 44° 02.25′N 68° 48.25′W
44° 02.10′N 68° 48.40′W TO 43° 51.75′N 69° 17.10′W
43° 51.75′N 69° 17.10′W TO 43° 48.15′N 69° 35.90′W
43° 48.15′N 69° 35.90′W TO 43° 42.00′N 69° 51.10′W
43° 42.00′N 69° 50.10′W TO 43° 33.47′N 70° 12.35′W
43° 33.47′N 70° 12.35′W TO 43° 21.90′N 70° 24.90′W

Rhode Island

41° 22.41′N 71° 30.80′W TO 41° 22.41′N 71° 30.85′W (Pt. Judith Pond Inlet)
41° 21.31′N 71° 38.30′W TO 41° 21.30′N 71° 38.33′W (Ninigret Pond Inlet)
41° 19.90′N 71° 43.08′W TO 41° 19.90′N 71° 43.10′W (Quonochontaug Pond Inlet)

New York

West of the line from the Northern fork of the eastern end of Long Island, NY (Orient Pt.) to Plum Island to Fisher's Island to Watch Hill, RI. (Long Island Sound)
41° 11.40′N 72° 09.70′W TO 41° 04.50′N 71° 51.60′W (Gardiners Bay)
40° 50.30′N 72° 28.50′W TO 40° 50.36′N 72° 28.67′W (Shinnecock Bay Inlet)
40° 45.70′N 72° 45.15′W TO 40° 45.72′N 72° 45.30′W (Moriches Bay Inlet)
40° 37.32′N 73° 18.40′W TO 40° 38.00′N 73° 18.56′W (Fire Island Inlet)
40° 34.40′N 73° 34.55′W TO 40° 35.08′N 73° 35.22′W (Jones Inlet)

New Jersey

39° 45.90′N 74° 05.90′W TO 39° 45.15′N 74° 06.20′W (Barnegat Inlet)
39° 30.70′N 74° 16.70′W TO 39° 26.30′N 74° 19.75′W (Beach Haven to Brigantine Inlet)
38° 56.20′N 74° 51.70′W TO 38° 56.20′N 74° 51.90′W (Cape May Inlet)
39° 16.70′N 75° 14.60′W TO 39° 11.25′N 75° 23.90′W (Delaware Bay)

Maryland/Virginia

38° 19.48′N 75° 05.10′W TO 38° 19.35′N 75° 05.25′W (Ocean City Inlet)
37° 52.50′N 75° 24.30′W TO 37° 11.90′N 75° 48.30′W (Chincoteague to Ship Shoal Inlet)
37° 11.10′N 75° 49.30′W TO 37° 10.65′N 75° 49.60′W (Little Inlet)
37° 07.00′N 75° 53.75′W TO 37° 05.30′N 75° 56.50′W (Smith Island Inlet)

North Carolina to Florida

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80.

(b) *Gear marking provisions*—(1) *Gear marking required for specified gear*—(i) *Specified gear.* Specified fishing gear consists of lobster pot gear in inshore and offshore lobster waters, anchored gillnet gear in northeast waters and in mid-Atlantic coastal waters; drift gillnet gear in mid-Atlantic coastal waters; and shark driftnet gear in southeast waters.

(ii) *Requirement.* From January 1, 1998, and as otherwise required in paragraphs (c)(1), (d)(1), (e)(1), and (f)(1) of this section, any person who owns or fishes with specified fishing gear must mark that gear as specified in paragraphs (b)(2) and (b)(3) of this section, unless otherwise required by the Assistant Administrator under paragraph (g) of this section.

(2) *Color code.* Gear must be marked as specified with the appropriate colors to designate gear-types as follows:

Lobster pot gear in inshore lobster waters—red and green
Lobster pot gear in offshore lobster waters—red and blue
Anchored gillnet gear in northeast waters—green and yellow
Anchored gillnet gear in mid-Atlantic waters—green and black
Mid-Atlantic driftnet gear—blue and yellow
Shark driftnet gear—blue and black

(3) *Markings.* Each color of the color codes must be permanently marked on or along the line or lines specified under paragraphs (c)(1), (d)(1), (e)(1), and (f)(1) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The two color marks must be placed within 6 inches (15.2 cm) of each other. (For example, buoy lines of inshore lobster pot gear must have a red mark and a green mark, each at least 4 inches long, with the red and green marks placed within 6 inches of each other.) If the color of the rope is the same or similar to a color code, a white mark may be substituted for that color code. In marking or affixing the color code or associated neutral band, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic or heat shrink tubing, or other material, or thin line may be woven into or through the line, or the line may be marked as approved in writing by the Assistant Administrator. If the Assistant Administrator revises the gear marking requirements under paragraph (g) of this section, the gear must be marked in compliance with those requirements.

(c) *Restrictions applicable to lobster pot gear in regulated waters*—(1) *Gear marking requirements.* No person may fish with lobster pot gear in regulated waters unless that gear is marked by gear type and region according to the gear marking code specified under paragraph (b) of this section. From January 1, 1998, all buoy lines used in connection with lobster pot gear must be marked within 2 ft (0.6 m) of the top of the buoy line (or 2 ft below a weak link) and midway along the length of the buoy line.

(2) *No line floating at the surface.* No person may fish with lobster pot gear that has any portion of the buoy line floating at the surface at any time, except that, if there are more than one buoy attached to a single buoy line or if there are a high flyer and a buoy used together on a single buoy line, floating line may be used between these objects.

(3) *No wet storage of gear.* No person may leave lobster pot gear in the water without hauling it out of the water at least once in 30 days.

(4) *Cape Cod Bay Restricted area.*—(i) *Area.* The Cape Cod Bay restricted area consists of the Cape Cod Bay Critical Habitat area specified under 50 CFR 216.13(b), unless the Assistant Administrator extends that area in accordance with paragraph (g) of this section.

(ii) *Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (g) of this section. The Assistant Administrator may waive the restrictions of these paragraphs through a document in the **Federal Register** if it is determined that right whales have left the critical habitat and are unlikely to return for the remainder of the winter restricted period. During the winter restricted period, no person may fish with lobster pot gear in the Cape Cod Bay Restricted Area unless that person's gear complies with the following requirements:

(A) *Weak links.* All buoy lines are attached to the buoy with a weak link.

The breaking strength of this weak link must be no more than 1100 lb;

(B) *Multiple pot trawls.* All pots are set in trawls of four or more pots. Single pots and two or three pot trawls are not allowed.

(C) *Sinking buoy lines.* All buoy lines are sinking line except the bottom portion of the line, which may be a section of floating line not to exceed 1/3 the overall length of the buoy line.

(D) *Sinking ground line.* All ground lines are made entirely of sinking line.

(iii) *Other restricted period.* From May 16 through December 31 of each year, no person may fish with lobster pot gear in the Cape Cod Bay Restricted Area unless that person's gear complies with at least two of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(5) *Great South Channel Restricted Lobster Area.*—(i) *Area.* The Great South Channel restricted area consists of the Great South Channel Critical Habitat area specified under 50 CFR 216.13(a) unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Spring closed period.* The spring closed period for this area is from April 1 through June 30 of each year unless the Assistant Administrator revises the closed period in accordance with paragraph (g) of this section. During the spring closed period, no person may fish with or set lobster pot gear in the Great South Channel restricted lobster area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications.

(iii) *Other restricted period.* From July 1 through March 31 no person may fish with lobster pot gear in the Great South Channel Restricted Lobster Area unless that person's gear complies with at least two of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(6) *Stellwagen Bank/Jeffreys Ledge Restricted Area.*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge restricted area consists of all Federal waters of the Gulf of Maine that lie to the south of the 43°15′N lat. line and west of the 70° W long. line, except for right whale critical habitat, unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear Requirements.* No person may fish with lobster pot gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that person's gear complies with at least two of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(7) *Northern offshore lobster waters.*—(i) *Area.* The northern offshore waters area includes all offshore lobster waters north of 41°30′N lat., except for areas included in the Great South Channel Critical Habitat.

(ii) *Gear requirements.* No person may fish with lobster pot gear in the northern offshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(8) *Southern offshore lobster waters.*—(i) *Area.* The southern offshore waters area includes all offshore lobster waters south of 41°30 N lat., except for areas included in the Great South Channel Critical Habitat.

(ii) *Gear requirements.* From December 1 through March 31, no person may fish with lobster pot gear in the southern offshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(9) *Northern inshore lobster waters.*—(i) *Area.* Northern inshore lobster waters consist of all inshore lobster waters north of 41°30′ N lat., except the Cape Cod Bay restricted area, Great South Channel restricted area and the Stellwagen Bank/Jeffreys Ledge restricted area.

(ii) *Gear requirements.* No person may fish with lobster pot gear in the northern inshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(10) *Southern inshore lobster waters.*—(i) *Area.* The southern inshore lobster waters consist of all inshore lobster waters south of 41°30′ N lat., except the Great South Channel restricted area.

(ii) *Gear requirements.* From December 1 through March 31, no person may fish with lobster pot gear in the southern inshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(11) *Lobster Take Reduction Technology List.* The following gear characteristics comprise the Lobster Take Reduction Technology List:

(i) All buoy lines are 7/16 inches in diameter or less.

(ii) All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lb. Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(iii) For gear set in offshore lobster areas only, all buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 3780 lb.

(iv) For gear set in offshore lobster areas only, all buoys are attached to the buoy line by a section of rope no more than 3/4 the diameter of the buoy line.

(v) All buoy lines are composed entirely of sinking line.

(vi) All ground lines are made of sinking line.

(d) *Restrictions applicable to anchored gillnet gear in regulated waters.*—(1) *Marking requirements.* No person may fish with anchored gillnet gear in northeast or mid-Atlantic waters unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. From January 1, 1998, all buoy lines used in connection with anchored gillnets must be marked within 2 ft (0.6 m) of the top of the buoy line (or two ft below a weak link) and midway along the length of the buoy line.

(2) *No line floating at the surface.* No person may fish with anchored gillnet gear that has any portion of the buoy line floating at the surface at any time, except that, if there are more than one buoy attached to a single buoy line or if there are a high flyer and a buoy used together on a single buoy line, floating line may be used between these objects.

(3) *Cape Cod Bay restricted area.*—(i) *Area.* The Cape Cod Bay restricted area consists of the Cape Cod Bay Critical Habitat area specified under 50 CFR 216.13(b), unless the Assistant Administrator extends that area under paragraph (g) of this section.

(ii) *Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator revises the restricted period under paragraph (g) of this section. During the winter restricted period, no person may fish with anchored gillnet gear in the Cape Cod Bay restricted area unless the Assistant Administrator specifies gear modifications or alternative fishing practices under paragraph (g) of this section and the gear or practices comply with those specifications. The Assistant Administrator may waive this closure for the remaining portion of any year through a notification in the **Federal Register** if NMFS determines that right whales have left the critical habitat and are unlikely to return for the remainder of the season.

(iii) *Other restricted period.* From May 16 through December 31 of each year, no person may fish with anchored gillnet gear in the Cape Cod Bay Restricted Area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(4) *Great South Channel restricted gillnet area*—(i) *Area.* The Great South Channel restricted gillnet area consists of the area bounded by lines connecting the following four points: 41°02.2′ N/69°02′ W., 41°43.5′ N/69°36.3′ W., 42°10′ N/68°31′ W., and 41°38′ N/68°13′ W., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section. This area includes the Great South Channel critical habitat area specified under 50 CFR 216.13(a), except for the "sliver area" identified below.

(ii) *Spring closed period.* The spring closed period for this area is from April 1 through June 30 of each year unless the Assistant Administrator revises the closed period in accordance with paragraph (g) of this section. During the spring closed period, no person may set or fish with anchored gillnet gear in the Great South Channel restricted gillnet area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications.

(iii) *Other restricted period.* From July 1 through March 31 no person may fish with lobster pot gear in the Great South Channel restricted gillnet area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(5) *Great South Channel sliver restricted area*—(i) *Area.* The Great South Channel sliver restricted area consists of the area bounded by lines connecting the following points: 41°02.2′ N/69°02′ W., 41°43.5′ N/69°36.3′ W., 41°40′ N/69°45′ W., and 41°00′ N/69°05′ W., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear requirements.* No person may fish with anchored gillnet gear in the Great South Channel sliver restricted area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(6) *Stellwagen Bank/Jeffreys Ledge restricted area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge restricted area consists of all Federal waters of the Gulf of Maine that lie to the south of the 43°15 N. lat. line and west of the 70° W long. line, except right whale critical habitat, unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear requirements.* No person may fish with anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge restricted area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(7) *Other northeast waters area*—(i) *Area.* The other northeast waters area consists of all northeast waters except for the Cape Cod Bay restricted area, the Great South Channel restricted gillnet area and Great South Channel sliver restricted areas and the Stellwagen Bank/Jeffreys Ledge restricted area.

(ii) *Gear requirements.* No person may fish with anchored gillnet gear in the other northeast waters area unless that person's gear complies with at least one of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(8) *Mid-Atlantic coastal waters area.*—(i) *Area.* The mid-Atlantic coastal waters area is defined in § 229.2.

(ii) *Gear requirements.* From December 1 through March 31, no person may fish with anchored gillnets in mid-Atlantic coastal waters area unless that person's gear complies with at least one of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(9) *Gillnet Take Reduction Technology List.* The following gear characteristics comprise the Gillnet Take Reduction Technology List:

(i) All buoy lines are 7/16 inches in diameter or less.

(ii) All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lb. Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(iii) Gear is anchored with the holding power of a 22 lb. danforth-style anchor at each end.

(iv) Gear is anchored with a 50 lb dead weight at each end.

(v) Nets are attached to a lead line weighing 100 lb or more per 300 feet.

(vi) Weak links with a breaking strength of up to 1100 lb are installed in the float rope between net panels.

(vii) All buoy lines are composed entirely of sinking line.

(e) *Restrictions applicable to mid-Atlantic driftnet gear.*—(1) *Gear marking requirements.* No person may fish in mid-Atlantic coastal waters with drift gillnet gear unless that gear is marked by gear type and region according to the gear marking code specified under paragraph (b) of this section. From January 1, 1998, all buoy lines used in connection with driftnet gear in the mid-Atlantic must be marked within 2 ft (0.6 m) of the top of the buoy line and midway along the length of the buoy line according to gear type and region.

(2) *Restrictions.* From January 1, 1998, during the winter/spring restricted period, no person may fish at night with driftnet gear in the mid-Atlantic coastal waters area unless that gear is tended. Before a vessel returns to port, all driftnet gear set by that vessel in the mid-Atlantic coastal waters area must be removed from the water and stowed on board the vessel. The winter/spring restricted period for this area is from December 1 through March 31 unless the Assistant Administrator revises that restricted period in accordance with paragraph (g) of this section.

(f) *Restrictions applicable to shark driftnet gear.*—(1) *Gear marking*

requirements. No person may fish with drift gillnet gear in southeast waters unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. From November 1, 1998, all buoy lines must be marked within 2 ft (0.6 m) of the top of the buoy line and midway along the length of the buoy line. From November 1, 1999, each net panel must be marked along both the float line and the lead line at least once every 100 feet (30.8 m).

(2) *Management areas.*—(i) *SEUS restricted area.* The southeast U.S. restricted area consists of the area from 32°00′ N lat. (near Savannah, GA) south to 27°51′ N lat. (near Sebastian Inlet, FL), extending from the shore eastward to 80°00′ W long., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *SEUS observer area.* The SEUS observer area consists of the SEUS restricted area and an additional area along the coast south to 26°46.5′ N lat. (near West Palm Beach, FL) and extending from the shore eastward out to 80°00′ W long., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(3) *Restrictions.*— (i) *Closure.* Except as provided under paragraph (f)(3)(iii) of this section, no person may fish with driftnet gear in the SEUS restricted area during the closed period. The closed period for this area is from November 1 through March 31 of the following year, unless the Assistant Administrator changes that closed period in accordance with paragraph (g) of this section.

(ii) *Observer requirement.* No person may fish with driftnet gear in the SEUS observer area from November 1 through March 31 of the following year unless the operator of the vessel calls the SE Regional Office in St. Petersburg, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Regional Office requests that an observer be taken on board a vessel during a fishing trip at any time from November 1 through March 31 of the following year, no person may fish with driftnet gear aboard that vessel in the SEUS observer area unless an observer is on board that vessel during the trip.

(iii) *Special provision for strikenets.* Fishing with strikenet gear is exempt from the restriction under paragraph (e)(3)(i) of this section if:

(A) No nets are set at night or when visibility is less than 500 yards (460 m).

(B) Each set is made under the observation of a spotter plane.

(C) No net is set within 3 nautical miles of a right, humpback, or fin whale.

(D) If a right, humpback or fin whale moves within 3 nautical miles of the set gear, the gear is removed immediately from the water.

(g) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant administrator may take action under this section in the following situations:

(1) *Entanglements in critical habitat.* If a serious injury or mortality of a right whale occurs in the Cape Cod Bay critical habitat from January 1 through May 15, in the Great South Channel restricted areas from April 1 through June 30, or in the SEUS restricted area from November 1 through March 31 as a result of an entanglement by gear types allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type for the rest of that time period and for that same time period in each subsequent year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (g)(2) of this section or unless other measures are implemented under paragraph (g)(2) of this section.

(2) *Other special measures.* The Assistant Administrator may revise the requirements of this section through publication of a rule in the **Federal Register** if:

(i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;

(ii) New gear technology is developed and determined to be appropriate;

(iii) Revised breaking strengths are determined to be appropriate;

(iv) New marking systems are developed and determined to be appropriate;

(v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;

(vi) NMFS determines that the boundaries of a closed area are not appropriate;

(vii) Gear testing operations are considered appropriate; or

(viii) Similar situations occur.

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Proposed Rules

Federal Register
Vol. 62, No. 140
Tuesday, July 22, 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

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

General Crop Insurance Regulations, Stonefruit Endorsement; and Common Crop Insurance Regulations, Stonefruit Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of stonefruit. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current stonefruit endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current stonefruit endorsement to the 1998 and prior crop years.

DATES: Written comments and opinions on this proposed rule will be excepted until close of business September 22, 1997, and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131.

FOR FURTHER INFORMATION CONTACT: Ron Nesheim, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations are being reviewed by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563–0053.

The title of this information collection is "Multiple Peril Crop Insurance."

The burden associated with stonefruit is estimated at 14 minutes per response from approximately 3,392 respondents each year for a total number of 1,196 hours.

FCIC is requesting comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This proposed rule has been reviewed under Executive Order No. 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.159, Stonefruit Crop Insurance Provisions. The new provisions will be effective for the 1999 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring stonefruit found at 7 CFR 401.122 (Stonefruit Endorsement). FCIC also proposes to amend 401.122 to limit its effect to the 1998 and prior crop years.

This rule makes minor editorial and format changes to improve the Stonefruit Endorsement compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring stonefruit as follows:

1. Section 1—Add definitions for the terms "days," "direct marketing," "FSA," "good farming practices," "interplanted," "irrigated practice," "marketable," "non-contiguous," "processor," "production guarantee (per acre)," "stonefruit," "type," "USDA," "varietal group," and "written agreement" for clarification. The definition of "stonefruit" removes current policy type references I through VI for each stonefruit, though the same types remain insurable. Also, change the definition of "ton" for clarification. The definition is applicable to each stonefruit that can be measured in tons. Also, remove definitions of "appraisal" and "crop year" as unnecessary.

2. Section 2—Provide that stonefruit will be divided into additional basic units by each Stonefruit crop designated in the Special Provisions that the producer elects to insure. Basic units may be further divided into optional units based on non-contiguous land and by type or varietal group, if provided for in the Special Provisions.

3. Section 3(a)—Specify that the insured may select only one price election for each crop in the county insured under this policy, unless the Special Provisions provide different price elections by type or varietal group, in which case the insured may select one price election for each type or varietal group. The price election the insured selects must have the same percentage relationship to the maximum price offered. This will help to protect against adverse selection and simplifies administration of the program.

4. Section 3(b)—Specify that the insured must report damage, removal of trees, and any change in practice that could reduce yields. The insured must also report, for the first year of insurance for acreage interplanted with another perennial crop and anytime the planting pattern of such acreage is changed, the age and varietal group, if applicable, of any interplanted crop, its planting pattern, and any other information that the insurance provider requests in order to establish the approved yield. If the insured fails to notify the insurance provider of factors that may reduce yields from previous levels, the insurance provider will reduce the production guarantee at any time the insurance provider becomes aware of damage, removal of trees, or changes in practices. This change will standardize these provisions with those in other perennial crop policies.

5. Section 6—Remove the provision that requires production records to be provided for at least the previous crop year. Transitional yields are now available to producers who do not have production records for the previous crop year.

6. Section 6(d)—Specify that at least 200 lugs per acre of fresh market production or at least 2.2 tons per acre of processing types production must have been produced in at least one of the three most recent crop years of the actual production history base period for the crop to be insured, unless the insurer inspects such acreage and gives approval in writing. This requirement requires the orchard to produce the minimum production in the most recent years which indicates the orchard is productive and is a feasible insurance risk. Previous regulations required a minimum 200 lugs fresh market production per acre (at least 2.2 tons per acre for processing types) but did not clearly state that the minimum must have been produced in one of the three most recent crop years.

7. Section 7—Allow insurance for stonefruit interplanted with another perennial crop in order to make insurance available on more acreage and reduce the reliance on noninsured crop disaster assistance (NAP) for protection against crop losses.

8. Section 8(a)(1)—Specify that the insurance period begins on February 1 of each crop year, except that for the year of application, if the producers's application is received after January 22 but prior to February 1, insurance will attach on the 10th day after the producer's application is received in the insurance provider's local office unless the insurance provider inspects the acreage and determines that it does not meet insurability requirements. These provisions were modified to avoid interpretation that late-filed applications are allowed. Ten days is sufficient to prevent adverse selection and avoid unnecessary exposure to uninsured losses during the waiting period.

9. Section 8(b)—Provide policy guidelines for attachment of insurance when insurable acreage is acquired or relinquished after coverage begins but on or before the acreage reporting date and if the acreage was insured by you the previous crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due. Under the current endorsement for acreage relinquished on or before the acreage reporting date, the premium would still be due from the producer even if the producer no longer had an insurable interest. In the same situation under these new provisions, insurance will not be considered to have attached, so the premium will not be due unless a transfer of right to an indemnity was in effect.

10. Section 9(a)—Remove insufficient chilling hours as a specified insurable cause of loss because not enough actuarial data is available to demonstrate that a lack of chilling hours adversely affects stonefruit production. If damage or loss was due to an insufficient number of chilling hours, such loss would be covered under adverse weather. This change is consistent with other perennial crop policies.

11. Section 9(b)(1) (i) and (ii)—Clarify that damage or loss of production due to disease or insect infestation will not be an insured cause of loss, unless adverse weather prevents the proper application of control measures, causes properly applied control measures to be ineffective, or causes disease or insect infestation for which no effective control mechanism is available. This change also will be made to be consistent with other crop policies.

12. Section 10—Specify that the insured must notify the insurance provider: (1) Within 3 days of the date harvest should have started if the crop will not be harvested, (2) 15 days prior to harvest if the insured previously gave notice of loss so that an inspection can be made, (3) at least 15 days prior to

harvest so a preharvest inspection can be made if the insured intends to directly market the crop, and (4) must not destroy the damaged crop which is not marketed until after we have given written consent to do so. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in the insurance provider's inability to make the required appraisal. The current endorsement requires written notice within 72 hours of damage, immediate notice of damage if damage occurs within 72 hours of or during harvest, notice 72 hours prior to harvest, and prohibits the insured from selling or otherwise disposing of any damaged production until written consent is given by the insurance provider. These proposed changes will incorporate and standardize the notice of loss requirements used for other perennial crops.

13. Section 11(c)(2)(i)—Specify that the total production to count will include all harvested production from insurable acreage that is packed and sold as fresh fruit and that meets the grade requirements of the California Tree Fruit Agreement Marketing Order or State Department of Food and Agriculture Code of Regulations, as amended, in effect for the crop, or processing industry.

14. Section 11(c)(2)(ii)—Specify how production to count is determined for fresh fruit that is marketed and meets California Utility Grade. This change clarifies that fresh fruit that is damaged and of poor quality is eligible for quality adjustment on a fresh fruit basis.

15. Section 11(c)(2)(iii)—Specify how production to count is determined for fresh harvested production that does not meet the specific grade requirements, but is used for any use other than fresh stonefruit. This change clarifies that fresh fruit that does not meet the specific grade requirements is eligible for quality adjustment on a processing fruit basis.

16. Section 11(c)(2)(v)—Add procedure for determining the production to count for mature Processing Apricots, Processing Cling Peaches, and Processing Freestone Peaches damaged by insurable causes within the insurance period to the extent that their value is less than 75 percent of the marketable value of the corresponding undamaged crop. This change is added to allow quality adjustment for such processing fruit.

17. Section 12—Add provisions for providing insurance coverage by written agreement. FCIC has a long-standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover the procedures for, and duration of, written agreements.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Stonefruit endorsement.

Proposed Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation, hereby, proposes to amend 7 CFR parts 401 and 457 as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. The introductory text of § 401.122 is revised to read as follows:

§ 401.122 Stonefruit endorsement.

The provisions of the Stonefruit Crop Insurance Endorsement for the 1988 through 1998 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

3. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

4. Section 457.159 is added to read as follows:

§ 457.159 Stonefruit crop insurance provisions.

The Stonefruit Crop Insurance Provisions for the 1999 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:
(Appropriate title for insurance provider)
Both FCIC and reinsured policies:

Stonefruit Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), the crop provisions, the Special Provisions; the Catastrophic Risk Protection Endorsement, if applicable, the Special Provisions; will control these Crop Provisions and these Basic Provisions; the Crop Provisions will control the Basic Provisions; and the Catastrophic Risk Protection Endorsement, if applicable, will control all provisions.

1. Definitions

Days. Calendar days.

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as wholesaler, retailer, packer, processor, shipper, or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. The picking of mature stonefruit either by hand or machine.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Lug. A container of fresh stonefruit of specified weight. Lugs of varying sizes will be converted to standard lug equivalents on the basis of the following net pounds of packed fruit:

Crop	Pounds/Lug
Fresh Apricots	24
Fresh Nectarines	25
Fresh Freestone Peaches	22

(Weights for Processing Apricots, Processing Cling Peaches, and Processing Freestone Peaches are specified in tons.)

Marketable. Stonefruit production acceptable for processing or other human consumption, even if it fails to meet the state Department of Food and Agriculture minimum grading standard.

Non-contiguous. Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Processor. A business enterprise regularly engaged in processing fruit for human consumption that possesses all licenses and permits for processing fruit required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept

and process contracted fruit within a reasonable amount of time after harvest.

Production guarantee (per acre). The number of tons or lugs of stonefruit determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

Stonefruit. Any of the following crops grown for fresh market or processing:

(a) Fresh Apricots,

(b) Fresh Freestone Peaches,

(c) Fresh Nectarines,

(d) Processing Apricots,

(e) Processing Cling Peaches, or

(f) Processing Freestone Peaches.

Ton. Two thousand (2,000) pounds avoirdupois.

Type. Classes of a stonefruit crop with similar characteristics that are grouped for insurance purposes.

USDA. United States Department of Agriculture.

Varietal group. A subclass of type.

Written agreement. A written document that alters designated terms of this policy in accordance with section 12.

2. Unit Division

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), will be divided into additional basic units by each stonefruit crop designated in the Special Provisions that you elect to insure.

(b) Unless limited by the Special Provisions, basic units may be divided into optional units if, for each optional unit you meet all the conditions of this section.

(c) Basic units may not be divided into optional units on any basis other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you for the units combined.

(e) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(f) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) For each crop year, records of marketed production or measurement of stored production from each optional unit must be maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(3) Each optional unit must meet one of the following criteria, as applicable, unless otherwise specified by written agreement:

(i) *Optional Units on Acreage Located on Non-contiguous Land:* Optional units may be established if each optional unit is located on non-contiguous land; or

(ii) *Optional Units by Type or Varietal Group:* Optional units may be established by type or varietal group if provided for in the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election and coverage level for each crop grown in the county and listed in the Special Provisions that is insured under this policy. If separate price elections are available by type or varietal group of a crop, the price elections you choose for each type or varietal group must have the same percentage relationship to the maximum price offered by us for each type or varietal group. For example, if you choose 100 percent of the maximum price election for one type of cling peaches, you must choose 100 percent of the maximum price election for all other types of cling peaches.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by type or varietal group, if applicable, for each stonefruit crop:

(1) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres; (2) The number of bearing trees on insurable and uninsurable acreage; (3) The age of the trees and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and type or varietal group if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of interplanting a perennial crop, removal of trees, damage, change in practice, and any other circumstance that could effect the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is October 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and Termination dates are January 31.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all of each stonefruit crop you elect to insure, that is grown in the county, and for which premium rates are provided in the actuarial table:

(a) In which you have a share; (b) That are grown on trees that:

(1) Were commercially available when the trees were set out; (2) Are adapted to the area; and

(3) Are grown on a root stock that is adapted to the area;

(c) That are irrigated;

(d) That have produced at least 200 lugs of fresh market production per acre, or at least 2.2 tons per acre for processing crops, in at least 1 of the 3 most recent actual production history crop years, unless we inspect such acreage and give our approval in writing;

(e) That are regulated by the California Tree Fruit Agreement or related crop advisory board for the state (for applicable types);

(f) That are grown in an orchard that, if inspected, is considered acceptable by us; and

(g) That have reached at least the fifth growing seasons after set out. However, we may agree in writing to insure acreage that has not reached this age if it has produced at least 200 lugs fresh market production per acre or at least 2.2 tons per acre for processing types.

7. Insurable Acreage

In lieu of the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, stonefruit interplanted with another perennial crop is insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on February 1 of each crop year, except that for the year of application, if your application is received after January 22 but prior to February 1, insurance will attach on the 10th day after your properly completed application is received in our local office unless we inspect the acreage and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is:

(i) July 31 for all apricots, and

(ii) September 30 for all nectarines and peaches.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such

acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of stonefruit on or before the acreage reporting date for the crop year and if the acreage was insured by you the previous crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(3) Wildlife, unless appropriate control measures have not been taken;

(4) Earthquake;

(5) Volcanic eruption; or

(6) Failure of irrigation water supply, if caused by an insured cause of loss that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available;

(2) Split pits regardless of cause; or

(3) Inability to market the insured crop for any reason other than actual physical damage from an insurable cause of loss specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the insured crop will not be harvested.

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest if you previously gave notice in accordance with section 14 of the Basic Provisions (§ 457.8), so that we may inspect the damaged production. You must not destroy the damaged crop until after we have given you written consent to do so. If you fail to notify us and such failure results in our inability to inspect the damaged production, we may consider all such production to be undamaged and include it as production to count.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type or varietal group, if applicable, by its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election for each type or varietal group, if applicable;

(3) Totaling the results in section 11(b)(2);

(4) Multiplying the total production to be counted of each type or varietal group, if applicable (see section 11(c)) by the respective price election;

(5) Totaling the results in section 11(b)(4);

(6) Subtracting the result in section 11(b)(5) from the result in section 11(b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

(c) The total production to count (in standard lugs equivalent or tons) from all insurable acres on a unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing, if you fail to meet the requirements contained in section 10;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the insured crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage:

(i) That is packed and sold as fresh fruit and meets the grade requirements shown in the California Tree Fruit Agreement Marketing Order, or State Department of Food and Agriculture Code of Regulations, as amended, in effect for the crop, type, or varietal group;

(ii) That is packed and sold as fresh fruit as California Utility grade, damaged by an insurable cause, and the value of the damaged crop is less than 75 percent of the marketable value of an undamaged crop, such production will be adjusted by:

(A) Dividing the marketable value per lug of this production by the highest price election available for the crop, type, or varietal group; and

(B) Multiplying the resulting factor, if less than 1.0, by the number of lugs of each crop, type, or varietal group;

(iii) That does not meet the applicable standards in section 11(c)(2)(i) due to insurable causes but is, or could be, used for any use other than fresh packed stonefruit. Such production will be determined by:

(A) Dividing the greater of the marketable value per ton, or $50.00, by the highest price election available for the crop, type, or varietal group; and

(B) Multiplying the resulting factor by the number of tons of such crop, type, or varietal group;

(iv) That is mature production of Processing Apricots, Processing Cling Peaches, or Processing Freestone Peaches which is acceptable to the processor;

(v) That is mature production of Processing Apricots, Processing Cling Peaches, or Processing Freestone Peaches, damaged by insurable causes, and the value of the damaged crop is less than 75 percent of the marketable value of an undamaged crop, the production will be determined as follows:

(A) Divide the damaged value per ton by the highest price election available for the crop, type, or varietal group; and

(B) Multiply the resulting factor (not to exceed 1.00) by the number of tons of such production.

12. Written Agreements.

Terms of this policy which are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 12(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved by us, the written agreement will include all variable terms of the contract, including, but not limited to,

type or varietal group, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, DC, on July 16, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–19214 Filed 7–21–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–63–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100, –200, and –300 series airplanes. This proposal would require modification of the attitude and heading reference systems (AHRS). This proposal is prompted by a report of loss of power to both AHRS's during flight due to a faulty terminal block to which the signal ground for the AHRS's are connected. The actions specified by the proposed AD are intended to prevent simultaneous power loss to both AHRS's, which could result in reduced controllability of the airplane.

DATES: Comments must be received by August 29, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–63–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Luciano Castracane, Aerospace Engineer, Systems and Equipment Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–63–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, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–63–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland DHC–8–100, –200, and –300 series airplanes. Transport Canada Aviation advises that an operator of one of the affected airplanes reported loss of power to both the Number 1 and Number 2 attitude and heading reference systems (AHRS) during flight. The power losses were attributed to a faulty terminal block to which the signal ground for the AHRS's are connected. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin S.B. A8–34–117, Revision 'C,' dated February 14, 1997, which describes procedures for modification of the AHRS's. The modification involves installation of separate grounds for the Number 1 and Number 2 AHRS's. Accomplishment of the modification will minimize the possibility for the simultaneous loss of both AHRS's. Transport Canada Aviation classified this alert service bulletin as mandatory and issued Canadian airworthiness directive CF–97–01R1, dated February 3, 1997, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada 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, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the AHRS's. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Cost Impact

The FAA estimates that 173 de Havilland Model DHC–8–100, –200, and –300 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $10 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $43,250, or $250 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed 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 proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

De Havilland, Inc.: Docket 97–NM–63–AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes, serial numbers 3 through 483 inclusive, 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 simultaneous power loss to both attitude and heading reference systems (AHRS), which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 400 flight hours after the effective date of this AD, modify the AHRS's, in accordance with Bombardier Alert Service Bulletin S.B. A8–34–117, Revision 'C', dated February 14, 1997.

(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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

(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.

Issued in Renton, Washington, on July 15, 1997.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–19141 Filed 7–21–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–52–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require repetitive inspections to detect corrosion or plating cracks of the pin assemblies in the forward trunnion support of the main landing gear (MLG), and replacement of the pin assembly with a new assembly, if necessary. Such replacement, if accomplished, would constitute terminating action for the repetitive inspections. This proposal is prompted by reports indicating that these pin assemblies were found to have corroded as a result of plating cracks. The actions specified by the proposed AD are intended to detect and correct such corrosion and plating cracks, which could cause breakage of these assemblies, and consequent collapse of the MLG.

DATES: Comments must be received by September 2, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97-NM–52-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2783; fax (425) 227–1181.

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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-NM–52-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, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97-NM–52-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports of corrosion on pin assemblies in the forward trunnion support of the main landing gear (MLG) installed on Boeing Model 767 series airplanes. At the time these corroded pin assemblies were found, the airplanes had accumulated between 6,900 and 12,600 total landings.

The manufacturer performed a review of several pin assemblies and determined that the bond between the 4330M Steel pin and its Class 2 chrome plating is not sufficient to prevent the plating from cracking and peeling. Such cracking and peeling provide sites for moisture to corrode the pin. Corrosion of these pin assemblies, if not detected and corrected in a timely manner, could cause breakage of the pin assemblies, and consequent collapse of the MLG.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–57A0047, Revision 1, dated May 9, 1996, which describes procedures for repetitive close visual inspections to detect corrosion or plating cracks of the 4330M Steel pin assemblies in the forward trunnion support of the MLG, and replacement of the pin assembly with a new asembly, if necessary. Replacement of pin assemblies with new ones made from a different material and finish would eliminate the need for further inspections of those assemblies. The new assemblies are made from 15–5PH CRES with Class 3 chrome plating, and are more resistant to corrosion and plating cracks.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive close visual inspections to detect corrosion or plating cracks of the 4330M Steel pin assemblies in the forward trunnion support of the MLG, and replacement of the pin assembly with a new assembly, if necessary. Such replacement would constitute terminating action for the repetitive inspections.

The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 562 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 151 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 65 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $588,900, or $3,900 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed 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 proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

Boeing: Docket 97-NM–52-AD.

Applicability: Model 767 series airplanes having line positions 1 through 562 inclusive, 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 (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, unless accomplished previously.

To detect and correct corrosion or plating cracks of the pin assemblies in the front trunnion support of the main landing gear (MLG), which could cause these assemblies to break and result in collapse of the MLG, accomplish the following:

(a) Perform a close visual inspection to detect corrosion or plating cracks of each 4330M Steel pin assembly in the forward trunnion support of the MLG, in accordance with Boeing Alert Service Bulletin 767–57A0047, Revision 1, dated May 9, 1996, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Within 4 years since date of manufacture of the airplane, or 4 years since the last overhaul of the MLG. Or

(2) Within 18 months after the effective date of this AD.

(b) If no corrosion or crack is detected, repeat the close visual inspection thereafter at intervals not to exceed 48 months.

(c) If any corrosion or crack is detected, prior to further flight, replace it with a new pin assembly made from 15–5PH CRES with Class 3 chrome plating, in accordance with Boeing Alert Service Bulletin 767–57A0047, Revision 1, dated May 9, 1996.

(d) Accomplishment of replacement of a 4330M Steel pin assembly with a new pin assembly made from 15–5PH CRES with Class 3 chrome plating, in accordance with Boeing Alert Service Bulletin 767–57A0047, Revision 1, dated May 9, 1996, constitutes terminating action for the inspections required by this AD for that pin location.

Note 2: Replacement of a 4330M Steel pin assembly with a new pin assembly made from 15–5PH CRES with Class 3 chrome plating prior to the effective date of this AD, in accordance with Boeing Service Bulletin 767–57A0047, dated January 19, 1995, is considered an acceptable method of compliance with paragraph (d) of this AD for that pin location.

(e) 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, Seattle Aircraft Certification Office (ACO), 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, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) 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.

Issued in Renton, Washington, on July 16, 1997.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–19176 Filed 7–21–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS

38 CFR Part 17

RIN 2900–AH66

Payment for Non-VA Physician Services Associated with Either Outpatient or Inpatient Care Provided at Non-VA Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend Department of Veterans Affairs (VA) medical regulations concerning payment for non-VA physician services that are associated with either outpatient or inpatient care provided to eligible VA beneficiaries at non-VA facilities. We propose that when a service specific reimbursement amount has been calculated under Medicare's Participating Physician Fee Schedule, VA would pay the lesser of the actual billed charge or the calculated amount. We also propose that when an amount has not been calculated, VA would pay the amount calculated under a 75th percentile formula or, in certain limited circumstances, VA would pay the usual and customary rate. In our view, adoption of this proposal would establish reimbursement consistency among federal health benefits programs, would ensure that amounts paid to physicians better represent the relative resource inputs used to furnish a service, and, would, as reflected by a recent VA Office of Inspector General (OIG) audit of the VA fee-basis program, achieve program cost reductions. Further, consistent with statutory requirements, the regulations would continue to specify that VA payment constitutes payment in full.

DATES: Comments must be received on or before September 22, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AH66". All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (expect holidays).

FOR FURTHER INFORMATION CONTACT: Abby O'Donnell, Health Administration Service (161A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; (202) 273–8307. (This is not a toll-free number)

SUPPLEMENTARY INFORMATION: This document proposes to amend the Department of Veterans Affairs (VA) medical regulations concerning payment (regardless of whether or not authorized in advance) for non-VA physician services associated with either outpatient or inpatient care provided to eligible VA beneficiaries at non-VA facilities.

Currently, VA pays for non-VA outpatient services based on fee schedules which are locally developed by VA health care facilities using a 75th percentile methodology. Payment under this 75th percentile methodology is determined for each VA medical facility by ranking all treatment occurrences (with a minimum of eight) under the corresponding Current Procedural Terminology (CPT) code during the previous fiscal year with charges ranked from the highest rate billed to the lowest rate billed. A value at the 75th percentile is then established as the maximum amount to be paid. Also, if there were fewer than eight occurrences in the previous fiscal year payment currently is made at the amount determined to be usual and customary. Further, inpatient non-VA physician services currently are paid at the usual and customary rate.

We propose to change the payment methodology for non-VA physician services (outpatient and inpatient) provided at non-VA facilities. More specifically, we propose to provide that payment would be the lesser of the amount billed or the amount calculated using the formula developed by the Department of Health & Human Services, Health Care Financing Administration (HCFA) under the Medicare's participating physician's fee schedule for the period in which the service is provided (see 42 CFR parts 414 and 415).

The payment amount for each service paid under Medicare's participating physician fee schedule is the product of three factors: A nationally uniform relative value for the service; a geographic adjustment factor for each physician fee schedule area; and a nationally uniform conversion factor for the service. There are three conversion factors (CFs)—one for surgical services, one for nonsurgical services, and one for primary care services. The conversion factors convert the relative values into payment amounts. For each physician fee schedule service, there are three relative values: An RVU for physician work; an RVU for practice expense; and an RVU for malpractice expense. For each of these components of the fee schedule, there is a geographic practice cost index (GPCI) for each fee schedule area. The GPCIs reflect the relative costs

of practice expenses, malpractice insurance, and physician work in an area compared to the national average. The GPCIs reflect the full variation from the national average in the costs of practice expenses and malpractice insurance, but only one-quarter of the difference in area costs for physician work. The general formula calculating the Medicare fee schedule amount for a given service in a given fee schedule area can be expressed as: Payment = [(RVUwork X GPCIwork) + (RVUpractice expense × GPCIpractice expense) + (RVUmalpractice × GPCImalpractice)] × CF.

In our view, adoption of this proposal would establish reimbursement consistency among federal health benefits programs, would ensure that amounts paid to physicians better represent the relative resource inputs used to furnish a service and, would, as reflected by a recent VA OIG audit of the VA fee-basis program, achieve program cost reductions. That audit covered all of fiscal year 1993 and the first half of fiscal year 1994 during which period VA made 2.3 million payments totaling $180 million for non-VA physician services associated with either outpatient or inpatient care. The audit compared the amount paid by VA for a random sample of 1122 fee-basis payments for care to the amount that would have been paid under Medicare's system of payment. Audit results showed that VA could save an estimated $25.6 million annually by adopting Medicare's participating physician fee schedule for payment of such services.

It is further proposed that when HCFA has not specified an amount under the Medicare Program Fee Schedule for Physicians' Services formula, VA would utilize the current 75th percentile methodology for non-VA physician services that are associated with either outpatient or inpatient care provided to eligible VA beneficiaries at non-VA facilities.

Further, it is proposed that in those circumstances when HCFA has not specified an amount under Medicare's participating physician fee schedule for participating physician and there are insufficient occurences for using the 75th percentile methodology, payment would be made at the usual and customary rate. This would continue the current practice for these payments.

The regulations would continue to specify that VA payment constitutes payment in full. Accordingly, the provider or agent for the provider could not impose any additional charge on a veteran or his/her health care insurer for any services for which payment is made by VA. In our view, the provisions of 38 U.S.C. 1710 require that VA, without assistance from the beneficiary, bear the amount paid for services provided.

The proposal also would make nonsubstantive changes for purposes of clarity.

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 USC 601 through 612. The proposed rule would not cause significant economic impact on health care providers, suppliers, or entities since only a small portion of the business of such entities concerns VA beneficiaries. Therefore, pursuant to 5 U.S.C. 605(b), the proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Numbers are 64.009, 64.010 and 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: July 10, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is proposed to be amended as set forth below:

PART 17—MEDICAL

1. The authority citation for Part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

§ 17.55 [Amended]

2. In § 17.55, in the introductory text remove "38 U.S.C. 1703 or 38 CFR 17.52" and add, in its place "38 U.S.C. 1703 and 38 CFR 17.52 of this part or under 38 U.S.C. 1728 and 38 CFR 17.120'; paragraph (h) is removed; and paragraphs (i), (j) and (k) are redesigned as paragraphs (h), (i) and (j), respectively.

3. Section 17.56 is redesignated as § 17.57 and a new § 17.56 is added to read as follows:

§ 17.56 Payment for non-VA physician services associated with outpatient and inpatient care provided at non-VA facilities.

(a) Payment for non-VA physician services associated with outpatient and inpatient care provided at non-VA facilities authorized under § 17.52, or made under § 17.120 of this part, shall be the lesser of the amount billed or the amount calculated using the formula developed by the Department of Health & Human Services, Health Care Financing Administration (HCFA) under Medicare's participating physician fee schedule for the period in which the service is provided (see 42 CFR Parts 414 and 415). This payment methodology is set forth in paragraph (b) of this section. If no amount has been calculated under Medicare's participating physician fee schedule, payment for such non-VA physician services associated with outpatient and inpatient care provided at non-VA facilities authorized under § 17.52, or made under § 17.120 of this part, shall be the lesser of the actual amount billed or the amount calculated using the 75th percentile methodology set forth in paragraph (c) of this section; or the usual and customary rate if there are fewer than 8 treatment occurrences for a procedure during the previous fiscal year.

(b) The payment amount for each service paid under Medicare's participating physician fee schedule is the product of three factors: a nationally uniform relative value for the service; a geographic adjustment factor for each physician fee schedule area; and a nationally uniform conversion factor for the service. There are three conversion factors (CFs)—one for surgical services, one for nonsurgical services, and one for primary care services. The conversion factors convert the relative values into payment amounts. For each physician fee schedule service, there are three relative values: An RVU for physician work; an RVU for practice expense; and an RVU for malpractice expense. For each of these components of the fee schedule, there is a geographic practice cost index (GPCI) for each fee schedule area. The GPCIs reflect the relative costs of practice expenses, malpractice insurance, and physician work in an area compared to the national average. The GPCIs reflect the full variation from the national average in the costs of practice expenses and malpractice insurance, but only one-quarter of the difference in area costs for physician work. The general formula calculating the Medicare fee schedule amount for a given service in a given fee schedule area can be expressed as: Payment=[(RVUwork × GPCIwork) + (RVUpractice expense × GPCIpractice expense) + (RVUmalpractice × GPCImalpractice)] × CF.

(c) Payment under the 75th percentile methodology is determined for each VA medical facility by ranking all

occurrences (with a minimum of eight) under the corresponding code during the previous fiscal year with charges ranked from the highest rate billed to the lowest rate billed and the charge falling at the 75th percentile as the maximum amount to be paid.

(d) Payments made in accordance with this section shall constitute payment in full. Accordingly, the provider or agent for the provider may not impose any additional charge for any services for which payment is made by VA.

4. Section 17.128 is revised to read as follows:

§ 17.128 Allowable rates and fees.

When it has been determined that a veteran has received public or private hospital care or outpatient medical services, the expenses of which may be paid under § 17.120 of this part, the payment of such expenses shall be paid in accordance with §§ 17.55 and 17.56 of this part.

(Authority: Section 233, Pub. L. 99–576)

[FR Doc. 97–19156 Filed 7–21–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL145–1, IL152–1; FRL–5861–4]

Approval and Promulgation of Implementation Plan; Illinois Designation of Areas for Air Quality Planning Purposes; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 14, 1995, May 9, 1996, June 14, 1996, and February 3, 1997, the State of Illinois submitted a State Implementation Plan (SIP) revision request to meet commitments related to the conditional approval of Illinois' May 15, 1992, SIP submittal for the Lake Calumet (SE Chicago), McCook, and Granite City, Illinois, Particulate Matter (PM) nonattainment areas. The EPA is proposing limited approval and limited disapproval of the portion of the SIP revision request that applies to the Granite City area because it does not correct all of the deficiencies of the May 15, 1992 submittal, as discussed in the November 18, 1994, conditional approval notice. This action entails approval of the submitted regulations into the Illinois SIP for their strengthening effect, and disapproval of the submittal for not meeting all of the commitments of the conditional approval. All of the deficiencies were corrected, except that Illinois failed to provide an opacity limit for coke oven combustion stacks which is reflective of their mass limits. No action is being taken on the submitted plan corrections for the Lake Calumet and McCook areas at this time. They will be addressed in separate rulemaking actions.

On March 19, 1996, and October 15, 1996, Illinois submitted a request to redesignate the Granite City area to attainment for PM. The EPA is also proposing disapproval of this request because the area does not have a fully approved implementation plan.

DATES: Written comments on this proposed rule must be received on or before August 21, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and EPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 107(d)(4)(B) of the Clean Air Act (Act), as amended on November 15, 1990 (amended Act), certain areas ("initial areas") were designated nonattainment for PM. Under section 188 of the amended Act these initial areas were classified as "moderate". The initial areas include the Lake Calumet, McCook, and Granite City, Illinois, PM nonattainment areas. (See 40 CFR 81.314 for a complete description of these areas.) Section 189 of the amended Act requires State submission of a PM SIP for the initial areas by November 15, 1991. Illinois submitted the required SIP revision for the Lake Calumet, McCook, and Granite City, Illinois, PM nonattainment areas to EPA on May 15, 1992. Upon review of Illinois' submittal, EPA identified several concerns. Illinois submitted a letter on March 2, 1994, committing to satisfy all of these concerns within one year of final conditional approval. On May 25, 1994, the EPA proposed to conditionally approve the SIP. Final conditional approval was published on November 18, 1994, and became effective on December 19, 1994. The final conditional approval allowed the State until November 20, 1995 to correct the five stated deficiencies:

1. Invalid emissions inventory and attainment demonstration, due to failure to include emissions from the roof monitors for the Basic Oxygen Furnaces (BOFs) and underestimated emissions from the quench towers at Granite City Steel (GCS).

2. Failure to adequately address maintenance of the PM National Ambient Air Quality Standards (NAAQS) for at least 3 years beyond the applicable attainment date.

3. Lack of an opacity limit on coke oven combustion stacks.

4. Lack of enforceable emissions limit for the electric arc furnace (EAF) roof vents at American Steel Foundries.

5. The following enforceability concerns:

a. Section 212.107, Measurement Methods for Visible Emissions could be misinterpreted as requiring use of Method 22 for sources subject to opacity limits as well as sources subject to limits on detectability of visible emissions.

b. Inconsistencies in the measurement methods for opacity, visible emissions, and "PM" in section 212.110, 212.107, 212.108, and 212.109.

c. Language in several rules which exempts sources with no visible emissions from mass emissions limits.

The Illinois Environmental Protection Agency (IEPA) held a public hearing on the proposed rules on January 5, 1996. The rules became effective at the State level on May 22, 1996, and were published in the Illinois Register on June 7, 1996. Illinois made submittals to meet the commitments related to the conditional approval on November 14, 1995, May 9, 1996, June 14, 1996, and February 3, 1997. At this time, the EPA is only acting on the portions of those submittals that pertain to the Granite City PM nonattainment area conditional approval, including the following new or revised rules in 35 Ill. Adm. Code:

Part 212: Visible and Particulate Matter Emissions

Subpart A: General

212.107 Measurement Method for Visible Emissions

212.108 Measurement Methods for PM–10 Emissions and Condensible PM–10 Emissions

212.109 Measurement Methods for Opacity

212.110 Measurement Methods for Particulate Matter

Subpart L: Particulate Matter Emissions

212.324 Process Emission Units in Certain Areas

Subpart N: Food Manufacturing

212.362 Emission Units in Certain Areas

Subpart O: Stone, Clay, Glass and Concrete Manufacturing

212.425 Emission Units in Certain Areas

Subpart R: Primary and Fabricated Metal Products and Machinery Manufacture

212.443 Coke Plants
212.446 Basic Oxygen Furnaces
212.458 Emission Units in Certain Areas

Subpart S: Agriculture

212.464 Sources in Certain Areas

In addition to the rule changes needed to meet the commitments in the conditional approval, Illinois submitted other revised rules. Rules not related to the Granite City PM nonattainment area conditional approval will be addressed in future rulemaking actions.

Title I, section 107(d)(3)(D) of the amended Act and the general preamble to Title I (57 FR 13498 (April 16, 1992)), allow the Governor of a State to request the redesignation of an area from nonattainment to attainment. The criteria used to review redesignation requests are derived from the Act, general preamble, and the following policy and guidance memorandum from the Director of the Air Quality Management Division to the Regional Air Directors, September 4, 1992, *Procedures for Processing Requests to Redesignate Areas to Attainment.* An area can be redesignated to attainment if the following conditions are met:

1. The area has attained the applicable NAAQS;

2. The area has a fully approved SIP under section 110(k) of the Act;

3. The air quality improvement must be permanent and enforceable;

4. The area has met all relevant requirements under section 110 and Part D of the Act;

5. The area must have a fully approved maintenance plan pursuant to section 175(A) of the Act.

II. Analysis of State Submittal

The first deficiency was an invalid emissions inventory and attainment demonstration. The emissions inventory issue concerning the quench tower emissions calculations involved the use of "clean water" (Clean water is defined as water with ≤1500 mg/l total dissolved solids (TDS). Dirty water is defined as ≥5000 mg/l TDS.) emission factor. The EPA had argued that, because Illinois' rules allow weekly averaging and the PM standard is based on 24-hour measurements, Illinois' quench rule could allow significantly dirtier water than the 1200 mg/l TDS limit suggests, and should, therefore, be modeled using the dirty water emission factor. Illinois submitted records of quench water TDS concentrations which show that daily concentrations rarely approach 1500 mg/l, let alone 5000 mg/l. (Appendix 2 to Attachment 17 of Illinois' May 9, 1996 submittal) Based on the information provided by Illinois, the EPA agrees that the use of the clean water emission factor was appropriate.

To correct the problems with the attainment demonstration and emissions inventory, Illinois adopted and submitted to the EPA a 20%, 3 minute average opacity limit on the GCS BOF roof monitors (35 IAC 212.446(c)) and a more stringent mass limit of 60 pounds per hour or 0.225 pounds per ton of steel produced for the BOF stack. Illinois also submitted a revised emissions inventory, which includes emissions from the BOF roof monitors, and a revised attainment demonstration including an air quality modeling analysis.

In the submitted modeled attainment demonstration, which uses 5 years of meteorological data, a violation of the 24 hour NAAQS is indicated when six exceedances of the 24 hour standard are predicted. Each receptor's predicted 6th highest 24 hour value is, therefore, compared to the standard. The 24 hour PM standard is 150 micrograms per cubic meter ($\mu g/m^3$). The highest, sixth highest predicted 24 hour PM concentration at any receptor in the Granite City nonattainment area was 135.7 $\mu g/m^3$. Thus, the modeling analysis predicts that the 24-hour NAAQS will be met.

A modeled violation of the annual PM standard is indicated when any receptor's 5 year arithmetic mean annual PM concentration exceeds the annual PM standard of 50 $\mu g/m^3$. The highest arithmetic mean annual PM concentration predicted by the modeling for the Granite City area was 49.05 $\mu g/m^3$. Therefore, the modeling analysis predicts that the annual PM NAAQS will be met.

The second deficiency was Illinois' failure to adequately address maintenance of the PM NAAQS for at least 3 years beyond the applicable attainment date. Because of the length of time it may take to determine whether an area has attained the standards, EPA recommends that PM nonattainment area SIP submittals demonstrate maintenance of the PM NAAQS for at least 3 years beyond the applicable attainment date. (See a August 20, 1991, memorandum from Fred H. Renner, Jr. to Regional Air Branch Chiefs titled "Questions and Answers for Particulate Matter, Sulfur Dioxide, and Lead") Illinois' May 15, 1992, submittal took growth into account in the modeling analysis, but did not adequately address maintenance of the NAAQS for PM.

The attainment date was December 31, 1994. Therefore, Illinois needs to show maintenance up to December 31, 1997. In the May 9, 1996, submittal, Illinois used ambient monitoring data to show that background concentrations of PM were no higher in 1995 than they were in 1991, and there are no significant trends in background pm concentrations from 1989 to 1995. (See Figure 1 of Attachment 18 to the May 9, 1996, submittal.) Illinois concluded from this analysis that the effects of growth on ambient PM concentrations in the Granite City PM nonattainment area will continue to be negligible through the end of the maintenance period. The EPA agrees, because of the short time remaining in the maintenance period, that the projection of trends in PM background concentrations is sufficient for this maintenance demonstration.

The third deficiency was the lack of an opacity limit on coke oven combustion stacks. Because coke oven operations are generally covered by special opacity limits, Illinois' SIP exempts coke oven sources from the statewide 30 percent opacity limit. This State exemption was approved by EPA on September 3, 1981. It was later realized that this exemption left coke oven combustion stacks without an opacity limit. Coke oven combustion stacks in Illinois are subject to grain loading limits which require stack tests for compliance determinations. Because stack tests can take months to perform and only last a few hours, an opacity limit, for which compliance can be determined by visual observations, is needed to ensure continuous compliance. This deficiency was cited in the November 18, 1994, conditional approval of Illinois' pm SIP submittal for the Granite City, Lake Calumet and McCook nonattainment areas.

In response to the conditional approval of Illinois' PM plan, the State adopted a 30 percent opacity limit for coke oven combustion stacks. However, this rule also includes an exemption for "when a leak between any coke oven and the oven's vertical or crossover flue(s) is being repaired . . ." for up to 3 hours per repair. Illinois' position is that this is a very limited exemption. The State reports that the exemption will apply only 1 percent to 4 percent of the time, and that encouraging such

maintenance would reduce potential problems with future emissions. The State explains that this exemption is needed only for LTV Steel in Chicago because of a procedure LTV uses to detect and repair oven leaks using ceramic welding. Illinois states that other coke ovens in the State (including Granite City Steel) almost never require ceramic welding; however, the rule applies to all Illinois coke oven batteries so that such repairs will be allowed when coke oven aging requires future repairs at other facilities.

The EPA believes this rule is unacceptable for several reasons. First, the exemption could apply for a large percentage of time, since repairs which would qualify for the exemption are quite common. Illinois' estimate of 1 percent to 4 percent exemption time is based on only ceramic welding. There are other types of repairs which could qualify for the exemption, such as silica dusting, spray patching, panel patching, end flue rehabilitation, and through wall rehabilitation. Aside from the significance of unlimited emissions for 1 percent to 4 percent of the time (for ceramic welding), the exemption time would be even higher when other types of repairs are considered.

Second, compliance with this opacity limit will not ensure compliance with the corresponding mass emission limits. Since there is no repair exemption in the mass limits for these sources, it is likely that the mass limits would be exceeded during the 3-hour exemption periods.

Third, the repair opacity exemption could be used to argue against stack tests taken while ovens are being repaired. It could be argued that, by accepting the opacity repair exemption, the EPA would be recognizing that sources cannot comply with emissions limits while oven repairs are being made.

Fourth, the exemption allows for battery condition to degrade to the point where ceramic welding is needed. An unlimited repair exemption would encourage the patching of old batteries when more substantive repairs would be appropriate. In fact, Illinois has stated that the exemption is currently only needed for LTV Steel in Chicago, yet the rule applies statewide so that other batteries can take advantage of the exemption when their condition deteriorates.

Fifth, other states across the country impose 20% opacity limits on coke oven combustion stacks, with exemptions, if any, of only a few minutes per hour. Even in areas not designated nonattainment for PM, these stacks are often covered by 20% opacity limits. Indiana imposes a 20 percent six minute average opacity limit on coke oven combustion stacks in PM nonattainment areas, with no exemption. Other such stacks in Indiana are covered by either a 30 percent or 40 percent six minute average, with no exemption. Ohio requires combustion stacks to meet a 20 percent 6-minute average opacity limit with a 1 averaging period per hour exemption up to 60 percent opacity. Michigan also has a 20 percent 6-minute average opacity limit, with a 1 averaging period per hour exemption up to 27 percent opacity. West Virginia imposes a 20% opacity limit with a 5-minute per hour exemption up to 40%, while Utah uses a 20% 6-minute average limit with no exemption. In Allegheny County, Pennsylvania, opacity from coke oven combustion stacks is not allowed to equal or exceed 20% opacity for more than 3 minutes per hour, and is never allowed to exceed 60% opacity.

Since this opacity limit is not acceptable, Illinois has not adequately addressed this issue.

The fourth conditional approval item involved the pM emission limitations on the electric arc furnace roof vents at American Steel Foundries. The EPA considered the mass limits on these sources to be unenforceable because the stacks are too short to be tested for compliance. The rules submitted by IEPA include a 20% opacity limit (6-min average) on the EAF roof vents at American Steel Foundries. This limit is enforceable. Therefore, the enforceability problem has been addressed.

The final issue from the November 18, 1994, conditional approval notice involves wording problems in several of Illinois' rules. In the 1992 submittal, 35 IAC Section 212.107, Measurement Methods for Visible Emissions, stated that Method 22 should be used for "detection of visible emissions". This could be misinterpreted as requiring use of Method 22 for sources subject to opacity limits as well as sources subject to limits on detectability of visible emissions. The revised rule (See the June 14, 1996, submittal.) contains revised language which adequately clarifies the intended uses of Method 22.

Another wording problem was the fact that measurement methods for opacity, visible emissions, and "PM" in 35 IAC 212.107, 212.108, 212.109, and 212.110 were not always consistent with each other. The revised rules in the June 14, 1996, submittal contain much less overlap than the previous rules. The rules are now consistent.

Finally, several of the rules in the 1992 submittal contained language which exempted sources with no visible emissions from mass emissions limits. Illinois has added language which states that the exemption "is not a defense to a finding of a violation of the mass emission limits". This issue has been adequately addressed.

Under cover letters dated March 19, 1996, and October 15, 1996, the State submitted a redesignation request for the Granite City PM nonattainment area. A public hearing was held on May 6, 1996.

All five of the redesignation criteria given under section 107(d)(3)(E) of the Clean Air Act must be satisfied in order for the EPA to redesignate an area from nonattainment to attainment. Under the second criterion, the EPA is prohibited from redesignating an area to attainment when a SIP for that area has not been fully approved. Those States containing initial moderate PM nonattainment areas were required to submit a SIP by November 15, 1991 which implemented reasonably available control measures (RACM) by December 10, 1993 and demonstrated attainment of the PM NAAQS by December 31, 1994. The SIP for the area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area.

Illinois submitted the required SIP revision for the Granite City PM nonattainment area to EPA on May 15, 1992. Upon review of Illinois' submittal, EPA identified several concerns. Illinois submitted a letter on March 2, 1994, committing to satisfy all of these concerns within one year of final conditional approval. On May 25, 1994, the EPA proposed to conditionally approve the SIP. Final conditional approval was published on November 18, 1994, and became effective on December 19, 1994. The final conditional approval gave the State one year to correct the five stated deficiencies. Illinois made submittals to meet the commitments related to the conditional approval on November 14, 1995, May 9, 1996, June 14, 1996, and February 3, 1997. In this notice, the EPA is proposing to disapprove this submittal because it does not correct all the concerns cited in the conditional approval. Illinois has not provided an enforceable limit for coke oven combustion stacks (see discussion above). Therefore, Illinois does not have a fully approved SIP for the Granite City PM nonattainment area. Without a fully approved SIP, the redesignation request can not be approved.

Section 179(a) of the amended Act states that if the Administrator finds that a State has failed to make a required submission, finds that a SIP or SIP

revision submitted by the State does not satisfy the minimum criteria established under section 110(k) of the amended Act, or disapproves a SIP submission in whole or in part, unless the deficiency has been corrected within 18 months after the finding, one of the sanctions referred to in section 179(b) of the amended Act shall apply until the Administrator determines that the State has come into compliance. (Pursuant to 40 CFR 52.31, the first sanction shall be a sanction requiring 2 to 1 offsets, in the absence of a case-specific selection otherwise.) If the deficiency has not been corrected within 6 months of the selection of the first sanction, the second sanction under section 179(b) shall also apply. In addition, section 110(c) of the Act requires promulgation of a Federal Implementation Plan (FIP) within 2 years after the finding or disapproval, as discussed above, unless the State corrects the deficiency and the SIP is approved before the FIP is promulgated.

On December 17, 1991, a letter was sent to the Governor of Illinois notifying him that the EPA was making a finding that the State of Illinois had failed to submit PM SIPs for the Lake Calumet, McCook, and Granite City nonattainment areas. This letter triggered both the sanctions and FIP processes as explained above. Illinois submitted a PM SIP revision for the three nonattainment areas on May 15, 1992, and in an April 30, 1993, letter to the State the EPA informed the State that the SIP was determined to be complete. Therefore, the deficiency which started the sanctions and FIP processes was corrected, and the sanctions process ended. The FIP process, however, was not stopped by the correction of the deficiency and EPA was to promulgate a FIP within 2 years of the failure-to-submit letter (or December 17, 1993), unless a PM SIP for the three nonattainment areas was finally approved before then.

On November 18, 1994, the EPA conditionally approved the SIP. The final conditional approval allowed the State until November 20, 1995, to correct the five stated deficiencies. Conditional approval does not start a new sanctions process, unless the state fails to make a submittal to address the deficiencies, makes an incomplete submittal, or the submittal is ultimately disapproved. Illinois made a submittal to meet the commitments related to the conditional approval on November 14, 1995. Supplemental information was submitted on May 9, 1996, June 14, 1996, and February 3, 1997. This submittal became complete by operation of law on May 14, 1996.

III. EPA's Proposed Rulemaking Action

Illinois has corrected all of the deficiencies listed in the November 18, 1994, conditional approval as they relate to the Granite City PM nonattainment area except for one deficiency. The State failed to provide an acceptable opacity limit on coke oven combustion stacks. Because Illinois has not met all of the commitments of the conditional approval, the EPA is proposing limited approval/limited disapproval of the plan. By this action, EPA is proposing to approve those regulations that have a strengthening effect on the SIP, while at the same time proposing to disapprove the overall SIP for failure to satisfy the requirement under the Clean Air Act for a fully enforceable plan that assures attainment. See sections 172(c)(1), 172(c)(6), and 189(a)(1)(B) of the Act. The EPA may grant such a limited approval under section 110(k)(3) of the Act in light of the general authority delegated to EPA under section 301(a) of the Act, which allows EPA to take actions necessary to carry out the purposes of the Act.

Upon limited approval/limited disapproval of the Granite City PM SIP, a new 18-month sanctions clock will begin. See section 179 (a) and (b) of the Act. To correct the deficiency and avoid implementation of sanctions, Illinois must submit a complete plan to the EPA, and that plan must be fully approved within 18 months from the final limited approval/limited disapproval.

The EPA is also proposing disapproval of Illinois' March 19, 1996, and October 15, 1996, request to redesignate the Granite City area to attainment for PM because the SIP for the area has not been fully approved by the EPA.

EPA is requesting written comments on all aspects of this proposed rule. As indicated at the outset of this document, EPA will consider any written comments received by August 21, 1997.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. section 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. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with 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 the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: July 1, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–19212 Filed 7–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN44–01–7269b; FRL–5861–7]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) is proposing to conditionally approve a revision to the Minnesota State Implementation Plan (SIP) for the Saint Paul particulate matter (PM) nonattainment area, located in Ramsey County Minnesota. The SIP was submitted by the State for the purpose of bringing about the attainment of the PM National Ambient Air Quality Standards (NAAQS). In the final rules section of this **Federal Register**, EPA is conditionally approving the SIP revision as a direct final rule without prior proposal, because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do sc at this time.

DATES: Comments on this proposed action must be received by August 21, 1997.

ADDRESSES: Written cómments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Authority: 42 U.S.C. 7401–7671(q)

Dated: July 8, 1997.

Michelle D. Jordan,

Acting Regional Administrator

[FR Doc. 97–19217 Filed 7–21–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7222]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildfngs built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	‡Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arkansas	Central City (Town) Sebastian County	Vache Grasse Creek	At State Highway 255	None	*399

Maps are available for inspection at the Town of Central City Town Hall, 1101 Highway 255, Central City, Arkansas.

Send comments to The Honorable Verna Combs, Mayor, Town of Central City, 1101 Highway 255, Central City, Arkansas 72941.

	Sebastian County (Unincorporated Areas).	Vache Grasse Creek	At Old Military Road (State Highway 256)	None	*399

Maps are available for inspection at the Sebastian County Courthouse, 35 South Sixth Street, Fort Smith, Arkansas.

Send comments to The Honorable William R. Harper, Jr., County Judge, Sebastian County, 35 South Sixth Street, Fort Smith, Arkansas 72901.

	Stuttgart (City) and Arkansas County (Unincorporated Areas).	Bull Ditch	Approximately 6,700 feet downstream of Oak Street (extended).	None	[1] *211
			Just upstream of Vine Street	None	[2] *213
		Lateral 1	At confluence with Bull Ditch	None	[2] *212
			Approximately 50 feet downstream of Park Avenue.	None	[2] *213
		Lateral 1A	At confluence with Lateral 1	None	[2] *213
		Ditch 7	At confluence with Ditch 7A	None	[2] *198
			Approximately 950 feet upstream of St. Louis Southwestern Railroad.	None	[2] *200
		Ditch 7A	Just upstream of County Road	None	[1] *198
			Approximately 8,100 feet upstream of County Road.	None	[2] *206
		Ditch 7B	At confluence with Ditch 7	None	[2] *198
			Just upstream of Buerkle Street	None	[2] *203
		Elm Prong	Just upstream of Route 130	None	[1] *212
		Mill Bayou	Just upstream of Route 130 (downstream crossing).	None	[1] *212
			Approximately 1,100 feet upstream of Route 130 (upstream crossing).	None	[2] *214
		Ditch 3B	At confluence with Mill Bayou	None	[1] *213
			Approximately 1,000 feet upstream of McCraken Street.	None	[2] *215
		Main Ditch	Approximately 9,100 feet downstream of Railroad Spur.	None	[1] *201
			Just downstream of Railroad Spur	None	[1] *211
			Just upstream of 19th Street East	None	[2] *214
		Lateral A	At confluence with Main Ditch	None	[2] *214
		Stuttgart King Bayou Ditch	Just downstream of County Road	None	[1] *197
			Just upstream of Fourth Street	None	[2] *202

Maps are available for inspection at the City of Stuttgart Water Department, 612 South College, Stuttgart, Arkansas.

Send comments to The Honorable Harry Richenback, Mayor, City of Stuttgart, 514 South Main, Stuttgart, Arkansas 72160.

Maps are available for inspection at the Arkansas County Courthouse, 101 Court Square, Dewitt, Arkansas.

Send comments to The Honorable Glenn S. Cox, Arkansas County Judge, 101 Court Square, Dewitt, Arkansas 72042.

[1] Affects Arkansas County.

[2] Affects the City of Stuttgart.

California	Palmdale (City) and Los Angeles County (Unincorporated Areas).	Anaverde Creek	Just downstream of Antelope Valley Freeway (California State Highway 14).	None	*2,742
			Approximately 5,000 feet upstream of Tierra Subida, at an unnamed road.	None	*2,876
			Just upstream of Leona Siphon	None	*2,929

State	City/town/county	Source of flooding	Location	‡Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the City of Palmdale, 721 East Palmdale Boulevard, Palmdale, California.					
Send comments to The Honorable James C. Ledford, Jr., Mayor, City of Palmdale, 38300 North Sierra Highway, Palmdale, California 93550–4798.					
Maps are available for inspection at 23920 Valencia Boulevard, Santa Clarita, California.					
Send comments to The Honorable Zev Yaroslavsky, Chairperson, Los Angeles County Board of Supervisors, 500 West Temple Street, Suite 821, Los Angeles, California 90012.					
	Redding (City) and Shasta County (Unincorporated Areas).	Olney Creek	Just upstream of Anderson-Cottonwood Irrigation District Canal.	*477	*481
			Approximately 100 feet upstream of Texas Springs Road.	None	*530
		Stillwater Creek	At Dersch Road	None	*409
			Approximately 9,100 feet upstream of Dersch Road.	None	*437
			At Rancho Road	None	*475
			Approximately 500 feet upstream of Rancho Road.	None	*476
Maps are available for inspection at the City of Redding Development Services Department, 760 Parkview Avenue, Redding, California.					
Send comments to Mr. Michael Warren, City Manager, City of Redding, 760 Parkview Avenue, Redding, California 96001–3396.					
Maps are available for inspection at the Shasta County Department of Public Works, 1855 Placer Street, Redding, California.					
Send comments to The Honorable Doug Latimer, Chief Administrative Officer, Shasta County, 1815 Yuba Street, Redding, California 96001.					
Kansas	Fort Scott (City)	Buck Run	At Wall Street	*799	*799
	Bourbon County		Just upstream of Tenth Street	*830	*831
			Approximately 1,200 feet upstream of 23rd Street.	None	*895
		Buck Run East Fork	At confluence with Buck Run	*844	*841
			Just upstream of St. Louis-San Francisco Railroad.	*871	*870
		Buck Run Tributary	At confluence with Buck Run	*817	*814
			Approximately 520 feet upstream of Wilson Street.	*846	*851
Maps are available for inspection at the City of Fort Scott City Hall, 1 East Third Street, Fort Scott, Kansas.					
Send comments to The Honorable Dick Hedges, Mayor, City of Fort Scott, P.O. Box 151, Fort Scott, Kansas 66701.					
Nebraska	Otoe County (Unincorporated Areas).	Missouri River	Approximately 3.8 miles downstream of confluence of Camp Creek.	None	*913
			Approximately 23.1 miles upstream of confluence of Camp Creek.	None	*940
Maps are available for inspection at the Otoe County Courthouse, 1021 Central Avenue, Nebraska City, Nebraska.					
Send comments to The Honorable Arlen Ross, Chairperson, Otoe County Board of Supervisors, Otoe County Courthouse, 1021 Central Avenue, Nebraska City, Nebraska 68410–0249					
Oregon	Lincoln City (City)	Pacific Ocean	On the ocean side of Oregon Coast Highway at its crossing of Schooner Creek.	*17	*10
	Lincoln County		Along the ocean side of Oregon Coast Highway at its crossing of the D River.	#1	*21
			Along the entire portion of Southwest Anchor Avenue between 32nd and 36th Streets.	#1	*24
Maps are available for inspection at the City of Lincoln City Planning Department, 801 Southwest Highway 101, Lincoln City, Oregon.					
Send comments to The Honorable Foster Ashenbrenner, Mayor, City of Lincoln City, P.O. Box 50, Lincoln City, Oregon 97367.					
Texas	Denton County and Incorporated Areas.	Clear Creek	Just upstream of Interstate Highway 35	*620	*620
			Just upstream of FM 455	None	*669
			Approximately 24,100 feet upstream of Waide Road.	None	*698
		Duck Creek	Approximately 4,450 feet downstream of Duck Creek Road.	None	*623
			Just upstream of Sam Bass Road	None	*691
		Milam Creek	Approximately 1,450 feet above mouth	*561	*561

State	City/town/county	Source of flooding	Location	‡Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 540 feet upstream of Interstate 35 southbound frontage road.	None	*666
		North Hickory Creek	Just upstream of FM 156 (First Street extended).	*675	*675
			Approximately 600 feet upstream of Plainview Road.	None	*686
		Elizabeth Creek	Approximately 6,200 feet above mouth	*571	*571
			Approximately 130 feet upstream of John Day Road.	None	*731

Maps are available for inspection at the Denton County Government Center, Department of Planning, 306 North State Route 288, Denton, Texas.

Send comments to The Honorable Jeff A. Moseley, Denton County Judge, 110 West Hickory, Denton, Texas 76201.

Maps are available for inspection at the City of Denton, City Hall West, 221 North Elm, Denton, Texas.

Send comments to Mr. Ted Benavides, City Manager, City of Denton, 215 East McKinney, Denton, Texas 76201.

Maps are available for inspection at the City of Roanoke City Hall, 201 Bowie Street, Roanoke, Texas.

Send comments to The Honorable Toby Alsip, Mayor, City of Roanoke, 201 Bowie Street, Roanoke, Texas 76262.

	Highland Village (City) Denton County.	Hickory Creek Arm Tributary 1.	At Sellmeyer Lane	None	*537
			At Tanglewood Lane	None	*552
		Hickory Creek Arm Tributary 2.	At confluence with Hickory Creek Arm Tributary 1.	None	*539
			At Lakevista West	None	*544
		Copperas Branch	Approximately 670 feet downstream of Cuero Place at the Cities of Highland Village and Lewisville corporate limits.	*569	*569
			Approximately 710 feet upstream of Sellmeyer Lane.	None	*580

Maps are available for inspection at the City of Highland Village City Hall, 1800 FM 407, Highland Village, Texas.

Send comments to The Honorable Brad Jones, Mayor, City of Highland Village, City Hall, 1800 FM 407, Highland Village, Texas 75067.

	Lewisville (City) Denton County.	Copperas Branch	Along Aspen Drive, 300 feet north of intersection with Maxwell Drive.	*570	*569

Maps are available for inspection at the City of Lewisville City Hall, 1197 West Main Street, Lewisville, Texas.

Send comments to Mr. Charles R. Owen, City Manager, City of Lewisville, 1197 West Main Street, Lewisville, Texas 75029–9002.

Washington	King County and Incorporated Areas.	North Fork Issaquah Creek.	At confluence with Issaquah Creek	*51	*51
			Approximately 150 feet upstream of Southeast 62nd Street.	*57	*56
			Approximately 570 feet upstream of 66th Street.	*75	*90
		Bear Creek	Approximately 100 feet upstream of State Route 202.	*42	*42
			Approximately 100 feet upstream of Northeast Novelty Hill Road.	*60	*62
			Approximately 80 feet upstream of Avondale Road.	*91	*90
		Evans Creek	At confluence with Bear Creek	*50	*47
			Approximately .74 mile upstream of confluence with Bear Creek.	*56	*55
		South Fork Skykomish River.	At Snohomish-King County line, approximately 6 miles downstream of Burlington Northern Railroad.	None	*748
			Approximately 100 feet downstream of Fifth Street in the Town of Skykomish.	*926	*926
			Approximately .52 mile upstream of U.S. Highway 2 (Northeast Stevens Pass Highway).	None	*1,039
		Middle Fork Snoqualmie River.	Approximately .35 mile downstream of Mount Si Road.	*467	*467
			Approximately .44 mile upstream of Mount Si Road.	*492	*495
			Approximately 3.57 miles upstream of Mount Si Road.	None	*629
		North Fork Snoqualmie River.	At mouth, approximately .36 mile downstream of 428th Avenue Southeast.	*427	*427

State	City/town/county	Source of flooding	Location	‡Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 2.06 miles upstream of 428th Avenue Southeast.	None	*482
		South Fork Skykomish River.	Approximately 200 feet upstream of confluence with Maloney Creek.	*922	*922
			Approximately .46 mile upstream of Fifth Street North.	*940	*940
		North Creek	At confluence with Sammomish River	*22	*22
			At 208th Street Southeast	None	*122

Maps are available for inspection at the King County Department of Development and Environmental Services, 3600 136th Place Southeast, Bellevue, Washington.

Send comments to The Honorable Ron Simms, King County Executive, King County Courthouse, Room 400, 516 Third Avenue, Seattle, Washington 98104.

Maps are available for inspection at the Town of Skykomish, 119 Fourth Street North, Skykomish, Washington.

Send comments to The Honorable Ted Cleveland, Mayor, Town of Skykomish, 119 Fourth Street North, Skykomish, Washington 98288.

Maps are available for inspection at the City of Issaquah Planning Department, 130 East Sunset Way, Issaquah, Washington.

Send comments to The Honorable Rowan Hinds, Mayor, City of Issaquah, P.O. Box 1307, Issaquah, Washington 98027.

Maps are available for inspection at the City of Redmond, 15670 Northeast 85th Street, Redmond, Washington.

Send comments to The Honorable Rosemarie Ives, Mayor, City of Redmond, 15670 Northeast 85th Street, Redmond, Washington 98052.

Wyoming	Sheridan County (Unincorporated Areas).	Big Goose Creek	Approximately 1,800 feet downstream of State Highway 388.	None	*3,697
			Approximately 4 miles upstream of Works Street.	None	*3,800
		Littie Goose Creek	Approximately 1,250 feet downstream of Brundage Lane.	*3,782	*3,782
			Just upstream of County Road 66	None	*3,836
		Tongue River	Approximately 2 miles downstream of Wolf Creek Road at the north section line of Section 20.	None	*3,728
			Just upstream of Wolf Creek Road	*3,762	*3,761
			Approximately 3 miles upstream of Wolf Creek Road.	None	*3,776
		Fivemile Creek	At the township line between Townships 85 and 86 West.	None	*3,776
			Approximately 800 feet upstream of township line between Townships 85 and 86 West.	None	*3,780

Maps are available for inspection at the Sheridan County Engineering Department, 224 South Main Street, Sheridan, Wyoming.

Send comments to The Honorable Ken Kerns, Chairperson, Sheridan County Board of Supervisors, 224 South Main Street, Suite B1, Sheridan, Wyoming 82801.

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

Dated: July 15, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–19218 Filed 7–21–97; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 525

Denial of Petition for Rulemaking; Corporate Average Fuel Economy (CAFE) Standards

This document sets forth the reasons for the denial of a petition for rulemaking submitted by the Coalition of Small Volume Automobile Manufacturers, Inc. (COSVAM) regarding eligibility for exemptions from corporate average fuel economy (CAFE) standards under 49 CFR Part 525. COSVAM requested that the agency initiate rulemaking to amend Part 525.5 to add a definition that would define the number of "Passenger automobiles manufactured by a manufacturer" to:

(1) Include every passenger vehicle manufactured by

(A) The manufacturer; and

(B) Any person that controls, is controlled by, or is under common control with the manufacturer, unless such person neither manufactures in nor imports into the Customs territory of the United States;

(2) Not include an automobile manufactured by any person described in (1)(A) or (B) above, that is exported from the US not later than 30 days after end of the model year in which the automobile is manufactured.

The petition is denied on the basis that it is unlikely that the agency would adopt this definition. NHTSA concludes that the proposed definition is contrary

to the language and intent of the governing statute.

Section 32902(d) of Title 49, United States Code (49 U.S.C. 32902(d)), provides that low volume manufacturers of passenger automobiles may be eligible for an exemption from the general average fuel economy standards for passenger automobiles. Subsection (d)(1) of Section 32902(d) limits eligibility for low volume exemptions to those manufacturers who "manufacture" (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year for which an exemption is sought. This section also declares that applications for these exemptions may only be submitted by manufacturers who produced fewer than 10,000 passenger automobiles in the second model year preceding the model year for which the exemption is sought.

A final rule, implementing the exemption provisions, became effective July 28, 1977 (42 FR 38374). It added a new part 525 to NHTSA regulations that established the timing, content, and format requirements of petitions for exemption as well as the procedures that the agency follows in acting on such petitions. Section 525.5 of Part 525 restates the statutory criteria for the availability and application of exemptions by providing that an application may only be made by a manufacturer who manufactures fewer than 10,000 cars in the second model year preceding the model year for which an application is made and that no exemption shall apply in any model year in which the manufacturer produces more that 10,000 vehicles.

Section 32901(a)(4) defines "automobiles manufactured by a manufacturer" to include "every automobile manufactured by a person that controls, is controlled by, or is under common control with the manufacturer * * *." Under this definition, two or more companies producing automobiles are considered to be a single manufacturer if one company is controlled by, or controls, another manufacturer of motor vehicles.

In 1978, NHTSA issued an interpretation of Part 525 known as the "Chase interpretation." This interpretation, addressed to Howard E. Chase, an attorney representing Officino Alfieri Maserati, S.p.A (Maserati), concluded that cars produced by a "parent" manufacturer that are neither produced or imported into the United States are not counted for the purposes of determining eligibility for an exemption. It thereby allowed Maserati, whose world-wide production of automobiles was much less than 10,000 vehicles, to be eligible for exemption from CAFE requirements even though Maserati was controlled by Nuova Innocenti S.p.A. (Innocenti), whose annual production of passenger automobiles exceeded 10,000 vehicles. Because Innocenti did not import any vehicles into the United States, Maserati was granted an exemption from the general CAFE requirements. This interpretation allowed an importer or a number of importing manufacturers to apply for an exemption if the worldwide production of those firms within a control relationship that import into the United States did not exceed 10,000 passenger vehicles.

In a September 1990 notice concerning an application for exemption submitted by Ferrari, which was then under the control of Fiat (55 FR 38822, Sept. 21, 1990), NHTSA re-examined the position it had taken in the Chase interpretation. In that notice, the agency found that the Chase interpretation was based on the definition of "manufacture" contained in the general definitions now found in Section 32901. This definition states that "manufacture" means "to produce or assemble in the customs territory of the United States or to import." NHTSA then concluded that the Chase interpretation wrongly applied this limited definition of manufacture when the exemption provisions themselves, now found in Section 32901(d), restrict the availability of exemptions to manufacturers that "manufactured (whether in the United States or not) fewer than 10,000 passenger automobiles * * *" The notice also explained that importers who are controlled by larger "parent" manufacturers have, by virtue of the relationship with the parent, access to technological and material resources that can provide them with the ability to manufacture more fuel efficient vehicles. The fact that the parent may choose not to import and market in the United States does not have any bearing on the availability of these resources. In a notice dated July 10, 1991 (56 FR 31459), the agency indicated that it was adopting the revised interpretation set forth in the September 1990 notice and abandoning the Chase interpretation.

COSVAM's January 8, 1997 petition sought to broaden the exemption for small volume automobile manufacturers. The amendments proposed by COSVAM would allow importing manufacturers within a control relationship with another major manufacturer to be eligible to apply for an exemption from the CAFE requirements even though the combined worldwide annual production of all related manufacturers within the control relationship exceeds 10,000 passenger automobiles, provided no other manufacturer in the control relationship produces or imports more than 10,000 passenger automobiles in the United States. The petitioner's proposed amendment would modify 49 CFR Part 525.5 by adding a new section, 525.5(b), reading as follows:

(b) For purpose of determining whether a manufacturer manufactured * * * 10,000 or more passenger automobiles, "automobiles manufactured by a manufacturer":

(1) Includes every automobile manufactured * * * by

(A) The manufacturer; and

(B) Any person that controls, is controlled by, or is under common control with the manufacturer, unless such person neither manufactures in nor imports into the Customs territory of the United States.

The petitioner also stated that the petition process for an exemption, as outlined in Part 525.6 and 525.7, is cumbersome and an unnecessary burden on small volume manufacturers.

Notwithstanding COSVAM's view, Chapter 329 sets clear limits on eligibility for exemption from CAFE standards. These limits preclude the agency from granting the relief COSVAM requests. Section 32901(a)(4) defines "automobiles manufactured by a manufacturer" to include "every automobile manufactured by a person that controls, is controlled by, or is under common control with the manufacturer * * *". Section 32902(d)(1) limits eligibility for low volume exemptions to those manufacturers who "manufacture" (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year for which an exemption is sought regardless of where those automobiles are produced.

Congress had a clear purpose when it indicated in Section 32902(d) that "manufacture" meant worldwide production. Examination of both the text and the legislative history of the exemption provisions indicates that Congress sought to provide relief to low volume manufacturers because of their limited flexibility and resources to improve fuel economy. In so doing, Congress intended that such relief be made available to manufacturers who, based on their worldwide annual production, may not be able to adapt to the CAFE standards applicable to large manufacturers. Congress did not intend that any inquiry into the size and resources of a company seeking exemption be governed by an examination of how many cars it brings

into the U.S., either directly or by a subsidiary it controls.

The effect of the rulemaking suggested by COSVAM would be to allow a small volume manufacturer to be eligible for an exemption if the worldwide production of all manufacturers within the control relationship that import into the U.S. does not exceed 10,000 vehicles per year, even though non-importing manufacturers may produce many more than 10,000 vehicles per year. As noted above, NHTSA considers that adoption of this language to be contrary to the commands of Chapter 329 and beyond the agency's authority. COSVAM argues however, that the agency would be within its authority as a proposed change to the existing scheme under an inherent power to fashion relief from the operation of a statutory scheme where the impact of such relief is *de minimis*, as recognized in the case of *Alabama Power* versus *Costle*, 636 F.2d 323 (D.C. Cir. 1979). The agency does not agree that it has such an implied power. Congress has expressly addressed the issue of exemptions under the CAFE statutes and issued precise criteria under which such exemptions may be granted. This express directive negates any implied right the agency might otherwise have had to fashion its own scheme.

COSVAM further argues that this petition should be granted because of this agency's commitment to regulatory reform. However, regulatory reform does not grant the agency authority to do what the statute does not permit. While COSVAM also suggested that the procedures for applying for an exemption be simplified, it offered no suggestions on how to make the petition process less cumbersome for a low volume automobile manufacturer. The agency has already reviewed Parts 525.6 and 525.7 as part of its regulatory reform effort and concluded that all of the information requested is necessary for the agency to fulfill its responsibility in establishing the maximum feasible fuel economy standard for manufacturers seeking an exemption. NHTSA also notes that provisions have been incorporated into Part 525 to allow for an exemption to be sought for as many as three model years. This was intended to provide some relief for the small volume manufacturer by reducing the frequency of petitions.

The agency has consistently concluded, since reconsideration of the Chase interpretation, that for CAFE purposes "vehicles manufactured by a manufacturer" includes all vehicles manufactured, worldwide, by any entity that controls, is controlled by, or is under common control with the manufacturer. In the agency's view this interpretation is consistent with the express language and the purpose of Chapter 329. For the reasons stated above, the petition is denied.

Issued on: July 16, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–19151 Filed 7–21–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Availability of Draft Recovery Plan for Four Species of Hawaiian Ferns for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the Technical/Agency Draft Recovery Plan for Four Species of Hawaiian Ferns. These four taxa are currently found on one or more of the following Hawaiian Islands: Oahu, Molokai, Lanai, Maui, and Hawaii.

DATES: Comments on the draft recovery plan must be received on or before September 22, 1997.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Ecoregion Office, 300 Ala Moana Boulevard, room 3108, P.O. Box 50088, Honolulu, Hawaii 96850 (phone 808/541–3441); U.S. Fish and Wildlife Service, Regional Office, Ecological Services, 911 N.E. 11th Ave., Eastside Federal Complex, Portland, Oregon 97232–4181 (phone 503/231–6131); the Molokai Public Library, 15 Ala Malama Street, Kaunakakai, Hawaii 96748; Kailua-Kona Public Library, 75–138 Hualalai Road, Kailua-Kona, Hawaii 96740; Hilo Public Library, 300 Waianuenue Avenue, Hilo, Hawaii 96720; and, the Wailuku Public Library, 251 High Street, Wailuku, Maui, Hawaii 96793. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Brooks Harper, Field Supervisor, Ecological Services, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: Kevin Foster at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The four taxa being considered in this recovery plan are: *Asplenium fragile* var. *insulare* (no common name (NCN)), *Ctenitis squamigera* (pauoa), *Diplazium molokaiense* (NCN), and *Pteris lidgatei* (NCN).

These four taxa are all Federally listed as endangered and are currently found on one or more of the following Hawaiian Islands: Oahu, Molokai, Lanai, Maui, and Hawaii. Three of the four endangered fern taxa have been reported from lowland forest habitat. *Ctenitis squamigera* is typically found in lowland mesic forests, while *Pteris lidgatei* appears to be restricted to lowland wet forest. *Diplazium molokaiense* has been reported from lowland to montane forests in mesic to wet settings. The fourth species, *Asplenium fragile* var. *insulare*, has been reported from montane wet, mesic and dry forest habitats as well as subalpine dry forest and shrubland

habitat. The four taxa and their habitats have been variously affected or are threatened by one or more of the following: habitat degradation and/or predation by feral or domestic animals (goats, pigs, cattle, sheep and deer); competition for space, light, water, and nutrients from alien plants; human impacts; and fire. In addition, these taxa are subject to an increased likelihood of extinction and/or reduced reproductive vigor from chance (stochastic) events due to the small number of existing individuals and their very narrow distributions.

The objective of this plan is to provide a framework for the recovery of these four taxa so that their protection by the Endangered Species Act (ESA) is no longer necessary. This plan summarizes available information about each taxon, reviews the threats to their continued existence, and lists management actions needed to remove these threats. Immediate actions needed to prevent extinction of these taxa include habitat protection through fencing for exclusion of ungulates, control of alien plants, and protection from fire. *Ex situ* propagation and augmentation of some populations may also be needed. Long-term activities necessary for the perpetuation of these taxa in their natural habitats include long-term monitoring and management as well as re-establishment of populations within their historic ranges. Research on life history, limiting factors, habitat requirements, and minimum viable population size is needed to help make appropriate management decisions.

Public Comments Solicited

The Service solicits written comments on the recovery plan. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 27, 1997.

Michael J. Spear,

Regional Director, U.S. Fish and Wildlife Service, Region 1, Pacific Region.

[FR Doc. 97–19175 Filed 7–21–97; 8:45 am]

BILLING CODE 4310–65–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Stone Mountain Fairy Shrimp as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the Stone Mountain fairy shrimp (*Branchinella lithaca*) under the Endangered Species Act of 1973, as amended. The Service finds that the petition presents substantial information indicating that listing this species may be warranted. A status review is initiated.

DATES: The finding announced in this document was made on July 11, 1997. To be considered in the 12-month finding for this petition, information and comments should be submitted to the Service by September 22, 1997.

ADDRESSES: Questions, comments, data, or information concerning this petition should be sent to the U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Milio (see **ADDRESSES** section); telephone (904) 232–2580, ext. 112.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition and promptly published in the **Federal Register**. Following a positive finding, section 4(b)(3)(B) of the Act requires the Service to promptly commence a status review of the species.

The processing of this petition conforms with the Service's final listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will continue to process the backlog of rulemakings during fiscal year 1997 following two related events: (1) The lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (tier 1), second highest priority (tier 2) to resolving the listing status of the outstanding proposed listings, and third priority (tier 3) to resolving the conservation status of candidate species and processing administrative findings on petitions. The processing of this petition falls under tier 3. At this time, the Southeast Region has no pending tier 1 actions and pending tier 2 actions are near completion. Additionally, the guidance states that "effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3" (61 FR 64480).

The Service has made a 90-day finding on a petition to list the Stone Mountain fairy shrimp, *Branchinella lithaca*. The petition, dated March 29, 1995, was submitted by Mr. Larry Winslett, President of the "Friends of Georgia," Lithonia, Georgia, and was received by the Service on March 31, 1995. It requests the Service to emergency list the Stone Mountain fairy shrimp as endangered and designate critical habitat under 5 U.S.C. 553 of the Administrative Procedures Act. The petition identifies construction and demolition associated with further development at the summit of Stone Mountain Park as the immediate threats to the species' continued existence. It includes as potential impacts the contamination of the shrimp's vernal (temporary) pool habitat by chemicals and physical debris, and crushing of its resting stages by vehicles.

The Stone Mountain fairy shrimp is one of four species of *Branchinella* known from North America, where they are among the least common fairy shrimp species (Belk and Sissom 1992). Fairy shrimp are small Anostracan crustaceans usually restricted to fishless ponds, particularly vernal pools. Their life cycle includes both active and resting stages which are synchronized with the seasonal filling and drying out

of their habitat (Dodson and Frey 1991). The known range of the Stone Mountain fairy shrimp is restricted to rock pools near the summit of State-owned Stone Mountain, a large granitic dome in DeKalb County located in north-central Georgia, east of Atlanta (Creaser 1940, Pennak 1953).

The development project cited by the petitioner began in 1995, with completion expected in spring or summer 1997 (Alice Richards, Stone Mountain Memorial Association, pers. comm. 1997). Responding to the petition and a Service letter of concern, the Stone Mountain Memorial Association, manager of Stone Mountain Park, outlined the additional specific measures being taken to protect and conserve the affected environment (G.C. Branscome, Stone Mountain Memorial Association, *in litt.* 1995). These measures included use of spill kits and containment booms, preparation of maps and guidelines to address environmental issues, such as avoidance of sensitive areas, and dedication of Park personnel to monitor and report on environmental and work site conditions as well as contractor adherence to environmental specifications.

The Service has reviewed the petition, its accompanying literature, and other literature and information in the Service's files. On the basis of the best scientific and commercial information available, the Service finds that the petition presents substantial information that listing the Stone Mountain fairy shrimp may be warranted. This finding is based on range surveys which suggest that the species is restricted to a single locality, and the potential adverse impacts to the species and its habitat from documented actions such as the parking of construction equipment in a vernal pool and the infiltration of construction-related debris into fairy shrimp habitat. The last documented collection of the species was in 1951. The petitioner believes he observed the Stone Mountain fairy shrimp at the type locality in 1994. Cursory samples taken at Stone Mountain in 1995 and 1996 did not contain fairy shrimp, but did produce clam shrimp (*Eulimnadia* sp.). The Service feels that a regular survey involving collection of water and sediment samples at various sites is needed to accurately determine the species' status.

The petitioner's requests for emergency listing and concurrent designation of critical habitat are not subject to the Act's petition provisions. However, in accordance with the Service's listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475) the Service has conducted a preliminary review of this petition in order to determine whether an emergency situation currently exists. Our preliminary review indicated that an emergency listing of the Stone Mountain fairy shrimp is not necessary. The designation of critical habitat, petitionable under the Administrative Procedures Act, will be considered if it is determined that listing is warranted.

References Cited

Belk, D., and S.L. Sissom. 1992. New *Branchinella* (Anostraca) from Texas, U.S.A., and the problem of antennalike processes. Journal of Crustacean Biology 12(2):312–316.

Creaser, E.P. 1940. A new species of phyllopod crustacean from Stone Mountain, Georgia. Journal of the Washington Academy of Sciences 30:435–437.

Dodson, S.I., and D.G. Frey. 1991. Cladocera and other Branchiopoda. Pp. 723–780 *in*: J.H. Thorp and A.P. Covich, eds. Ecology and Classification of North American Freshwater Invertebrates. Academic Press, New York.

Pennak, R.W. 1953. Fresh-water invertebrates of the United States. The Ronald Press Company, New York. 769 pp.

Author: The primary author of this document is Mr. John F. Milio, Jacksonville Field Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: July 11, 1997.

Jay L. Gerst,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–19203 Filed 7–21–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 62, No. 140
Tuesday, July 22, 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 COMMERCE

International Trade Administration

[A–122–047]

Elemental Sulphur From Canada; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: In response to a request from Mobil Oil Canada, Ltd. (Mobil), the Department of Commerce (the Department) published in the **Federal Register** (January 17, 1997, 62 FR 2647) the notice of initiation of the administrative review of the antidumping duty order on elemental sulphur from Canada, for the period December 1, 1995 through November 30, 1996. On June 3, 1997, we received a request for withdrawal of this review from Mobil. Because the Department has not devoted considerable time and resources to the review up to this point and because no other interested party requested a review, we are terminating this review.

EFFECTIVE DATE: August 22, 1997.

FOR FURTHER INFORMATION CONTACT: Donald Little or Maureen Flannery, AD/CVD Enforcement, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Regulations

Unless otherwise indicated, all citations to the Department's regulations are to the regulations as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On December 19, 1996, Mobil requested an administrative review with respect to its entries or sales of elemental sulphur. On January 17, 1997, in accordance with 353.22(c), we initiated an administrative review of this order. On June 3, 1997, we received a withdrawal of request for review from Mobil.

Pursuant to 19 CFR 353.22(a)(5) of the Department's regulations, the Department may allow a party that requests an administrative review to withdraw such request not later than 90 days after the date of publication of the notice of initiation of the administrative review. The Department may extend this time limit if the Department decides it is reasonable to do so.

Because this request for withdrawal is early in the review, the Department has not devoted considerable time and resources to the review up to this point, and there were no requests for review from other interested parties, we are terminating this review.

This notice is in accordance with Sec. 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Dated: July 15, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97–19239 Filed 7–21–97; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Notice of Amended Antidumping Duty Order: Persulfates From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 21, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara Wojcik-Betancourt, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0629.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 353 (1997).

Antidumping Duty Order

On July 7, 1997, in accordance with section 736(a)(1) of the Act, the Department published the antidumping duty order which directed the U.S. Customs Service to assess antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of all entries of persulfates from the PRC. In the order, the weighted-average margin percentages were erroneously assigned; the weighted-average margin percentages for Sinochem Jiangsu Wuxi Import & Export Corporation ("Wuxi") and Shanghai AJ Import & Export Corporation ("AJ") were inverted. The following is the correction of this error:

Manufacturer/producer/exporter	Weight-average margin percentage
Sinochem Jiangsu Wuxi Import & Export Corporation	32.22
Shanghai AJ Import & Export Corporation (or Shanghai Ai Jain Import & Export Corporation)	34.41
Guangdong Petroleum Chemical Import & Export Trade Corporation	34.97
China-wide Rate	119.02

This amended order is published pursuant to section 736(a) of the Act (19 USC 1673e(a)) and 19 CFR 353.21.

Dated: July 16, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–19240 Filed 7–21–97; 8:45 am]
BILLING CODE 3510–DS–M

COMMODITY FUTURES TRADING COMMISSION

New York Cotton Exchange Petition for Exemption From the Dual Trading Prohibition in Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is granting the petition of the New York Cotton Exchange ("NYCE" or "Exchange") for exemption from the prohibition against dual trading in its Cotton No. 2 futures contract.

DATES: This Order is to be effective July 16, 1997.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581; telephone (202) 418–5490.

SUPPLEMENTARY INFORMATION: On September 28, 1995, the New York Cotton Exchange ("NYCE" or "Exchange") submitted a Petition for Exemption from the Dual Trading Prohibition for its Cotton No. 2 futures contract. Subsequently, the Exchange submitted a corrected petition and an update on November 21, 1995, and March 14, 1997, respectively. Upon consideration of these petitions and other matters of record, including staff review of Exchange audit trail test results to Commission-specified tests, compliance with the order ticket customer identification requirement of Commission Regulation 1.35, dual trading surveillance data required under the Commission's August 12, 1996 Audit Trail Report, and disciplinary and investigatory actions undertaken by the Exchange during the period of September 1995 through January 1997, the Commission hereby finds that NYCE meets the standards for granting a dual trading exemption contained in Section 4j(a) of the Commodity Exchange Act ("Act") as interpreted in Commission Regulation 155.5.[1]

Subject to NYCE's continuing ability to demonstrate that it meets applicable requirements, the Commission specifically finds that NYCE maintains a trade monitoring system which is capable of detecting and deterring, and is used on a regular basis to detect and to deter, all types of violations attributable to dual trading and, to the full extent feasible, other violations involving the making of trades and execution of customer orders, as required by Section 5a(b) and Commission Regulation 155.5. The Commission further finds that NYCE's trade monitoring system includes audit trail and recordkeeping systems that satisfy the Act and regulations.[2]

With respect to each required component of the trade monitoring system, the Commission finds as follows:

(a) *Physical Observation of Trading Areas*—NYCE's trade monitoring system satisfies the requirements of Section 5a(b)(1)(A) in that NYCE maintains and executes an adequate program for physical observation of Exchange trading areas and integrates the information obtained from such observation into its compliance programs. The Exchange physically observes trading areas by conducting daily floor surveillance during the open, close, and at random times during each trading day. NYCE also performs floor surveillance when warranted by special market conditions, such as exceptional volatility or contract expirations. The Exchange uses information obtained from such surveillance in evaluating audit trail data and otherwise in executing its compliance programs.

(b) *Audit Trail System*—The Exchange's trade monitoring system satisfies the audit trail standards of Section 5a(b)(1) in that it is capable of capturing essential data on the terms, participants, and sequence of transactions. The system obtains relevant data on unmatched trades and outtrades as required by Section 5a(b)(1) of the Act. The Commission further finds that NYCE accurately and promptly records the essential data on terms, participants, times (in increments of no more than one minute in length), and sequence through a means that is unalterable, continual, independent, reliable, and precise, as required by Section 5a(b)(3) of the Act. Consistent with the guidelines to Regulation 155.5, the Commission finds that NYCE also demonstrated the use of trade timing data in its surveillance systems for dual trading-related and other abuses.

One-Minute Execution Time Accuracy and Sequencing

NYCE's manual trade timing system captures a one-minute time for both the buy and sell sides of every trade and sequences all customer and proprietary trades. In an audit trail test conducted by Commission staff in January 1997, the accuracy and sequencing rates of NYCE's trade times exceeded 90 percent. Separately, the Exchange provided the Commission with four months of data from the period of November 1996 to February 1997 demonstrating that more than 90 percent of trade times in the cotton futures contract were consistent with time and sales data during this time period.

Unalterable, Continual, Independent, Reliable, and Precise Times

The Commission finds that trade records generated by NYCE, including order tickets and trading cards, are recorded in nonerasable ink and that alterations are completely recorded. Trading card collections occur within 15 minutes after each half-hour time bracket, and members must submit trade data for clearing within one hour after each one-half hour trading period. Trade data, therefore, are provided periodically to the Exchange, which is continual.

Trade times are independently obtained through a reliable means, to the extent practicable, since individual times separately submitted for each side of a trade can be compared to each other, to underlying trade data, and to time and sales. NYCE's trade timing system also produces precise sequencing.

Broker Receipt Time

The Commission finds that it is not practicable at this time for NYCE to record the time that each order is received by a floor broker for execution at NYCE.

(c) *Recordkeeping System*—NYCE satisfies the requirements of Section 5a(b)(1)(B) by maintaining an adequate recordkeeping system that is able to capture essential data on the terms, participants, and sequence of transactions. The Exchange uses such information and information on violations of such requirements on a

[1] The record consists of the NYCE's petition and amendment thereto and supporting documents, the Commission's January 1997 audit trail test, dual trading surveillance, customer identification information, and documents submitted by the Exchange as part of a rule enforcement review of the Exchange initiated by the Commission in February 1997.

[2] Sections 4j(a)(3) and 5a(b) of the Commodity Exchange Act and Commission Regulations 1.35 and 155.5, 17 CFR § 1.35, 155.5. Section 4j(a)(3) requires the Commission to exempt a contract market from the prohibition against dual trading, either unconditionally or on stated conditions, upon finding that the trade monitoring system in place at the contract market satisfies the requirements of Section 5a(b), governing audit trails and trade monitoring systems, with regard to violations attributable to dual trading at such contract market. Commission Regulation 155.5 requires a contract market to demonstrate that its trade monitoring system is capable of and is used to detect and to deter dual trading abuses and to demonstrate that it meets each element required of the components of such a system.

consistent basis to bring appropriate disciplinary actions.

NYCE conducts either annual or quarterly trading card and order ticket reviews for a representative sample of customer orders and uses information from these reviews to generate investigations. Commission staff review of a sample of order ticket account identifiers demonstrated 97 percent compliance with the requirement that the account identifier relate back to the ultimate customer account.

(d) *Surveillance Systems and Disciplinary Actions*—As required by Section 5a(b)(1) (C), (D) and (F), NYCE uses information generated by its trade monitoring and audit trail systems on a consistent basis to bring appropriate disciplinary action for violations relating to the making of trades and execution of customer orders. In addition, NYCE assesses meaningful penalties against violators and refers appropriate cases to the Commission.

On a daily basis, NYCE reviews trade registers and computerized surveillance reports to detect dual trading-related and other trading abuses. All relevant trade data are included in these reviews. The Exchange reviews its trade register daily and surveillance exception reports at least three times a week. The exception reports are designed to identify such suspicious trading activity as trading ahead, trading against, preferential trading (withholding or disclosing orders), accommodation trading, prearranged trading, improper cross trading, and misallocating orders.[3]

From September 1995 through January 1997, the Exchange initiated 89 investigations into all types of possible abuses. Based on examination of its computerized surveillance reports, NYCE initiated 48 dual trading-related investigations during that period, two of which resulted in referral to the Business Conduct Committee. In 1996, NYCE assessed $31,000 in fines, suspended a member for 14 days, issued three cease and desist orders, and agreed to a voluntary transfer of membership in three dual trading-related cases involving three members.

(e) *Commitment of Resources*—The Commission finds that NYCE meets the requirements of Section 5a(b)(1)(E) by committing sufficient resources for its trade monitoring system, including automating elements of such trade surveillance system, to be effective in detecting and deterring violations and by maintaining an adequate staff to investigate and to prosecute disciplinary actions. For fiscal year 1996, NYCE expended $1,039,729 in salaries for self-regulatory personnel and reported its total self-regulatory costs to be $2,712,516. NYCE reported volume for this period as 6,228,285 contracts.

Accordingly, on this date, the Commission *Hereby Grants* NYCE's Petition for Exemption from the dual trading prohibition for trading in its Cotton No. 2 futures contracts.

For this exemption to remain in effect, NYCE must demonstrate on a continuing basis that it meets the relevant statutory and regulatory requirements. The Commission will monitor continued compliance through its rule enforcement review program and based on any other information it may obtain about NYCE's program. Although the Commission has found that NYCE meets the standards of independence and continual provision of data to the extent practicable and has found that it is not practicable at this time to capture a broker receipt time, the Commission reserves the ability to reconsider what is practicable as technology for order routing and trade reporting becomes more widely available.

The provisions of this Order shall be effective on the date on which it is issued and shall remain in effect unless and until it is revoked in accordance with Section 8e(b)(3)(B) of the Commodity Exchange Act, 7 U.S.C. § 12e(b)(3)(B). If other NYCE contracts become affected contracts after the date of this Order, the Commission may expand this Order in response to an updated petition that includes those contracts.

It is so Ordered.

Dated: July 16, 1997.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 97–19177 Filed 7–21–97; 8:45 am]

BILLING CODE 6351–01–P

[3] On a recent date, for example, NYCE's trading ahead review, which isolates brokers receiving better prices than customers fairly contemporaneously, identified one percent of trades in all futures and futures option contracts for further review.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board of Directors of the Corporation for National and Community Service (Corporation).

DATE AND TIME: Thursday, July 31, 1997, from 2 p.m. to 3:30 p.m.

PLACE: The meeting will be held via conference call.

STATUS: The meeting will be closed, pursuant to exemptions (4) and (9(b)) of the Government in the Sunshine Act. The basis for this closing has been certified by the Corporation's Acting General Counsel. A copy of the certification will be posted for public inspection at the Corporation's headquarters at 1201 New York Avenue NW., Suite 8200, Washington, DC 20525, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED: The Board of Directors of the Corporation will meet to deliberate and make decisions on grant awards in the following areas: AmeriCorps*State formula and AmeriCorps Education Awards Program.

FOR FURTHER INFORMATION CONTACT: Rhonda Taylor, Assoc. Dir., Special Projects and Initiatives, Corporation for National Service, 1201 New York Avenue NW., 8th Floor, Washington, DC 20525. Telephone (202) 606–5000 ext. 282. (T.D.D. (202) 565–2799)).

Dated: July 17, 1997.

Stewart Davis,

Acting General Counsel.

[FR Doc. 97–19272 Filed 7–17–97; 4:23 pm]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 22, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Kansas City Center (Code DSA), Attn: Thomas L. Glover, 1500 E. 95th Street, Kansas City, MO 64197–0001.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Mr. Thomas L. Glover, at 816–926–1262.

Title, Associated Form, and OMB Number: Statement of Claimant Requesting Re-certified Check (DD Form 2660), (formerly collected under OMB 0730–0002 which expired December 31, 1996)

Needs and Uses: In accordance with TFM Vol. I, Part 4, Section 7060.20 and DoD 7000.14R, Volume 5, there is a requirement that a payee identify himself/herself and certify as to what happened to the original check issued by the government (non-receipt, loss, destruction, theft, etc.). this collection will be used to identify rightful re-issuance of government checks to individuals or businesses outside of DoD.

Affected Public: Individuals or businesses

Annual Burden Hours: 26,250 hours

Number of Respondents: 315,000

Responses Per Respondent: 1

Average Burden Per Response: ½ hour (5 minutes)

Frequency: On occasion

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Statement of Claimant Requesting Re-certified Check is used to ascertain pertinent information needed by the Department of Defense in order to reissue checks to payees, if the checks have not been negotiated to financial institutions within one (1) year of the date of their issuance, when an original check has been lost, not received, damaged, stolen, etc. The form will be completed by the payee who was issued the original check. The information provided on this form will be used in determining whether a check may be reissued to the named payee.

Dated: July 16, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–19182 Filed 7–21–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 97–23]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT:

Ms. J. Hurd, DSAA/COMPT/CPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–23, with attached transmittal and policy justification.

Dated: July 16, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

9 JUL 1997

In reply refer to:
I-50456/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97-23, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Thailand for defense articles and services estimated to cost $40 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 97-23

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Thailand

(ii) Total Estimated Value:

Major Defense Equipment*	$20 million
Other	$20 million
TOTAL	$40 million

(iii) Description of Articles or Services Offered:
Thirty-seven thousand five hundred M16A2 rifles, 4,700 M4 carbines, 2,600 M203 grenade launchers, bayonets, shop sets and repair kits for small arms, spare and repair parts, and other related elements of logistics support.

(iv) Military Department: Army (WDJ)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
None

(vii) Date Report Delivered to Congress: 9 JUL 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Thailand - M16A2 5.56mm Rifles

The Government of Thailand has requested the purchase of 37,500 M16A2 rifles, 4,700 M4 carbines, 2,600 M203 grenade launchers, bayonets, shop sets and repair kits for small arms, spare and repair parts, and other related elements of logistics support. The estimated cost is $40 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Southeast Asia.

These rifles will augment and modernize Thailand's present M16 rifles, and the Thai Armed Forces will have no difficulty absorbing these additional small arms.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Fabrique Nationale, Columbia, South Carolina. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Thailand.

There will no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 97-19180 Filed 7-21-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 97–22]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/CPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–22, with attached transmittal and policy justification.

Dated July 16, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

8 JUL 1997

In reply refer to:
I-04704/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97-22 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Bahrain for defense articles and services estimated to cost $303 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

Thomas G. Rhame

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Separate Cover:
Classified Annex

Transmittal No. 97-22

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Bahrain

(ii)

Total Estimated Value:	F-16A/B Acft	F-16C/D Acft
Major Defense Equipment*	$250 million	$270 million
Other	$ 53 million	$ 33 million
TOTAL	$303 million	$303 million

(iii) Description of Articles or Services Offered:
Twenty F-16A/B aircraft with Mid-Life Update (MLU) modification kits, Falcon-Up structural modification or 10 F-16C/D aircraft, and the Pratt-Whitney 220E engine upgrade or General Electronic 110 engines, installation, spare and repair parts, special test sets and support equipment, publications and technical documentation, training, training equipment and training devices, technical assistance, technical orders, system drawings, U.S. Government and contractor engineering and logistics services and other logistic elements necessary for full program support.

(iv) Military Department: Air Force (SGG)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex under separate cover.

(vii) Date Report Delivered to Congress: 8 JUL 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Bahrain - F-16A/B or F-16C/D Aircraft

The Government of Bahrain has requested the purchase of 20 F-16A/B aircraft with Mid-Life Update (MLU) modification kits, Falcon-Up structural modification or 10 F-16C/D aircraft, and the Pratt-Whitney 220E engine upgrade or General Electronic 110 engines, installation, spare and repair parts, special test sets and support equipment, publications and technical documentation, training, training equipment and training devices, technical assistance, technical orders, system drawings, U.S. Government and contractor engineering and logistics services and other logistic elements necessary for full program support. The estimated cost is $303 million.

The MLU production phase is the continuation of the development program notified to the Congress in August 1990. The MLU is an avionics retrofit program for F-16A/B aircraft consisting of a Central Core Computer, Block 50 cockpit design, Digital Terrain System, Global Positioning System, APG-66(V2) radar upgrade, integrated data modem, microwave landing system and night capabilities provisions, and an Advanced Identification Friend or Foe (AIFF).

This sale is consistent with the stated U.S. policy of assisting friendly nations to provide for their own defense by allowing transfer of reasonable amounts of defense articles and services.

These F-16A/B or F-16C/D aircraft will be used to increase Bahrain's small fighter inventory and eventually replace their aging fleet of F-5 aircraft, as well as enhance its inter-operability with U.S. forces. Bahrain, which already has F-16 Block 40 aircraft in its inventory, will have no difficulty absorbing these aircraft.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Tactical Aircraft Systems, Fort Worth, Texas. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will require the assignment of up to 15 additional U.S. Government personnel and contractor representatives to travel periodically over the next three years to Bahrain.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 97–19183 Filed 7–21–97; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0115]

Submission for OMB Review; Comment Request Entitled Notification of Ownership Changes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0115).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Notification of Ownership Changes. A request for comments was published at 62 FR 26482, May 14, 1997. No comments were received.

DATES: *Comment Due Date:* August 21, 1997.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0115 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Allowable costs of assets are limited in the event of change in ownership of a contractor. Contractors are required to provide the Government adequate and timely notice of this event per the FAR clause at 52.215–40, Notification of Ownership Changes.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated at 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *100*; responses per respondent, *1*; total annual responses, *100*; preparation hours per response, *1*; and total response burden hours, *100*.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *100*; hours per recordkeeper, *.25*; and total recordkeeping burden hours, *25*.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0115, Notification of Ownership Changes, in all correspondence.

Dated: July 17, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–19238 Filed 7–21–97; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Submarine of the Future

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Submarine of the Future will meet in closed session on July 30–31 and August 26–27 at Science Applications International Corporation, 8301 Greensboro Drive, McLean, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, these meetings are scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will assess the nation's need for attack submarines in the 21st century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: July 16, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–19181 Filed 7–21–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: August 19–20, 1997 from 0800 to 1700.

Place: Arlington Hilton Hotel, 950 North Stafford Street, Arlington, VA.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

For Further Information Contact: Ms. Amy Levine, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2124.

Dated: July 16, 1997.

L.M. Bynum,

Alternate OSD, Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–19179 Filed 7–21–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: 89th Medical Support Squadron, Andrews Air Force Base, MD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Associate Chief, BSC for Dietetics, 89MDSS/SGSD, announces the proposed reinstatement and the initiation of a public information collection and seeks public comment on

the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 22, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to 89 MDSS/SGSD, 1050 W. Perimeter Road, STE BB–2, Andrews Air Force Base, MD, 20762–6600, ATTN: Maj Sharon Heffner.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call 89 MDSS/SGSD at (301) 981–8070.

Title, Associated Forms, and OMB Number: Nutritional Medicine Service Patient Evaluation, AF Form 2503, OMB Number 0701–0125 Nutritional Medicine Patron Evaluation, AF Form 2504.

Needs and Uses: The information collection requirement is necessary to gather information from inpatients concerning the quality of food served and level of service provided by Nutritional Medicine Service on the AF Form 2503. The AF Form 2504 is used to gather information from dining room patrons on quality of food and service provided. This information is required by the Joint Commission on Accreditation of Healthcare Organizations for assessment of quality assurance in the hospital accreditation process. The information is used within individual military hospital settings only.

Affected Public: Individual inpatients in Air Force Medical Treatment Facilities, and patrons of Nutritional Medicine Service dining halls.

Annual Burden Hours: 8750.

Number of Respondents: 35,000.

Responses per Respondent: 1.

Average Burden per Respondent: 15 minutes.

Frequency: Upon hospital admission (AF Form 2503). or after patronizing the MTF dining hall (AF Form 2504).

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are medical beneficiaries admitted to the hospital, or patrons consuming meals in the dining hall. Information is requested from these individuals to determine their satisfaction with the food service and nutrition care provided. The completed forms are used to assess if changes in departmental service need to be implemented.

Barbara A. Carmichael,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–19161 Filed 7–21–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: 89th Medical Support Squadron, Andrews Air Force Base, MD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Associate Chief, BSC for Dietetics, 89 MDSS/SGSD, announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 22, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to 89 MDSS/SGSD, 1050 W. Perimeter Road, STE BB–2, Andrews Air Force Base, MD, 20762–6600, ATTN: Maj Sharon Heffner.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call 89 MDSS/SGSD at (301) 981–8070.

Title, Associated Forms, and OMB Number: Food/Exercise Diary, AF Form 3529, OMB Number 0701–0126.

Needs and Uses: The information collection requirement is necessary to teach individuals on the USAF Weight Management Program and those on calorie-controlled diets to make an accurate objective self-analysis of their own food and exercise habits in order to take control of their own behavior and identify areas for lifestyle change.

Affected Public: Individuals on the Air Force Weight Management Program and those on calorie controlled diets referred to Nutritional Medicine for dietary counseling.

Annual Burden Hours: 1000.

Number of Respondents: 4000.

Responses per Respondent: 1.

Average Burden per Respondent: 15 minutes.

Frequency: As requested upon attendance at weight management counseling.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are medical beneficiaries referred to Nutritional Medicine for weight management counseling. The Food/Exercise Diary is a self-reported tool used to determine personal eating and exercise habits. Respondents are asked to complete the tool for personal assessment of lifestyle habits.

Barbara A. Carmichael,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–19162 Filed 7–21–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Agency In Formation Collection Requirements

AGENCY: 89th Medical Support Squadron, Andrews Air Force Base, MD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Associate Chief, BSC for Dietetics, 89MDSS/SGSD, announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 22, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to 89 MDSS/SGSD, 1050 W. Perimeter Road, STE BB–2, Andrews Air Force Base, MD, 20762–6600, ATTN: Maj Sharon Heffner.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call 89 MDSS/SGSD at (301) 981–8070.

Title, Associated Forms, and OMB Number: Nutritional Assessment of Dietary Intake, AF Form 2572, OMB Number 0701–0130.

Needs and Uses: The information collection requirement is necessary to gather information from patients concerning their daily food intake and exercise habits. This information is used by the diet counselor to assess adequacy and make recommendations for changes in intake in compliance with a prescribed diet. This assessment is required by the Joint Commission on Accreditation of Healthcare Organizations. The information is used within individual military hospital settings only.

Affected Public: Individual patients referred to Nutritional Medicine Flight for dietary counseling.

Annual Burden Hours: 22,500.

Number of Respondents: 90,000.

Responses per Respondent: 1.

Average Burden per Respondent: 15 minutes.

Frequency: Upon referral to Nutritional Medicine for diet counseling.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are medical beneficiaries referred for nutrition counseling. Information is requested from these individuals to determine their usual daily food intake and exercise patterns. The diet counselor assesses this information and determines adequacy of the diet, as well as conformance of the usual diet with prescribed dietary guidelines. Every patient's dietary habits are assessed upon referral.

Barbara A. Carmichael,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–19163 Filed 7–21–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records Notice

AGENCY: Department of the Navy, DOD.

ACTION: Amend record systems.

SUMMARY: The Department of the Navy proposes to amend the system identifiers of two systems of records notices in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The first amendment consists of changing the system identifier of N01000–4, Naval Clemency and Parole Board Files, last published on June 25, 1997, at 62 FR 34233, to N01000–5.

The second amendment consists of changing the system identifier of N05521-2, Badge and Access Control System, last published on June 30, 1997, at 62 FR 35162, to N05512–2.

DATES: The actions will be effective on August 21, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend the system identifiers of two systems of records notices in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The first amendment consists of changing the system identifier of N01000–4, Naval Clemency and Parole Board Files, last published on June 25, 1997, at 62 FR 34233, to N01000–5.

The second amendment consists of changing the system identifier of N05521–2, Badge and Access Control System, last published on June 30, 1997, at 62 FR 35163, to N05512–2.

Dated: July 16, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–19178 Filed 7–21–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 21, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group publishes this notice containing proposed information collection

requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: July 16, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Postsecondary Education

Title: Student Aid Report (SAR).

Frequency: Annually.

Affected Public: Individuals or households.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 9,395,776.

Burden Hours: 3,806,796.

Abstract: The Student Aid Report (SAR) is used to notify all applicants of their eligibility to receive Federal student aid for postsecondary education. The form is submitted by the applicant to the institution of their choice.

[FR Doc. 97–19149 Filed 7–21–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting 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. This document is intended to notify the general public of their opportunity to attend.

DATES: July 31–August 2, 1997.

TIME: July 31—Subject Area Committee Item Review Session, 8:30 a.m.–5:00 p.m. (closed); Achievement Levels Committee, 2:00–4:15 p.m. (closed), 4:15–5:00 p.m. (open); Executive Committee, 5:00–6:30 p.m. (open), 6:30–7:00 p.m. (closed). August 1—Full Board, 8:00–10:00 a.m., (open); Subject Area Committees #1 and #2 in a joint session, 10:00 a.m.–12:00 Noon (open); Design and Methodology Committee, 10:00 a.m.–12:00 Noon (open); Reporting and Dissemination Committee, 10:00 a.m.–12:00 Noon (open); Full Board, 12:00–1:15 p.m. (open); 1:15–3:30 p.m. (closed); 3:30–4:15 p.m., (open). August 2—Full Board, 9:00 a.m. until adjournment, approximately 12:00 Noon (open).

LOCATION: Ritz Carlton Hotel, Pentagon City, 1250 South Hayes Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., 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 Thursday, July 31, 1997, the Subject Area Committee will meet in closed session from 8:30 a.m. to 5:00 p.m. The Committee will be reviewing items for the 1998 writing assessment. This meeting must be conducted in closed session because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)B of section 552b(c) of Title 5 U.S.C.

Also, there will be partially closed meetings of the Achievement Levels and the Executive Committees. The Achievement Levels Committee will meet in partially closed session from 2:00–4:15 p.m. During the closed portion of this meeting, the Committee will continue discussion of the results of the current 1996 science level-setting activities, review the current analysis of data and proposed exemplar items, the new description to interpret the levels, and formulate recommendations for Board action. This meeting must be closed because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C. In open session, 4:15–5:00 p.m., the Achievement Levels Committee will hear a briefing on the new contract to set levels in civics and writing.

The Executive Committee will meet in closed session from 6:30–7:00 p.m., to discuss the development of cost estimates for NAEP and future contract initiatives. Public disclosure of this information would likely have an adverse financial effect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C. In the open session from 5:00–6:30 p.m., the Executive Committee will be briefed by staff on NAEP reauthorization and the Voluntary National Test initiative.

On August 1, the full Board will convene in open session at 8:30 a.m. The agenda for this session of the full Board meeting includes approval of the agenda, the Executive Director's Report, a discussion on the status of the Voluntary National Test and its relationship to NAEP, and an update on the NAEP project. Between 10:00 a.m. and 12:00 noon, there will be open meetings of the following subcommittees: Design and Methodology, Reporting and Dissemination, and a joint meeting of Subject Area Committees #1 and #2. The Design and Methodology Committee will continue discussion of redesign issues and formulate final recommendations for Board consideration. Agenda items for the Reporting and Dissemination Committee include review of the Board policy on market basket reporting, and briefings on the reporting of the NAEP Arts Assessment, and the release plan for 1996 Long-Term Trends Report.

The Joint Subject Area Committees #1 and #2 will discuss issues related to the NAEP redesign. State-NAEP linking and the draft Board policy on framework development are the agenda items.

The full Board will reconvene in open session at 12:00 noon to hear a briefing on the 1996 TIMSS 4th Grade Science Report. The full Board will then meet in closed session from 1:15–3:30 p.m. From 1:15–2:15 p.m., the Board will

hear a report with recommendations from the Achievement Levels Committee on setting levels for the 1996 science assessment. This portion of the meeting must be closed because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of section 552b(c) of Title 5 U.S.C.

The Board will remain in closed session from 2:15–2:30 p.m. to hear a briefing on the 1996 report on Long Term Trends in Academic Progress. This report will include references to specific items from the assessments. This portion of the meeting must be closed because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of these data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C.

From 2:30–3:30 p.m., the full Board, still in closed session, will hear a briefing on the 1998 Writing Assessment. This portion of the meeting must be closed because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of section 552b(c) of Title 5 U.S.C. The Board will meet in open session from 3:30–4:15 p.m. for a discussion on redesign issues.

On Saturday, August 2, the Board will meet in open session from 9:00 a.m. until adjournment, approximately, 12:00 noon. The agenda for this session includes continued discussion on redesign issues, and presentation of reports from the various Board committee meetings.

The public is being given less than fifteen days notice of this meeting because the administrative process delayed clearance of the closed portions.

A summary of the activities of the closed and partially closed sessions and other related matters which are informative to the public and consistent with the policy of the section 5 U.S.C. 552b(c), will be available to the public within 14 days after the meeting. 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, NW, Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Dated: July 18, 1997.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 97–19382 Filed 7–21–97; 8:45 am]

BILLING CODE 40001–01–M

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement on the Disposal of the S3G and D1G Prototype Reactor Plants; Notice of Availability and Announcement of a Public Hearing

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) Office of Naval Reactors (Naval Reactors) has completed a Draft Environmental Impact Statement on the Disposal of the S3G and D1G Prototype Reactor Plants. The Draft Environmental Impact Statement was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969; Council on Environmental Quality regulations implementing NEPA (40 CFR Parts 1500–1508); and DOE NEPA Implementing Procedures (10 CFR Part 1021). Naval Reactors will conduct public hearings to receive comments on the Draft Environmental Impact Statement, which addresses the potential environmental impacts related to the disposal of the S3G and D1G Prototype reactor plants, located in West Milton, New York.

This Notice announces that the Draft Environmental Impact Statement will be available to the public at the Saratoga Springs Public Library in Saratoga Springs, New York, the Schenectady County Public Library in Schenectady, New York, or by mail upon request. Upon completion of general distribution of the document, Naval Reactors will file the Draft Environmental Impact Statement with the Environmental Protection Agency, which will then publish a notice in the **Federal Register** to start the formal comment period.

DATES: Naval Reactors invites interested agencies, organizations, and the general public to provide oral or written comments on the Draft Environmental Impact Statement. All written comments on the Draft Environmental Impact Statement are due by September 8, 1997. Comments postmarked after that date will be considered to the extent practicable. Oral comments will be accepted at two public hearings to be held at 1:00 pm and 7:00 pm on August 13, 1997 at the Town of Milton Community Center at the address listed below.

ADDRESSES: Comments should be sent to Mr. A. S. Baitinger, Chief, West Milton Field Office, Office of Naval Reactors, U.S. Department of Energy, P.O. Box 1069, Schenectady, New York 12301; telephone (518) 884–1234. Copies of the Draft Environmental Impact Statement may also be requested from Mr. Baitinger. The public hearings will be held at 1:00 pm and 7:00 pm on August 13, 1997 at the Town of Milton Community Center, 310 North Line Road, Ballston Spa, New York.

SUPPLEMENTARY INFORMATION:

Background

The S3G and D1G Prototype reactor plants are located on the Kesselring Site in West Milton, New York, approximately 17 miles north of Schenectady. The S3G and D1G Prototype reactor plants first started operation in 1958 and 1962, respectively, and served for more than 30 years as facilities for testing reactor plant components and equipment and for training Naval personnel. As a result of the end of the Cold War and the downsizing of the Navy, the S3G and D1G Prototype reactor plants were shut down in May 1991 and March 1996, respectively. Since then, the S3G and D1G Prototype reactor plants have been defueled, drained, and placed in a stable protective storage condition. The Kesselring Site will not be released for other uses in the foreseeable future since two active prototype reactor plants continue to operate to perform training of U.S. Navy personnel and testing of Naval nuclear propulsion plant equipment.

Alternatives Considered

1. Prompt Dismantlement

The Draft Environmental Impact Statement identifies this as the preferred alternative. If selected, this alternative would be subject to the availability of appropriated funds. This alternative would involve the prompt dismantlement of the S3G and D1G Prototype reactor plants. All S3G and D1G Prototype reactor plant systems, components and structures would be removed from the Kesselring Site. To the extent practicable, the resulting low-level radioactive metals would be recycled at existing commercial facilities that recycle radioactive metals. The remaining low-level radioactive waste would be disposed of at the DOE Savannah River Site in South Carolina. The Savannah River Site currently receives low-level radioactive waste

from Naval Reactors sites in the eastern United States. Both the volume and radioactive content of the S3G and D1G Prototype reactor plant low-level waste fall within the projections of Naval Reactors Program waste provided to the Savannah River Site, which in turn are included in the Savannah River Site Waste Management Final Environmental Impact Statement dated July 1995. Transportation of low-level radioactive waste to the DOE Hanford Site in Washington State is also evaluated.

2. Deferred Dismantlement

This alternative would involve keeping the defueled S3G and D1G Prototype reactor plants in protective storage for 30 years before dismantlement. Deferring dismantlement for 30 years would allow nearly all of the cobalt-60 radioactivity to decay away. Nearly all of the gamma radiation within the reactor plant comes from cobalt-60. The very small amount of longer-lived radioisotopes, such as nickel-59, would remain and would have to be attended to during dismantlement.

3. No Action

This alternative would involve keeping the defueled S3G and D1G Prototype reactor plants in a protective storage condition indefinitely. Since there is some residual radioactivity with long half-lives, such as nickel-59, in the defueled reactor plants, this alternative would leave this radioactivity at the Kesselring Site indefinitely.

4. Other Alternatives Considered

Other alternatives include permanent on-site disposal. Such on-site disposal could involve building an entombment structure over the S3G and D1G Prototype reactor plants or developing a below-ground disposal area at the Kesselring Site. Another alternative would be to remove the S3G and D1G Prototype reactor plants as two large reactor compartment packages for off-site disposal. Each of these alternatives was considered but eliminated from detailed analysis.

Public Hearing

The purpose of the hearing is to receive comments on the Draft Environmental Impact Statement. The meeting will be chaired by a presiding officer and will not be conducted as an evidentiary hearing; speakers will not be cross-examined, although the presiding officer and Naval Reactors representatives present may ask clarifying questions of those who provide oral comments. To ensure that everyone has an adequate opportunity to speak, five minutes will be allotted for each speaker. Depending on the number of persons requesting to speak, the presiding officer may allow more time for elected officials, or speakers representing multiple parties, or organizations. Persons wishing to speak on behalf of organizations should identify the organization. Persons wishing to speak may either notify Mr. Baitinger in writing at the address below or register at the meeting. As time permits, individuals who have spoken subject to the five minute rule will be afforded additional speaking time. Written comments will also be accepted at the meeting.

Availability of Copies of the Draft Environmental Impact Statement

Copies of the Draft Environmental Impact Statement are being distributed to interested Federal, State, and local agencies, and to individuals who have expressed interest. Copies of the Draft Environmental Impact Statement and its supporting references are available for review at the Saratoga Springs Public Library at 49 Henry Street, Saratoga Springs, NY 12866, and at the Schenectady County Public Library at 99 Clinton St, Schenectady, NY 12301. Copies of the Draft Environmental Impact Statement may be requested from Mr. Baitinger at the above address or telephone number.

Issued at Arlington, VA this 16th day of July 1997.

F.L. Bowman,

Admiral, U.S. Navy, Director, Naval Nuclear Propulsion Program.

[FR Doc. 97–19204 Filed 7–21–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC97–44–000, ER94–1685–014, ER95–393–014, ER95–892–013 and ER96–2652–005]

Citizens Power LLC and Peabody Investments, Inc.; Notice of Filing

July 16, 1997.

Take notice that on July 10, 1997, as amended July 14, 1997, Citizens Power LLC and Peabody Investments, Inc. filed an application for an order authorizing the proposed sale and transfers of control over their power marketing affiliates and subsidiaries (Citizens Power Sales; Hartford Power Sales, L.L.C.; CL Power Sales One, L.L.C.; CL Power Sales Two, L.L.C.; CL Power Sales Three, L.L.C.; CL Power Sales Four, L.L.C.; CL Power Sales Five, L.L.C.; CL Power Sales Six, L.L.C.; CL Power Sales Seven, L.L.C.; CL Power Sales Eight, L.L.C.; CL Power Sales Nine, L.L.C.; CL Power Sales Ten, L.L.C.) to Lehman Brothers Holdings Inc. (or to one or more wholly owned subsidiaries thereof). The application also constitutes a notice of change in status for each of the power marketing affiliates.

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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants participants to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19191 Filed 7–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–636–000]

Western Gas Resources, Inc.; Notice of Petition For Declaratory Order

July 16, 1997.

Take notice that on July 14, 1997, Western Gas Resources, Inc. (Western), 12200 N. Pecos Street, Denver, Colorado 80234, filed in Docket No. CP97–636–000 a petition for an order declaring that Western's acquisition of the Yellowstone Line, comprised of 10.7 miles of 12-inch pipeline, and related facilities from Williams Natural Gas Company (WNG), its conveyance of such facilities to Westana Gathering Company (Westana), and Westana's subsequent acquisition, ownership and operation of the facilities, will be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act.

Western states that the Yellowstone Line originates just across the Oklahoma/Kansas border in Comanche County, Kansas, and extends south into Woods County, Oklahoma to its

terminus at an interconnection with WNG's 26-inch west-to-east transmission line designated as the "Straight Line". Western states that there are currently only three active receipt points on the Yellowstone Line, all located in Woods County, Oklahoma. Western contends that of the three receipt points, two are used to connect one well each, with each well delivering an average of 50 Mcf per day. Western further contends that the third receipt point connects Westana's Finley Gathering System, which is comprised of 12 to 14 miles of 3-inch and 6-inch gathering lines, which deliver 3,300 Mcf per day of production from nine wells attached to the Finley System into the Yellowstone Line.

Western states that it has agreed to purchase the Yellowstone Line and related appurtenant facilities from WNG following WNG's abandonment of such facilities in related Docket No. CP97–620–000. Western further states that, thereafter, Western will convey the Yellowstone Line and related facilities to Westana so that such facilities can be integrated into and operated as a part of Westana's existing gathering and processing operations in the same general region, thereby providing users of the line with access to additional markets, lower pressure service and opportunities for liquids recovery not currently available.

Western states that to ensure uninterrupted continuity of service for gas currently attached to the Yellowstone Line, Westana will move metering facilities at the line's current receipt points to the line's point of interconnect with WNG's Straight transmission line. In addition, Western states that Westana will install three quarters of a mile of gathering line extending south/southwest from the present terminus of the Yellowstone Line to a point of interconnection with Westana's existing Teagarden Gathering System in Woods County, Oklahoma. Once completed, Western states that the Yellowstone Line and Western's Finley Gathering System attached to the Yellowstone Line, will effectively become part of the Teagarden System, a complex of small diameter field gathering lines located behind the Chaney Dell Processing Plant. Western states that once the line is attached to Westana's Teagarden System, Westana will lower line pressures to 100–150 psig, thereby obviating the need for most producer-supplied wellhead compression and enabling noncompressed wells to flow at much higher rates of production.

Western maintains that attaching the Yellowstone Line to the Teagarden System will provide an opportunity for liquids recovery from the unprocessed gas stream currently flowing into WNG. Western states that the Teagarden System is located behind, and delivers into, the Chaney Dell Processing Plant which will operate to extract salable liquid hydrocarbons from the Yellowstone Line production and deliver processed residue gas at the plant tailgate in Major County, Oklahoma. In addition, Western maintains that attachment of the Yellowstone line to the Teagarden System will provide Yellowstone shippers with access to new markets, as the Chaney Dell Plant is currently connected to the pipeline systems of Enogex, Inc. and Panhandle Eastern Pipe Line Company.

Western states in its petition that it seeks a declaration from the Commission that the Yellowstone line and related facilities that it will acquire from WNG, Western's conveyance of such facilities to Westana and Westana's subsequent ownership and operation of such facilities in conjunction with its existing Oklahoma gathering and processing operations will be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act. Western explains that the facilities meet the primary function test because the Yellowstone Line is 10.7 miles of 12-inch pipeline extending from a point less than one-half mile north of the Oklahoma/Kansas state border, south to an interconnection with WNG's 26-inch Straight transmission line; the Yellowstone Line does not feed into a natural gas processing plant or a large field compression station, but, rather, directly into WNG's 26-inch transmission line, essentially functioning in conjunction with the Finley system to attach gas from various points of wellhead production to the WNG mainline system; the Yellowstone Line facilities operate at pressures ranging from 650 psig to 700 psig, delivering compressed wellhead production directly into WNG's 26-inch Straight transmission line; and there are three active receipt points, two connecting individual wells directly into the line and the third attaching the 6-inch "spine" of Westana's Finley Gathering System.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 6, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19159 Filed 7–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3421–000, et al.]

Arizona Public Service Company, et al.; Electric Rate and Corporate Regulation Filings

July 11, 1997.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER97–3421–000]

Take notice that on June 24, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreement to provide Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with Nevada Power Company (NPC).

A copy of this filing has been served on NPC, the Nevada Public Service Commission and the Arizona Corporation Commission.

Comment date: July 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Virginia Electric and Power Company

[Docket No. ER97–3422–000]

Take notice that on June 21, 1997, Virginia Electric and Power Company, tendered for filing an amendment to its Form of Service Agreements for Firm Point-to-Point and Non-Firm Point-to-Point under its Open Access Transmission Tariff.

Comment date: July 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Tucson Electric Power Company

[Docket No. ER97–3423–000]

Take notice that on June 24, 1997, Tucson Electric Power Company (TEP) tendered for filing a service agreement with Enron Power marketing, Inc. for firm point-to-point transmission service under Part II of TEP's Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreement to become effective as of June 2, 1997.

Comment date: July 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Company Services, Inc.

[Docket No. ER97–3424–000]

Take notice that on June 24, 1997, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed two (2) service agreements for firm point-to-point transmission service between SCS, as agent for Southern Companies, and I) Federal Energy Sales, Inc. and ii) Aquila Power Corporation, and four (4) service agreements for non-firm point-to-point transmission service between SCS, as agent for Southern Companies, and I) Dayton Power and Light Company, ii) Seminole Electric Cooperative, iii) Western Resources, and iv) Illinois Power Company, under Part II of the Open Access Transmission Tariff of Southern Companies.

Comment date: July 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Orange and Rockland Utilities, Inc.

[Docket No. ER97–3426–000]

Take notice that Orange and Rockland Utilities, Inc. (O & R) on June 24, 1997, tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, service agreements under which O&R will provide capacity and/or energy to Aquila Power Corporation (Aquila Power), Long Island Lighting Company (LILCO) and NorAm Energy Services, Inc. (NorAm Energy).

O&R requests waiver of the notice requirement so that the service agreements with Aquila Power, LILCO and NorAm Energy becomes effective as of June 1, 1997.

O&R has served copies of the filing on The New York State Public Service Commission, Aquila Power, LILCO and NorAm Energy.

Comment date: July 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Duquesne Light Company

[Docket No. ER97–3427–000]

Take notice that on June 25, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated June 17, 1997 with NIPSCO Energy Services, Inc. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds NIPSCO Energy Services, Inc. as a customer under the Tariff. DLC requests an effective date of June 17, 1997 for the Service Agreement.

Comment date: July 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Tri-Valley Corporation

[Docket No. ER97–3428–000]

Take notice that on June 25, 1997, Tri-Valley Corporation, tendered for filing a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1 to be effective the earlier of August 25, 1997, or the date of a Commission order granting approval of this Rate Schedule.

Tri-Valley Corporation intends to engage in electric power and energy transactions as a marketer and broker. In transactions where Tri-Valley Corporation purchases power including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, Tri-Valley Corporation will be functioning as a marketer. In Tri-Valley Corporation's marketing transactions, Tri-Valley Corporation proposes to charge rates mutually agreed upon by the parties. In transactions where Tri-Valley Corporation does not take title to the electric power and/or energy, Tri-Valley Corporation will be limited to the role of a broker and will charge a fee for its services. Tri-Valley Corporation is not in the business of producing or transmitting electric power. Tri-Valley Corporation does not currently have or contemplate acquiring title to any electric power transmission facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: July 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Avista Energy, Inc.

[Docket No. ER97–3429–000]

Take notice that on June 25, 1997, Avista Energy, Inc. tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that Avista Energy, Inc. had completed all the steps for pool membership. Avista Energy, Inc. requests that the Commission amend the WSPP Agreement to include it as a member.

Avista Energy, Inc. requests an effective date of June 30, 1997 for the proposed amendment. Accordingly, Avista Energy, Inc. requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: July 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Electric Company, Cambridge Electric Light Company

[Docket No. ER97–3434–000]

Take notice that on June 25, 1997, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Market-Based Power Sales Customers (collectively referred to herein as the Customers):

Burlington Electric Department
Chicopee Municipal Lighting Plant
Federal Energy Sales, Inc.
InterCoast Power Marketing Company
Middleborough Gas and Electric Department
Northeast Utilities Service Company
Princeton Municipal Light Department
The United Illuminating Company
Unitil Power Corp.

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Market-Based Power Sales Tariffs designated as Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9). These Tariffs, accepted by the FERC on February 27, 1997, and which have an effective date of February 28, 1997, will allow the Companies and the Customers to enter into separately scheduled short-term transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies and the Customers have also filed Notices of Cancellation for service under the Companies' Power Sales and Exchange Tariffs (FERC Electric Tariff Original Volume Nos. 5 and 3) and the Customers' respective FERC Rate Schedules.

The Companies request an effective date as specified on each Service Agreement and Notice of Cancellation.

Comment date: July 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Central Vermont Public Service Corporation

[Docket No. ER97–3435–000]

Take notice that on June 25, 1997, Central Vermont Public Service

Corporation of Rutland, Vermont, tendered for filing revisions to its FERC Transmission Service Tariff, First Revised Volume No. 7 to add a stranded cost surcharge to that tariff for ultimate deliveries of power over its transmission system in the service area of Connecticut Valley Electric Company. Central Vermont also tended for filing a Notice of Cancellation of Rate Schedule FERC No. 135, under which it provides wholesale service to Connecticut Valley.

Central Vermont asks that these submittals be accepted for filing and made effective in accordance with their terms as of August 25, 1997. Central Vermont states that this filing has been posted and that copies have been served upon the affected customers and the regulatory commissions of the States of New Hampshire and Vermont.

Comment date: July 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Maine Electric Power Company

[Docket No. ER97–3436–000]

Take notice that on June 26, 1997, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Short-Term Firm Point-to-Point Transmission service entered into with Northeast Utilities Service Company. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: July 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Maine Electric Power Company

[Docket No. ER97–3437–000]

Take notice that on June 26, 1997, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Short-Term Firm Point-to-Point Transmission service entered into with Enron Power Marketing, Inc. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: July 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Central Maine Power Company

[Docket No. ER97–3438–000]

Take notice that on June 26, 1997, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission service entered into with Entergy Power Marketing Corp. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: July 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Maine Electric Power Company

[Docket No. ER97–3439–000]

Take notice that on June 26, 1997, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission service entered into with Entergy Power Marketing Corporation. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: July 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Maine Electric Power Company

[Docket No. ER97–3440–000]

Take notice that on June 26, 1997, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Short-Term Firm Point-to-Point Transmission service entered into with New England Power Company. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: July 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. UtiliCorp United, Inc.

[Docket No. ES97–31–000 and ES97–31–001]

Take notice that on July 3, 1997, UtiliCorp United, Inc. (UtiliCorp) filed an amendment to its application in this Docket. The amendment requests that the Commission authorize the issuance up to 60,000 shares of preference stock (as sought in the initial application) and the issuance of rights for each of share of its outstanding common stock, such rights being exercisable under certain conditions for the acquisition of the preference stock.

Comment date: August 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Interstate Power Company

[Docket No. ES97–33–000]

Take notice that on May 28, 1997, Interstate Power Company (Interstate) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue up to $75 million of short-term debt on or before December 31, 1998 to mature no later than December 31, 1999.

Comment date: July 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19187 Filed 7–21–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3477–000, et al.]

The Detroit Edison Company, et al.; Electric Rate and Corporate Regulation Filings

July 16, 1997.

Take notice that the following filings have been made with the Commission:

1. The Detroit Edison Company

[Docket No. ER97–3477–000]

Take notice that on June 27, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Detroit Edison Transmission Operations and The Toledo Edison Company under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, dated as of April 2, 1997. Detroit Edison requests that the Service Agreement be made effective as of May 28, 1997.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. The Detroit Edison Company

[Docket No. ER97–3478–000]

Take notice that on June 27, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Detroit Edison Transmission Operations and The Cleveland Electric Illuminating Company under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, dated as of May 13, 1997. Detroit Edison requests that the Service Agreement be made effective as of May 28, 1997.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. The Detroit Edison Company

[Docket No. ER97–3479–000]

Take notice that on June 27, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Detroit Edison Transmission Operations and CMS Marketing, Services and Trading Company under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, dated as of May 13, 1997. Detroit Edison requests that the Service Agreement be made effective as of May 28, 1997.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. The Detroit Edison Company

[Docket No. ER97–3480–000]

Take notice that on June 27, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Detroit Edison Transmission Operations and The Cincinnati Gas & Electric Company, PSI Energy, Inc. (collectively, the Cinergy Operating Companies), and Cinergy Services, Inc., as agent for and on behalf of the Cinergy Operating Companies, under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, dated as of May 13, 1997. Detroit Edison requests that the Service Agreement be made effective as of May 28, 1997.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Idaho Power Company

[Docket No. ER97–3481–000]

Take notice that on June 27, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements under Idaho Power Company FERC Electric Tariff No. 5, Open Access Transmission Tariff, between Idaho Power Company and PECO Energy Company—Power Team.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Idaho Power Company

[Docket No. ER97–3482–000]

Take notice that on June 27, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff, Second Revised, Volume No. 1 between NGTS Energy Services and Idaho Power Company.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. UtiliCorp United Inc.

[Docket No. ER97–3483–000]

Take notice that on June 27, 1997, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with Kansas Electric Power Cooperative, Inc. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to Kansas Electric Power Cooperative, Inc. pursuant to the tariff, and for the sale of capacity and energy by Kansas Electric Power Cooperative, Inc. to WestPlains Energy-Colorado.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket No. ER97–3484–000]

Take notice that on June 27, 1997, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with Kansas Electric Power Cooperative, Inc. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to Kansas Electric Power Cooperative, Inc., pursuant to the tariff, and for the sale of capacity and energy by Kansas Electric Power Cooperative, Inc., to WestPlains Energy-Kansas.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. UtiliCorp United Inc.

[Docket No. ER97–3485–000]

Take notice that on June 27, 1997, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff, Original Volume No. 10, with Kansas Electric Power Cooperative, Inc. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to Kansas Electric Power Cooperative, Inc. pursuant to the tariff, and for the sale of capacity and energy by Kansas Electric Power Cooperative, Inc., to Missouri Public Service.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. The Empire District Electric Company

[Docket No. ER97–3488–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and NGTS Energy Services providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon NGTS Energy Services, 8150 North Central Expressway, Suite 525, Dallas, TX 75206.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. The Empire District Electric Company

[Docket No. ER97–3489–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Williams Energy Services Company providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Williams Energy Services Company, One

Williams Centre, P.O. Box 2848, Tulsa, OK 74101–9567.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. The Empire District Electric Company

[Docket No. ER97–3490–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and American Energy Solutions Inc. providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon American Energy Solutions Inc., 1280 Eaton Ave, Hamilton, OH 45013.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. The Empire District Electric Company

[Docket No. ER97–3491–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Arkansas Electric Cooperative Corporation providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Arkansas Electric Cooperative Corporation, P.O. Box 194208, Little Rock, AR 72219–4208.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. The Empire District Electric Company

[Docket No. ER97–3492–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Southern Energy Marketing providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Southern Energy Marketing, 900 Ashwood Parkway Suite 310, Atlanta, GA 30338.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. The Empire District Electric Company

[Docket No. ER97–3493–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Western Resources Incorporated providing firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Western Resources Incorporated, 818 South Kansas Ave, P.O. Box 889, Topeka, KS 66601.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. The Empire District Electric Company

[Docket No. ER97–3494–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Western Resources providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Western Resources, 818 South Kansas Ave, P.O. Box 889, Topeka, KS 66601.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. The Empire District Electric Company

[Docket No. ER97–3495–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and St. Joseph Light and Power Co. providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon St. Joseph Light and Power Co., 520 Francis Street, St. Joseph, MO 64502.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. The Empire District Electric Company

[Docket No. ER97–3496–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Heartland Energy Services providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Heartland Energy Services, 802 W. Broadway, Suite 301, Madison, WI 53713.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. The Empire District Electric

[Docket No. ER97–3497–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Kansas City Power & Light providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Kansas City Power & Light, 1201 Walnut, P.O. Box 418679, Kansas City, MO 64138.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. The Empire District Electric Company

[Docket No. ER97–3498–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Grand River Dam Authority providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Grand River Dam Authority, P.O. Box 772, Locust Grove, OK 74352.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. The Empire District Electric Company

[Docket No. ER97–3499–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Entergy Power Marketing Corp. providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Entergy Power Marketing Corp., Parkwood Two Building, Suite 500, 10055 Grogan's Mill Road, The Woodlands, TX 77380.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. The Empire District Electric Company

[Docket No. ER97–3500–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Enron Power Marketing, Inc. providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Enron Power Marketing, Inc., 1400 Smith Street, Houston, TX 77002.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19189 Filed 7–21–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3456–000, et al.]

Maine Public Service Company, et al.; Electric Rate and Corporate Regulation Filings

July 15, 1997.

Take notice that the following filings have been made with the Commission:

1. Maine Public Service Company

[Docket No. ER97–3456–000]

Take notice that on June 27, 1997, Maine Public Service Company (Maine Public) filed an executed Service Agreement with Edison Source.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Texas Utilities Electric Company

[Docket No. ER97–3457–000]

Take notice that on June 27, 1997, Texas Utilities Electric Company (TU Electric), tendered for filing two executed transmission service agreements (TSA's) with NP Energy, Inc. and The Utility-Trade Corporation for certain Economy Energy Transmission Service transactions under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA's that will permit them to become effective on or before the service commencement date under each of the two TSA's. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on NP Energy, Inc. and The Utility-Trade Corporation as well as the Public Utility Commission of Texas.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Power Company

[Docket No. ER97–3458–000]

Take notice that on June 27, 1997, Duke Power Company (Duke), tendered for filing with the Commission Supplement No. 11 to Supplement No. 24 to the Interchange Agreement between Duke and Carolina Power & Light Company (CP&L) dated June 1, 1961, as amended (Interchange Agreement). Supplement No. 11 changes Duke's monthly transmission capacity rate under the Interchange Agreement from $1.0983 per kW per month to $1.0758 per kW per month. Duke has proposed an effective date of July 1, 1997, for the revised charge.

Copies of this filing were mailed to Carolina Power & Light Company, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Northern Indiana Public Service Company

[Docket No. ER97–3459–000]

Take notice that on June 27, 1997, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and PECO Energy Company. Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to PECO Energy Company pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of June 9, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company

[Docket No. ER97–3460–000]

Take notice that on June 27, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order 888 Tariff (Tariff) for Northeast Energy Services, Inc. (Northeast Energy). Boston Edison requests that the Service Agreement become effective as of June 1, 1997.

Edison states that it has served a copy of this filing on Northeast Energy and the Massachusetts Department of Public Utilities.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER97–3461–000]

Take notice that on June 27, 1997, Southern California Edison Company (Edison), tendered for filing executed umbrella Service Agreements (Service Agreements) with Citizens Power Sales; Duke Energy Trading and Marketing, L.L.C.; Duke/Louis Dreyfus; Enron Power Marketing, Inc.; PacifiCorp; PECO Energy Company—Power Team; and Vitol Gas & Electric L.L.C. for Point-To-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff).

Edison filed the executed Service Agreements with the Commission in compliance with applicable Commission Regulations. Edison also submitted revised Sheet Nos. 165 and 166 (Attachment E) to the Tariff, which is an updated list of all current subscribers. Edison requests waiver of the Commission's notice requirement to permit an effective date of June 29, 1997 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER97–3462–000]

Take notice that on June 27, 1997, Southern California Edison Company tendered for filing a letter agreement dated May 19, 1997 (Letter Agreement), and Amendment No. 1 (Amendment No. 1) to the Edison-Riverside Intermountain Power Project Firm Transmission Service Agreement (FTS Agreement) with the City of Riverside (Riverside). The Letter Agreement and Amendment No. 1 modify the Rated Capability referenced in the Supplemental Agreement to the 1990 Integrated Operations Agreement for the integration of the Intermountain Power Project and the associated Firm Transmission Service Agreement with Riverside, Commission Rate Schedule No. 250.7 and 250.8, respectively.

Edison is requesting waiver of the Commission's 60 day notice requirements and is requesting an effective date of June 28, 1997.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Co.

[Docket No. ER97–3464–000]

Take notice that on June 27, 1997, Southern California Edison Company tendered for filing a letter agreement dated May 19, 1997 (Letter Agreement), and Amendment No. 1 (Amendment No. 1) to the Edison-Anaheim Intermountain Power Project Firm Transmission Service Agreement (FTS Agreement) with the City of Anaheim (Anaheim). The Letter Agreement and Amendment No. 1 modify the Rated Capability referenced in the Supplemental Agreement to the 1990 Integrated Operations Agreement for the integration of the Intermountain Power Project and the associated Firm Transmission Service Agreement with Anaheim, Commission Rate Schedule No. 246.7 and 246.8, respectively.

Edison is requesting waiver of the Commission's 60 day notice requirements and is requesting an effective date of June 28, 1997.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. South Carolina Electric & Gas Company

[Docket No. ER97–3465–000]

Take notice that on June 27, 1997, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement establishing Louisville Gas and Electric Company (LGEC) as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon LGEC and the South Carolina Public Service Commission.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Rochester Gas and Electric Corporation

[Docket No. ER97–3466–000]

Take notice that on June 27, 1997, Rochester Gas and Electric Corporation (RG&E), filed a Service Agreement between RG&E and PacifiCorp Power Marketing, Inc. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279–000, as amended by RG&E's December 31, 1996, filing in Docket No. OA97–243–000 (pending).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of June 3, 1997 for PacifiCorp Power Marketing, Inc., Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Rochester Gas and Electric Corporation

[Docket No. ER97–3467–000]

Take notice that on June 27, 1997, Rochester Gas and Electric Corporation (RG&E), filed a Service Agreement between RG&E and PacifiCorp Power Marketing, Inc. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279–000, as amended by RG&E's December 31, 1996, filing in Docket No. OA97–243–000 (pending).

RG&E requests waiver of the Commission's sixty(60) day notice requirements and an effective date of June 3, 1997, for PacifiCorp Power Marketing, Inc., Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. The Detroit Edison Company

[Docket No. ER97–3468–000]

Take notice that on June 27, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Detroit Edison Transmission Operations and Minnesota Power & Light Company under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, dated as of June 12, 1997. Detroit Edison requests that the Service Agreement be made effective as of June 12, 1997.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Power Company

[Docket No. ER97–3469–000]

Take notice that on June 27, 1997, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, as the Transmission Provider, and Duke Power Company, as the Transmission Customer, dated as of May 30, 1997 (TSA). Duke states that the TSA sets out the transmission arrangements under which Duke will provide Duke firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of May 30, 1997.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. The Detroit Edison Company

[Docket No. ER97–3470–000]

Take notice that on June 27, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Detroit

Edison Transmission Operations and Illinois Power Company under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, dated as of May 20, 1997. Detroit Edison requests that the Service Agreement be made effective as of May 28, 1997.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. The Detroit Edison Company

[Docket No. ER97–3471–000]

Take notice that on June 27, 1997, The Detroit Edison Company (Detroit Edison) tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Detroit Edison Transmission Operations and Ohio Edison Corporation and Pennsylvania Power (collectively, the Ohio Edison System) under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, dated as of May 13, 1997. Detroit Edison requests that the Service Agreement be made effective as of May 28, 1997.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Duke Power Company

[Docket No. ER97–3472–000]

Take notice that on June 27, 1997, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Delhi Energy Services, Inc., dated as of May 30, 1997 (TSA). Duke states that the TSA sets out the transmission arrangements under which Duke will provide Delhi non-firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of May 30, 1997.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Duke Power Company

[Docket No. ER97–3473–000]

Take notice that on June 27, 1997, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, as the Transmission Provider, and Duke Power Company, as the Transmission Customer, dated as of May 30, 1997 (TSA). Duke states that the TSA sets out the transmission arrangements under which Duke will provide Duke non-firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of May 30, 1997.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Duke Power Company

[Docket No. ER97–3474–000]

Take notice that on June 27, 1997, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Delmarva Power & Light Company, dated as of May 21, 1997 (TSA). Duke states that the TSA sets out the transmission arrangements under which Duke will provide Delmarva non-firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of May 28, 1997.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. The Detroit Edison Company

[Docket No. ER97–3475–000]

Take notice that on June 27, 1997, The Detroit Edison Company (Detroit Edison) tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Detroit Edison Transmission Operations and Virginia Electric and Power Company under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, dated as of June 9, 1997. Detroit Edison requests that the Service Agreement be made effective as of June 9, 1997.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. The Detroit Edison Company

[Docket No. ER97–3476–000]

Take notice that on June 27, 1997, The Detroit Edison Company (Detroit Edison) tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Detroit Edison Transmission Operations and PanEnergy Trading and Market Services, LLC, under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, dated as of May 13, 1997. Detroit Edison requests that the Service Agreement be made effective as of May 28, 1997.

Comment date: July 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19188 Filed 7–21–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM95–9–003]

Open Access Same-Time Information System and Standards of Conduct; Notice of Filing and Request for Comments on Request for Clarification of Masking Procedures and Proposed Interim Steps to Implement On-Line Negotiations and Posting of Discounts

July 15, 1997.

Compliance Date for Unmasking the Identities of Parties to Transactions

On June 27, 1997, the OASIS How Working Group (How Group) filed a letter stating that there has been confusion in the electric industry as to whether unmasking the identities of parties to transactions, as required by Order No. 889–A,[1] was to have been accomplished by the effective date of the order, May 13, 1997, or as part of the forthcoming revisions to the OASIS Standards and Protocols document. The How Group proposes that this requirement be implemented as soon as practical, but in no case later than August 31, 1997. The How Group argues

[1] Open Access Same-Time Information System and Standards of Conduct, Order No. 889, FERC Stats. & Regs. ¶ 31,037, 61 FR ¶ 21,737 (1996), *order on reh'g*, Order No. 889–A, FERC Stats. & Regs. ¶ 31,049, 62 FR 12,484 (1997), *reh'g pending*.

that this date is appropriate given the industry's confusion on this issue and given that implementation of this requirement necessitated modification to OASIS software programs.[2]

After consideration of the How Group's request, we will grant the request that implementation of the requirements in Order No. 889–A to unmask information, previously required to be implemented by May 13, 1997, be implemented as soon as possible, but in no case later than August 31, 1997.

Unmasking Information on Source and Sink

The How Group also states that clarification is needed on whether the unmasking of information identifying source and sink[3] is presently required, and if so, at what point in the reservation and scheduling process this information is to be disclosed.

The How Working Group's request for clarification states the positions of transmission providers and customers on the issue of unmasking source and sink information. However, the Commission needs to better understand the reasons for and against masking information on source and sink. For this reason, we invite interested persons to file with the Secretary written comments on this issue in accordance with the instructions provided below.

In addition to inviting a general discussion of this issue, we have some specific questions we would like to see addressed. For example, the comments should address the reasons why some transmission providers and customers consider this information to be business sensitive or confidential while others do not.

Source and sink information is important for determining the impact of a proposed transaction on the transmission grid. Masking this information limits public access to transmission related information. The comments should address whether public access to this information may harm competition and reduce efficiency, and if so, why. Also, the comments should address whether, if we allow source and sink information to be masked, competitors will be able to accurately estimate this information from other available data.

Additionally, the Commission is interested in better understanding the implications of masking source and sink information as the industry moves from contract path to flow-based methods of determining available transmission capability.

Proposed Interim Procedures to Implement On-Line Price Negotiations and Disclosure of Discounts

The How Group's letter also responds to the request in Order No. 889–A that the group suggest ways to implement on-line price negotiation and disclosure of discounts using existing OASIS Phase I templates. The How Group's letter proposes:

On-line price negotiation is proposed in Phase 1 by allowing the customer to modify the price field when submitting a request to purchase transmission service using the transrequest template. This would require a minor change to most OASIS nodes. The provider response in the transtatus template would be accepted if the bid is approved and denied if the bid is not acceptable. The reason for denial would be shown in the comments field. The transtatus template would retain the customer's bid price as a permanent record, whether accepted or not. If the request is denied for price reasons, the customer could repeat the process by submitting a new request with a different price bid.

Disclosure of discounts given will be accomplished on an interim basis using the existing message template. A category called discounts will be added to Phase 1 OASIS to indicate messages which contain discount information. The provider will be required to indicate information such as service type, path, POR, POD, customer name, price, and terms of the discount. If a discount is given on a posted product, it is also required that the transmission provider change the posted offer price to match the discount.

The Commission requests comments as to the effectiveness of these procedures. We would like to know whether the proposed interim measures are sufficient to permit the on-line negotiation and the disclosure of discounts required by Order No. 889–A and, if not, what modifications are needed. Specifically, it is our understanding that in the proposed negotiation process the customer would place a bid in the price field of the transrequest template when submitting a request to purchase transmission service as a discount. The transmission provider would respond by either accepting or denying the request using the transtatus template. If the request is accepted the transtatus template would contain a permanent record of the discounted price and terms and conditions of the transaction. If the bid is rejected, the customer could make another bid using the transrequest template.

It is our understanding that before a discount is accepted on a posted product, the discounted price will be posted in the offer template. For both posted products and products in which customers have requested non-standard terms and conditions, the How Group proposes, on an interim basis, to use the existing message template to disclose discounts given.

The Commission also requests suggestions for any revisions to the Standards and Communication Protocols and data dictionary needed to implement the interim measures.

Instructions for Filing Written Comments

Written comments (an original and 14 paper copies and one copy on a computer diskette in Wordperfect 6.1 format or in ASCII format) must be received by the Commission on or before August 15, 1997. Comments must be filed with the Office of the Secretary and must contain a caption that references Docket No. RM95–9–003. All written comments will be placed in the Commission's public files and will be available for inspection or copying in the Commission's Public Reference Room during normal business hours. All comments received on diskette will be made available to the public on the Commission's electronic bulletin board (EBB).

Address: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

For Further Information Contact:

Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1283

William C. Booth (Technical Information, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0849

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0321

[2] The same letter also contains a request to extend the due date for submittal of a revised OASIS Standards and Protocols document and for submittal of a report on OASIS Phase II implementation. These requests were granted in a separate notice.

[3] The location of the generating facility or facilities supplying the capacity and energy is the "source" and the location of the load ultimately served by the capacity and energy transmitted is the "sink." *See* § 17.2(iv) of the pro forma tariff. The two terms are used, but not defined, in the Standards and Protocols document, *see* § 4.3.5, and in the Data Element Dictionary accompanying Order No. 889, *see* 61 FR at 21,820.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19190 Filed 7–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Environmental Compliance and Applicant Environmental Report Preparation Training Courses

July 16, 1997.

The Office of Pipeline Regulation (OPR) staff is conducting three sessions of its environmental compliance training course and the course on preparing the applicants environmental report.

These courses are a result of the positive response to our outreach training courses held since 1992. We encourage interested organizations and the public to take advantage of the courses to gain an understanding of the requirements and objectives of the Commission in ensuring compliance with all environmental certificate conditions and meeting its responsibilities under the National Environmental Policy Act and other laws and regulations.

Environmental Report Preparation Course

The environmental report preparation course presentation and the manual focus primarily on Section 7 filings. However, the course manual will address the following topics:

A. What types of projects require environmental filings
   1. Natural Gas Act section 7
   2. Natural Gas Policy Act filings
   3. Section 2.55 replacements
B. What filings are required of each type of filing
C. What to include in each filing
D. Potential time saving procedures
   1. Applicant-prepared DEA
   2. Third-party EA or EIS.

The staff intends the manual to be a cookbook for preparing environmental filings under section 7 of the Natural Gas Act.

If you have specific questions related to the subject matter of this course, or if you would like the course to address a particular item, please call Mr. John Leiss at (202) 208–1106.

The one-day environmental report preparation course will be held on the dates and at the locations shown below. Attendees must call the number listed for the hotel by the reservation deadline and identify themselves as Federal Energy Regulatory Commission seminar attendees to receive the discounted group rate.

We also intend to have a session in Salt Lake City in October. Information on that session (and registration forms) should be available by the end of July through the telephone number given below under Preregistration.

Session and Location:

September 9, Four Points Hotel, Riverwalk North, 110 Lexington Avenue, San Antonio, Texas 78205,

September 22, Hynes Auditorium, 900 Boyleston Street, Boston, Massachusetts 02115, Information: (617) 954–2000

Reservation by: August 11.

Environmental Compliance Training Course

The two-day environmental compliance training course will include the following topics:

A. Postcertificate clearance filings
B. Environmental inspection as it relates to:
   1. Right-of-way preparation
   2. Temporary erosion control
   3. Cultural resources
   4. Waterbody crossings
   5. Wetland construction
   6. Residential area construction
   7. Right-of-way restoration, and
   8. Techniques for environmental compliance.

The environmental compliance training course will be held on the dates and at the locations shown below. Attendees must call the numbers listed for the hotels by the reservation deadline and identify themselves as FERC seminar attendees to receive the discounted group rate.

We also intend to have a session in Salt Lake City in October. Information on that session (and registration forms) should be available by the end of July through the telephone number given below under Preregistration.

Session and Location:

September 10–11, Four Points Hotel, Riverwalk North, 110 Lexington Avenue, San Antonio, Texas 78205, 1–800–28TEXAS

September 23–24, Hynes Auditorium, 900 Boyleston Street, Boston, Massachusetts 02115, Information: (617) 954–2000

Reservation by: August 11.

Preregistration

The OPR staff and Foster Wheeler Environmental Corporation, the Commission's environmental support contractor for natural gas projects, will conduct the training. There is no fee for the courses, but you must preregister because space is limited.

If you would like to attend either of these courses, please call the telephone number listed below to obtain a preregistration form.[1] Note: If you plan to attend both the environmental report preparation session and the subsequent environmental compliance training session, you must preregister separately for each (only one form is needed). Attendance will be limited to the first 150 people to preregister in each course. Call or FAX requests for preregistration forms to: Ms. Donna Connor, c/o Foster Wheeler Environmental Corporation, 470 Atlantic Avenue, Boston, MA 02210, Telephone or FAX (Menu driven): (508) 384–1424.

You will receive confirmation of preregistration and additional information before the training course(s).

Additional training will be offered in the future. Please indicate whether you would like these courses to be offered again, or if you are interested in any other courses with different topics or audiences. Please indicate your preferences for location and time of year. Suggestions on format are welcome.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19158 Filed 7–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment to Recreation Plan

July 16, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment to Recreation Plan.

Project Name and No: Kings Falls Project, FERC Project No. 7352–017.

c. *Date Filed:* August 27, 1996.

d. *Applicant:* Mercer Management, Inc.

e. *Location:* Lewis County, New York on the Deer River near the towns of Copenhagen and West Carthage.

f. *Filed pursuant to:* Federal Power Act, 16 U.S.C. § 791 (a)–825(r).

g. *Applicant Contact:* Mr. David G. Crandell, Mercer Management, Inc., 330 Broadway, Albany, New York 12207–2981, (518) 434–1412.

h. *FERC Contact:* Steve Naugle, (202) 219–2805.

[1] The preregistration forms referenced in this notice are not being printed in the **Federal Register**. Copies of the forms were sent to those receiving this notice in the mail.

i. *comment Date:* September 8, 1997.

j. *Description of the filing:* The applicant requests the commission's approval to close the project site to public recreational access because of safety concerns and recurring incidents of vandalism. The project site presently provides picnicking, fishing, and scenic viewing opportunities. A 40-foot-high waterfall, known as Kings Falls, and a 30-acre reservoir are located at the site.

k. *This notice also consists of the following standard paragraphs:* B, C1, D2.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19160 Filed 7–21–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5861–5]

Agency Information Collection Activities: Questionnaire for Operations and Maintenance (O&M), Biosolids Use (Biosolids), Combined Sewer Overflow (CSO), and Storm Water (SW) Awards Nominees Under the Annual National Wastewater Management Excellence Awards Program (NWMEAP)

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 EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Operations and Maintenance (O&M), Biosolids Use (Biosolids), Combined Sewer Overflow (CSO), and Storm Water (SW) Management Awards Nominees under EPA's National Wastewater Excellence Awards Program (NWMEAP), EPA ICR Number 1287.05, and OMB Control Number 2040–0101, approved through October 31, 1997. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be submitted on or before September 22, 1997.

ADDRESSES: Comments must be submitted to: Office of Water, Office of Wastewater Management, Municipal Support Division, Municipal Assistance Branch, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Maria E. Campbell, 202–260–5815/Fax Number 202–260–0116/email at campbell.maria@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are public wastewater treatment plants, universities, manufacturing sites, and States.

Title: Questionnaires for Operations and Maintenance (O&M), Beneficial Biosolids Use (Biosolids), Combined Sewer Overflow (CSO), and Storm Water (SW) Management Awards Nominees under EPA's National Wastewater Management Excellence Awards Program (NWMEAP) (OMB Control No. 2040–0101, EPA ICR No. 1287.05) expires 10/31/97.

Abstract: This ICR requests re-approval to collect data from EPA's NWMEAP nominees. The awards are for the following program categories: O&M, Biosolids, CSO, and SW management. (Note: Information collection approval for the Pretreatment awards program is included in the National Pretreatment Program ICR (OMB Control No. 2040–0009, EPA ICR No. 0003.08), expiring October 31, 1999). The NWMEAP is managed by EPA's Office of Wastewater Management (OWM). The NWMEAP is authorized under Section 501(e) of the Clean Water Act, as amended. The NWMEAP is intended to provide recognition to communities and industries which have demonstrated outstanding technological achievements, innovative processes, or other outstanding methods in their waste treatment and pollution abatement programs. Approximately 50 awards are presented annually. The achievements of these award winners are summarized in reports, news articles and national publications.

The information is collected from approximately 200 respondents at a total cost of $65,400 per year and 2800 burden hours, including $38,600 and 1600 burden hours for the respondents' time, and $26,800 and 1200 burden hours for the States' review time. Submission of information on behalf of the respondents is voluntary. No confidential information is requested. The agency only collects information from award nominees under a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. Based on the data collection, national panels will evaluate the nominees' efforts and recommend finalists. The collections will be used by the respective awards programs to evaluate and determine which abatement achievements should be recognized.

The O&M awards program has nine categories which recognize municipal achievements. The biosolids awards program has four categories which recognize municipal biosolids operations, technology and research achievements, and public acceptance; the CSO awards program has one category which recognizes municipal programs; and the SW awards program has two categories which recognize municipal and industrial programs. All nominees are screened for environmental compliance by the States and EPA. Municipalities and institutions desiring to be considered for National awards voluntarily complete the questionnaires and provide design and operating information about their facility. The award nominations are reviewed by State/Regional officials

prior to forwarding them for National award consideration. At the National level, award reviews involve Federal officials and review panels comprised of representatives of professional associations and State offices.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality. utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Respondents: Officials at public wastewater treatment plants, universities, States and manufacturing sites.

Estimated Number of Respondents: 200.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: Once a year.

Estimated Total Annual Burden on Respondents: 2800 hours (1600 hours for the response time and 1200 hours for the States' review time).

Burden means the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide information to EPA. This estimate includes the time needed to review instructions, collect, validate, and verify information; complete and review the collection of information; and transmit the information to EPA.

Dated: July 16, 1997.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 97–19211 Filed 7–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5862–6]

Science Advisory Board; Emergency Notification of Public Advisory Committee Meeting

August 5, 1997.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Integrated Risk Project (IRP) Steering Committee of the Science Advisory Board (SAB) will hold a teleconference meeting on August 5, 1997 from 11:00 a.m.–2:00 p.m. Eastern Daylight Time. The meeting is open to the public, however teleconference lines are limited. Please call Stephanie Sanzone, Designated Federal Official for the Committee, at (202) 260–6557 if you are interested in participating in the call and to obtain the dial-in number. The purpose of the teleconference meeting is to continue discussion of issues relating to implementation of a conceptual framework for decision-making that utilizes information on risk, risk reduction opportunity, and economic and societal consequences of various risk reduction strategies. The Steering Committee last met on July 9–11, 1997 to discuss an internal draft of the IRP integrated report. Revisions to the internal draft are in progress, but the teleconference meeting will be an opportunity to reach closure on several remaining issues.

Background on the Integrated Risk Project (IRP): In a letter dated October 25, 1995, to Dr. Matanoski, Chair of the SAB Executive Committee, Deputy Administrator Fred Hansen charged the SAB to: a) develop an updated ranking of the relative risk of different environmental problems based upon explicit scientific criteria; b) provide an assessment of techniques and criteria that could be used to discriminate among emerging environmental risks and identify those that merit serious, near-term Agency attention; c) assess the potential for risk reduction and propose alternative technical risk reduction strategies for the environmental problems identified; and d) identify the uncertainties and data quality issues associated with the relative rankings. The project is being conducted by several SAB panels, working at the direction of an *ad hoc* Steering Committee established by the Executive Committee.

Single copies of Reducing Risk, the report of the previous relative risk ranking effort of the SAB, can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW, Washington, DC 20460, telephone (202) 260–8414, or fax (202) 260–1889.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Stephanie Sanzone, Designated Federal Official for the IRP Steering Committee, Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, phone (202)-260–6557; fax (202)-260–7118; or via Email at: Sanzone.Stephanie@epamail.epa.gov. Requests for oral comments must be received no later than 4:00 p.m. Eastern Time on July 31, 1997. Copies of the draft meeting agenda can be obtained from Ms. Wanda Fields at (202) 260–8414 or at the above fax number or by Email to Fields.Wanda@epamail.epa.gov.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to the teleconference, may be mailed to the committee prior to its meeting; comments received too close to the meeting date will be provided to the committee following the teleconference. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: July 18, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–19385 Filed 7–21–97; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 24, 1997, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business Regulations

1. FAMC Receivership/ Conservatorship [12 CFR Part 650] (Final)

2. Releasing Information [12 CFR Part 602, Subparts B and C] (Final)

*CLOSED SESSION**

A. Report

—Litigation Update

Dated: July 17, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–19316 Filed 7–18–97; 9:22 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 15, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 22, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–XXXX.

Title: Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 20.

Estimated Hour Per Response: 8 hours per response; 5 responses annually.

Frequency of Response: On occasion reporting requirement.

Estimated Total Annual Burden: 800 hours.

Needs and Uses: The Commission has provided voluntary guidelines for filing expanded local calling service requests. The guidelines ask that each ELCS request include the following information: (1) Type of proposed service; (2) direction of proposed service; (3) telephone exchange involved; (4) names of affected carriers; (5) state commission approval; (6) number of access lines or customers; (7) usage data; (8) poll results if any; (9) community of interest statement; (10) a map showing exchanges and LATA boundary involved; and (11) any other pertinent information. These guidelines will allow the Commission to conduct smooth and continuous processing of these requests. The collection of information will enable the Commission to determine if there is a public need for expanded local calling service in each area subject to the request.

OMB Approval No.: 3060–0589.

Title: FCC Remittance Advice and Continuation Sheet.

Form No.: FCC 159, FCC 159–C.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 635,738.

Estimated Hour Per Response: .50 hours per response.

Frequency of Response: Recordkeeping and on occasion reporting requirement.

Estimated Total Annual Burden: 317,869 hours.

Needs and Uses: This form is required for payment of regulatory fees and for use when paying for multiple filings with a single payment instrument, or when paying by credit card. The forms require specific information to track payment history, and to facilitate the efficient and expeditious processing of collections by a lockbox bank. The forms have been revised to include Taxpayer Identification Number (TIN) which is used for anyone who requests services from the agency.

OMB Approval No.: 3060–0728.

Title: Supplemental Information Requesting Taxpayer Identifying Number for Debt Collection.

Form No.: N/A.

Type of Review: reinstatement, with change, of a previously approved collection for which approval has expired.

Respondents: Individuals or households; business or other for-profit entities; not-for-profit institutions; state, local or tribal government.

Number of Respondents: 10,469,716.

Estimated Hour Per Response: .017 hours per response.

Frequency of Response: On occasion reporting requirement.

Estimated Total Annual Burden: 177,985 hours.

Needs and Uses: In Pub. L. 104–134, Chapter 10, Section 31001, the FCC is required to collect the taxpayer identifying number (TIN) from any individual or firm doing business with it. In the case of an individual, that number is the person's social security number; in the case of a business, it is the employer identification number as

*Session closed—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

assigned by the Internal Revenue Service. The information will be used by the FCC and the U.S. Treasury for purposes of collecting and reporting on any delinquent amounts arising out of such person's relationship with the Government. The respondents are anyone doing business with the FCC. The collection is being revised to include payer TIN information.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–19136 Filed 7–21–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

July 17, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0782.

Expiration Date: 01/31/98.

Title: Petition for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 20 respondents; 8 hours per response (avg.) x 5 responses annually; 800 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Section 271 of the Communications Act of 1934, as amended, prohibits a BOC from providing "interLATA services originating in any of its in-region States" until the BOC takes certain steps to open its own market to competition and the Commission approves the BOC's application to provide such service. Section 3(25) of the Act, however, provides that a BOC may modify LATA boundaries if such modifications are approved by the Commission. Permitting LATA modifications to provide flat-rate non-optional local calling service will allow communities to have local calling service without having to wait for BOCs to open their markets and without creating a potential for competitive abuses. In CC Docket No. 96–159, *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations.* Memorandum Opinion and Order, adopted July 3, 1997, the Commission has provided voluntary guidelines for filing expanded local calling service requests. These guidelines will allow the Commission to conduct smooth and continuous processing of these requests. The guidelines ask that each ELCS request include the following information: (1) type of proposed service; (2) direction of proposed service; (3) telephone exchanges involved; (4) names of affected carriers; (5) state commission approval; (6) number of access lines or customers; (7) usage data; (8) poll results if any; (9) community of interest statement; (10) a map showing exchanges and LATA boundary involved; and (11) any other pertinent information. The collection of information will enable the Commission to determine if there is a public need for expanded local calling service in each area subject to the request. Your response is voluntary.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–19236 Filed 7–21–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 6, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. NSB Holding Corp., Staten Island, New York; to engage *de novo* through its subsidiary, Check Depot, Staten Island, New York, in check cashing, including federal, state and local government benefit checks, *See Midland Bank*, PLC, 76 Fed. Res. Bull. 869 (1990).

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Crestar Financial Corporation, Richmond, Virginia; to acquire American National Bancorp, Inc., Baltimore, Maryland, and thereby indirectly acquire American National Savings Bank, F.S.B., Baltimore, Maryland, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4) of the Board's Regulation Y. Comments on this application must be received by August 15, 1997.

2. NationsBank Corporation, Charlotte, North Carolina; to acquire Montgomery Securities, Inc., and The Pyramid Company, San Francisco, California, and thereby engage in underwriting and dealing in, to a limited extent, all types of debt and equity securities other than interests in open end investment companies (*See J.P. Morgan & Co., Inc., The Chase Manhattan Corp., Bankers Trust New York Corp., Citicorp, and Security Pacific Corp.*, 75 Fed. Res. Bull. 192 (1989)); in underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to

underwrite and deal in under 12 U.S.C. 24 and 335, pursuant to § 225.28(b)(8) of the Board's Regulation Y; in acting as investment or financial advisor, pursuant to § 225.28(b)(6) of the Board's Regulation Y; in providing securities brokerage services (including securities clearing and securities execution services on an exchange), alone and in combination with investment advisory services, and incidental activities (including related securities credit activities and custodial services), pursuant to § 225.28(b)(7) of the Board's Regulation Y; in buying and selling in the secondary market all types of securities on the order of customers as a riskless principal to the extent of engaging in a transaction in which the company, after receiving an order to buy (or sell) a security from a customer, purchases (or sells) the security for its own account to offset a contemporaneous sale to (or purchase from) the customer, pursuant to § 225.28(b)(7) of the Board's Regulation Y; and in acting as agent for the private placement of securities in accordance with the requirements of the Securities Act of 1933 and the rules of the Securities and Exchange Commission, pursuant to § 225.28(b)(7) of the Board's Regulation Y.

Montgomery Securities and The Pyramid Company, would be merged into a newly created subsidiary of NationsBank Corporation, which would be merged into NationsBanc Capital Markets, Inc., Charlotte, North Carolina. NationsBanc Capital Markets, Inc., would then be renamed NationsBanc Montgomery Securities, Inc.

C. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Barnett Banks, Inc., Jacksonville, Florida; to acquire First of America Bank-Florida, FSB, Tampa, Florida, and thereby engage in owning, controlling and operating a savings association, pursuant to § 225.28(b)(4) of the Board's Regulation Y. This activity will be conducted throughout the State of Florida. Comments on this application must be received by August 15, 1997.

D. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Associated Banc-Corp, Green Bay, Wisconsin; to acquire First Financial Corporation, Stevens Point, Wisconsin, and thereby indirectly acquire First Financial Bank, FSB, Stevens Point, Wisconsin, and thereby engage in owning and operating a savings and loan association, pursuant to § 225.28(b)(4) of the Board's Regulation Y; Appraisal Services, Inc., Milwaukee, Wisconsin, and thereby engage in performing appraisals of real estate and tangible personal property, pursuant § 225.28(b)(2) of the Board's Regulation Y; and First Financial Card Services Bank, N.A., Stevens Point, Wisconsin, and thereby engage in operating a credit card bank, pursuant to §§ 225.28(b)(1) and (2) of the Board's Regulation Y. Comments on this application must be received by August 15, 1997.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Union Planters Corporation, Memphis, Tennessee; to acquire Magna Bancorp, Inc., Hattiesburg, Mississippi, and thereby indirectly acquire Magnolia Federal Bank for Savings, Hattiesburg, Mississippi, and thereby engage in indirectly acquiring a federal savings bank, pursuant to Section 225.28(b)(4)(ii) of Regulation Y, and Magna Mortgage Company, Hattiesburg, Mississippi, and thereby engage in originating and servicing mortgage loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y, and in providing real estate appraisal and inspection services, pursuant to § 225.28(b)(2) of the Board's Regulation Y. At consummation, the offices of Magnolia Federal Bank for Savings will be disbursed among various Union Planters Corporation's existing subsidiary banks, and its charter will be merged with and into an existing bank subsidiary of Union Planters Corporation. Following consummation, the shares of Mortgage Company will be sold to an existing thrift subsidiary of Union Planters Corporation. Comments on this application must be received by August 15, 1997.

Board of Governors of the Federal Reserve System, July 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–19206 Filed 7-21-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 15, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. The Commercial Bancorp, Inc., Ormond Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial Bank of Volusia County, Ormond Beach, Florida (in organization).

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Maries County Bancorp, Inc., Vienna, Missouri; to acquire 73.85 percent of the voting shares of Progress Bancshares, Inc., Sullivan, Missouri, and thereby indirectly acquire Progress Bank of Sullivan, Sullivan, Missouri, a *de novo* bank.

Board of Governors of the Federal Reserve System, July 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–19205 Filed 7-21-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C.

1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 6, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. NSB Holding Corp., Staten Island, New York; to engage *de novo* through its subsidiary, Check Depot, Staten Island, New York, in check cashing, including federal, state and local government benefit checks, *See Midland Bank*, PLC, 76 Fed. Res. Bull. 869 (1990).

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Crestar Financial Corporation, Richmond, Virginia; to acquire American National Bancorp, Inc., Baltimore, Maryland, and thereby indirectly acquire American National Savings Bank, F.S.B., Baltimore, Maryland, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4) of the Board's Regulation Y. Comments on this application must be received by August 15, 1997.

2. NationsBank Corporation, Charlotte, North Carolina; to acquire Montgomery Securities, Inc., and The Pyramid Company, San Francisco, California, and thereby engage in underwriting and dealing in, to a limited extent, all types of debt and equity securities other than interests in open end investment companies (*See J.P. Morgan & Co., Inc., The Chase Manhattan Corp., Bankers Trust New York Corp., Citicorp, and Security Pacific Corp.*, 75 Fed. Res. Bull. 192 (1989)); in underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, pursuant to § 225.28(b)(8) of the Board's Regulation Y; in acting as investment or financial advisor, pursuant to § 225.28(b)(6) of the Board's Regulation Y; in providing securities brokerage services (including securities clearing and securities execution services on an exchange), alone and in combination with investment advisory services, and incidental activities (including related securities credit activities and custodial services), pursuant to § 225.28(b)(7) of the Board's Regulation Y; in buying and selling in the secondary market all types of securities on the order of customers as a riskless principal to the extent of engaging in a transaction in which the company, after receiving an order to buy (or sell) a security from a customer, purchases (or sells) the security for its own account to offset a contemporaneous sale to (or purchase from) the customer, pursuant to § 225.28(b)(7) of the Board's Regulation Y; and in acting as agent for the private placement of securities in accordance with the requirements of the Securities Act of 1933 and the rules of the Securities and Exchange Commission, pursuant to § 225.28(b)(7) of the Board's Regulation Y.

Montgomery Securities and The Pyramid Company, would be merged into a newly created subsidiary of NationsBank Corporation, which would be merged into NationsBanc Capital Markets, Inc., Charlotte, North Carolina. NationsBanc Capital Markets, Inc., would then be renamed NationsBanc Montgomery Securities, Inc.

C. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

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D. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Associated Banc-Corp, Green Bay, Wisconsin; to acquire First Financial Corporation, Stevens Point, Wisconsin, and thereby indirectly acquire First Financial Bank, FSB, Stevens Point, Wisconsin, and thereby engage in owning and operating a savings and loan association, pursuant to § 225.28(b)(4) of the Board's Regulation Y; Appraisal Services, Inc., Milwaukee, Wisconsin, and thereby engage in performing appraisals of real estate and tangible personal property, pursuant § 225.28(b)(2) of the Board's Regulation Y; and First Financial Card Services Bank, N.A., Stevens Point, Wisconsin, and thereby engage in operating a credit card bank, pursuant to §§ 225.28(b)(1) and (2) of the Board's Regulation Y. Comments on this application must be received by August 15, 1997.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Union Planters Corporation, Memphis, Tennessee; to acquire Magna Bancorp, Inc., Hattiesburg, Mississippi, and thereby indirectly acquire Magnolia Federal Bank for Savings, Hattiesburg, Mississippi, and thereby engage in indirectly acquiring a federal savings bank, pursuant to Section 225.28(b)(4)(ii) of Regulation Y, and Magna Mortgage Company, Hattiesburg, Mississippi, and thereby engage in originating and servicing mortgage loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y, and in providing real estate appraisal and inspection services, pursuant to § 225.28(b)(2) of the Board's Regulation Y. At consummation, the offices of Magnolia Federal Bank for Savings will be disbursed among various Union Planters Corporation's existing subsidiary banks, and its charter will be merged with and into an existing bank subsidiary of Union Planters Corporation. Following consummation, the shares of Mortgage Company will be sold to an existing thrift subsidiary of Union Planters Corporation. Comments on this application must be received by August 15, 1997.

Board of Governors of the Federal Reserve System, July 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–19207 Filed 7-21-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, July 28, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street

entrance between 20th and 21st Streets, NW., Washington, DC 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: July 18, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–19433 Filed 7–18–97; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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 sue of automated collection techniques or other forms of information technology.

Proposed Project 1

Responsibilities of Awardees and Applicant Institutions for Reporting Possible Misconduct in Science (42 CFR part 50 and PHS 6349)—0937–0198—Revision—As required by Section 493 of the Public Health Service Act, the Secretary by regulation shall require that applicant and awardee institutions receiving PHS funds must investigate and report instances of alleged or apparent misconduct in science. *Respondents:* State or local governments; Businesses or other for-profit; Non-profit institutions—Reporting Burden Information—*Number of Respondents:* 3607; *Number of Annual Responses:* 3,700; Average Burden per Response; 29.85 minutes; *Total Reporting Burden:* 1,841 hours—Disclosure Burden Information—*Number of Respondents:* 3607; *Number of Annual Responses:* 3,667; *Average Burden per Response:* 30 minutes; *Total Disclosure Burden:* 1,834 hours—Recordkeeping Burden Information—Number of Respondents: 40; *Number of Annual Responses:* 140; *Average Burden per Response:* 7,03 hours; *Total Recordkeeping Burden:* 984 hours—Total Burden—4,659 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: July 10, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97–19138 Filed 7–21–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meetings

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meetings.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Health Data Needs, Standards, and Security. Workgroup on Data Standards and Security.

Times and Dates: 9:00 a.m.–4:30 p.m., August 5, 1997; 8:30 a.m.–4:30 p.m., August 6, 1997; 8:30 a.m.–4:00 p.m., August 7, 1997.

Place: Capital Hilton, 16th and K Streets, NW., Washington, DC 20201.

Status: Open.

Purpose: Under the Administrative Simplification provisions of P.L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Secretary of Health and Human Services is required to adopt standards for specified transactions to enable health information to be exchanged electronically. The law requires that, within 24 months of adoption, all health plans, health care clearinghouses, and health care providers who choose to conduct these transactions electronically must comply with these standards. The law also requires the Secretary to adopt a number of supporting standards including standards for code sets and classification systems and standards for security to protect health information. The Secretary is required to consult with the National Committee on Vital and Health Statistics (NCVHS) in complying with these provisions. The NCVHS is the Department's federal advisory committee on health data, privacy and health information policy.

To assist in the development of the NCVHS recommendations to HHS, the NCVHS Subcommittee on Health Data Needs, Standards, and Security has been holding a series of public meetings to obtain the views, perspectives and concerns of interested and affected parties.

On August 5, and August 6, 1997, the Subcommittee's Working Group on Data Standards and Security will hold a public meeting at which they will receive input from the health care industry on recommendations for security standards. The Subcommittee is interested in receiving testimony that will provide an understanding of the foundation of information security in health care as well as the issues, barriers, and challenges that face the industry. Representatives of the health care industry—health care providers, payers, professional associations, vendors, and standards development organizations—are being invited to testify and respond to the Subcommittee's question on security issues in the implementation of the administrative simplification provisions of P.L. 104–191. The industry representatives are being asked to address the questions (below) in writing, to make brief oral presentations of their answers, and to answer further questions from the Subcommittee. Other organizations that would like to submit written statements on these issues are invited to do so.

On August 7, 1997, the Subcommittee will discuss issues, recommendations, and its proposed workplan for the supporting standards for the nine financial and administrative health care transactions. The full NCVHS has already forwarded its recommendations on the architecture for these nine transactions to the Secretary.

Questions to be Addressed: Whereas not all questions are applicable to all participants or their organizations, the following set of questions illustrates the scope and complexity of the security issues to be addressed by the Committee.

Policies and Procedures

- What policies and procedures should be employed to safeguard information?
- How should these policies and procedures be communicated to internal and external users as well as consumers?
- How frequently are policies reviewed?

- Do employees, agents, independent contractors, medical staff, and vendors sign confidentiality statements?
- What are the consequences of a security breach by an individual? What type of disciplinary action is taken?
- How do you protect employee health information, particularly if you self-administer a benefit plan?
- How do you monitor electronic files to detect unauthorized changes or systematic corruption?
- How do you protect backups? What abilities do you have to recover files that become corrupted or lost?

Organization Commitment

- What approaches have been successful in your organization in obtaining upper management commitment to data security? What approaches have been less than successful?
- Who is accountable to manage the information security program in your organization?
- What level of authority should review and approve policies?
- Has your organization assigned staff dedicated to information security? Please describe the reporting structure for information security at your organization.
- How do you determine who can have access to health information? Do you have different classes of access based on the sensitivity of the health information (e.g., more restrictive access to HIV status or mental health diagnoses)?
- Has cost been a factor in limiting your information security program? How would you determine the appropriate cost of security?
- What factors should be considered in assessing the costs and benefits of security? How should these factors be weighted?
- Based on your experience, what are the impediments to implementing health information security measures?
- How would federal legislation or regulations requiring the protection of health information affect the information security program at your organization?

Training

- What are the objectives of your data security training program?
- Who receives training in information security?
- How is training delivered?
- Is training customized to user class?
- How often is training repeated?

Technical Practices

- Are unique passwords used?
- Are tokens, smart cards, or biometrics used for authentication?
- Is access control handled through technology or through policy?
- How do you protect remote access points?
- Is encryption used for internal or external transmissions?
- If you use encryption, do you use it for your password, your patient identifier, your clinical information, or the entire patient record message?
- When you use encryption, do you use secure socket layer (SSL), data encryption standard (DES), or another encryption standard? Why did you select this particular encryption standard?
- What are the initial and ongoing costs associated with encryption?
- Do you transmit or plan to transmit patient identifiable information over the Internet? How is the information to be safeguarded?
- What physical security measures do you use?
- Are different security practices required for a private network?
- What type of unique identifier do you use to identify patient information?
- Do you use electronic signatures? If yes, explain the applications, the type of technology used, and liability issues, if any.

Patient Awareness/Authorization

- Are patients informed of your organization's policies and procedures on information security? If so, how? Do you have specific educational tools that you use to educate patients/consumers?
- Do patients review their information? How do patients amend incorrect information (particularly if maintained electronically)?
- Do patients have access to the audit trail of all those who have looked at their patient record?
- Can patients request that their information not be computerized?

Vendors and Data Security Consultants

- What security features do your products employ?
- What security features are customers asking for?
- Is cost a factor?
- Can security technology being used in other industries be integrated into your products?
- How do you help a client identify their data security risks, threats, and exposures?
- How do you help a client develop an effective data security strategy, design, or architecture?
- How do you avoid technology-dependent security procedures and systems?

SDOs/Accreditation Organizations

- What standards presently exist regarding security?
- Are the existing standards adequate for adoption by the Security of HHS?
- What standards must organizations meet in order to be accredited by your organization?
- What plans are underway to address security requirements?
- Do you feel that there is a need for the federal government to provide leadership in this area?

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Judy K. Ball, Committee staff, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201, telephone (202) 690–7100, or from Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, telephone (301) 436–7050. Information is also available on the NCVHS home page of the HHS website: http://aspe.os.dhhs.gov/ncvhs/.

Dated: July 14, 1997.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 97–19137 Filed 7–21–97; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Voluntary Establishment of Paternity.

OMB No.: New Request.

Description: Public Law 104–193 requires the Secretary of the Department of Health and Human Services to specify the minimum data requirements of an affidavit to be used for the voluntary acknowledgment of paternity. Public Law 104–193 also requires States to enact laws requiring the development and use of an affidavit which met the minimum requirements specified by the Secretary and to give full faith and credit to such an affidavit signed in any other State according to its procedures. The Department established a task group composed of Federal and State staff to recommend minimum data elements for all State paternity acknowledgment affidavits. The minimum data elements were crafted to balance the need for a tool for collecting information necessary to the establishment of a child support order and the need for a user-friendly form that addresses only the data necessary to establish legal paternity. The minimum data elements are: The current full name, social security number and date of birth of mother, father, and child; address of mother and father, birthplace of child; an explanation of the legal consequences of signing the affidavit; a statement indicating both parents understand their rights, responsibilities, alternatives and the consequences of signing the affidavit; the place the affidavit was completed; and signature lines for mother, father and witnesses or notaries.

Respondents: States and Other Entities.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Affidavits	2,000,000	.2243	.166	74,468

Estimated Total Annual Burden Hours: 74,468.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 16, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–19185 Filed 7–21–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–4259–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under Section 221(g)(4) of the Act during the six-month period beginning July 1, 1997, is 6⅞ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning July 1, 1997, is 7⅛ percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Department of Housing and Urban Development, 451 7th Street, S.W., Room 6164, Washington, D.C. 20010. Telephone (202) 708–1220 ext. 2612, or TDD (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTAL INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the Federal Register.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning July 1, 1997, is 7⅛ percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 7⅛ percent for the six-month period beginning July 1, 1997. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the last six months of 1997.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.

Effective interest rate	On or after	Prior to
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" of interest in effect at the time the debentures are issued. The term "going Federal rate" is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of eight- to twelve-year maturities, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the six-month period beginning July 1, 1997, is 6⅞ percent.

HUD expects to publish its next notice of change in debenture interest rates in January 1998.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: July 15, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 97–19174 Filed 7–21–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–831753

Applicant: Steven J. Holdeman and Stephen J. Fraley, Fish and Wildlife Associates, Whittier, North Carolina

The applicants request authorization to take (capture, identify, and release, and to salvage dead shells) the Appalachian elktoe, *Alasmidonta raveneliana*, and little-wing pearlymussel, *Pegias fabula*, throughout the species' ranges, in Jackson, Macon, and Swain Counties, North Carolina for the purpose of enhancement of survival of the species.

PRT–831711

Applicant: Dr. Frasier O. Bingham, Bingham Environmental Consulting, Tallahassee, Florida

The applicant requests authorization to take (capture, identify, and release, and to salvage dead shells) the ovate clubshell, *Pleurobema perovatum*, triangular kidneyshell, *Ptychobranchus greeni*, Alabama moccasinshell, *Medionidus acutissimus*, orange-nacre mucket, *Lampsilis perovalis*, fine-lined pocketbook, *Lampsilis altilis*, and flattened musk turtle, *Sternotherus depressus*, throughout the species' ranges, in the Black Warrior River system, Cullman and Blount Counties, Alabama for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by August 20, 1997.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: July 11, 1997.

Geoffrey L. Haskett,

Acting Regional Director.

[FR Doc. 97–19140 Filed 7–21–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Bureau of Land Management

Notice of Boundary Adjustments in Butte County and Blaine County, Idaho

SUMMARY: This announces a revision of the boundary of Craters of the Moon National Monument and adjacent lands, including public domain lands. These changes were made pursuant to Public Law 104–333 (110 Stat. 4093 et seq.) to facilitate land management and protection of the natural resources of the watershed within this revised portion of the Monument's hydrographic boundary.

FOR FURTHER INFORMATION CONTACT: Superintendent, Craters of the Moon National Monument, P.O. Box 29 (Highway 26), Arco, ID 83213–0029 (208) 527–3257.

SUPPLEMENTARY INFORMATION: Effective November 12, 1996, the boundary of Craters of the Moon National Monument was revised to add approximately 210 acres; however, approximately 315 acres previously within portions of the Monument were deleted. Federal lands and interests deleted from the boundary of the Monument shall now be administered by the Bureau of Land Management under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and the public land laws.

Federal lands and interests added to the Monument shall be administered by the National Park Service. As of the above effective date, the Federal lands added to the Monument are also segregated and reserved from the operation of the public land laws, including all forms of entry, appropriation or disposal under the mining and mineral leasing laws, and all amendments thereto.

Subject to valid existing rights, the lands affected by this boundary adjustment are located within:

Boise Meridian

Township 2 North, Range 24 East,
Sections 15, 16, 21, 22, 23 and 28,
Affecting Butte County and Blaine County, Idaho.

These changes were made to protect the Monument's only potable water resources and to resolve long standing

grazing, hunting, and mining concerns for the management of the federal lands within the areas' hydrologic divide of the Little Cottonwood Creek watershed. The official map depicting this boundary adjustment, entitled "Craters of the Moon National Monument, Idaho, Public Law 104–333 Boundary Adjustment," numbered 131–80,008A, dated November 12, 1996, is on file and available for inspection in the office of the National Park Service, Department of the Interior, Land Resources Program Center, Columbia Cascades Systems Office, 909 First Avenue, Seattle, WA 98104–1060 (206) 220–4065.

Dated: May 29, 1997.

William C. Walters,

Deputy Regional Director, Pacific West Region.

[FR Doc. 97–19192 Filed 7–21–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–07–1320–241A; ALES 47886]

Alabama: Notice of Coal Lease Offering; Coal Lease Application ALES 47886

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive coal lease offering by sealed bid.

SUMMARY: Notice is hereby given that as a result of a Coal Lease Application filed by Oak Mountain Energy Corporation, for the Jesse Creek Tract described below will be offered for competitive lease by sealed bid. This is in accordance with the provisions of the Federal Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq*). The tract consists of private surface with federally-owned coal. The coal tract to be offered is underground-minable, potentially bypass coal. The coal tract is described as the Jesse Creek Federal Mineral Tract in the Thompson, Gholson, Clark and Coke (Youngblood) Seams, T. 21 S., R. 4 W., Shelby County, Alabama containing 40.47 acres. The Jesse Creek Federal Mineral Tract will be leased to the highest qualified bidder provided that the high bid equals or exceeds the Fair Market Value (FMV) for the tract as determined by the Authorized Officer. The Department has established a minimum bid of $100.00 per acre or fraction therof for the tract. The minimum bid may not represent the amount for which the tract may actually be issued, since FMV will be determined in a separate postsale analysis.

DATES: The lease sale will be held at 10 a.m. Thursday, August 21, 1997. Each bid must be clearly identified on the outside of the sealed envelope containing the bid. The bid should be sent by certified mail, return receipt or be hand delivered on or before 4:30 p.m., Wednesday, August 20, 1997 to the Bureau of Land Management at the address below. If any bid is received after the time specified it will not be considered.

ADDRESSES: The sale will be held at the Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153.

SUPPLEMENTARY INFORMATION: Any lease issued as a result of this offering will require an annual rental payment of $3.00 per acre and a royalty payable to the United States of 8.0 percent of the value of the coal mined by underground methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2. Bidding instructions and bidder qualifications are included in the Detailed Statement.

FOR FURTHER INFORMATION CONTACT: Copies of the Detailed Statement and of the proposed coal lease and casefile documents are available at the Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Please contact Ida V. Doup at (703) 440–1541.

Dated: July 17, 1997.

David R. Stewart,

Acting Deputy State Director, Division of Resources Planning, Use and Protection.

[FR Doc. 97–19186 Filed 7–21–97; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW128665]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

July 14, 1997.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW128665 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW128665 effective March 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 97–19168 Filed 7–21–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00; ES–48891, Group 29, Illinois]

Notice of Filing of Plat of Survey; Illinois

The plat, in four sheets, of the dependent resurvey of a portion of U.S. Survey No. 578, and the survey of the Locks and Dam No. 27 acquisition boundary, Township 3 North, Ranges 9 and 10 West, Third Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on August 25, 1997.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., August 25, 1997.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: July 11, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–19166 Filed 7–21–97; 8:45 am]

BILLING CODE 4310–GJ–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 July 12, 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 August 6, 1997.

Carol D. Shull,

Keeper of the National Register.

ARIZONA

Yavapai County

South Prescott Townsite, (Prescott MRA), Roughly bounded by Alarcon, Montezuma, Union, and Leroux Sts., Prescott, 97000859

ARKANSAS

Benton County

Cooper, Mildred B., Memorial Chapel and Office (Architecture of E. Fay Jones MPS), 504 Memorial Dr., Bella Vista, 97000855

Cleburne County

Shaheen—Goodfellow Weekend Cottage, (Architecture of E. Fay Jones MPS), 704 Stony Ridge, Eden Isle, 97000854

St. Francis County

Edmondson House (Architecture of E. Fay Jones MPS), Ridgewood Ln., Forrest City, 97000856

Washington County

Reed House (Architecture of E. Fay Jones), Address Restricted, Hogeye, 97000857

FLORIDA

Dade County

Sears, Roebuck and Company Department Store, 1300 Biscayne Blvd., Miami, 84003903

Lake County

Duncan, Harry C., House, 426 Lake Dora Dr., Tavarcs, 97000860

Polk County

Lake Wales Historic Residental District, Roughly bounded by the Seaboard Airline RR grade, CSX RR tracks, E. Polk Ave., S. and N. Lake Shore Blvds., Lake Wales, 97000858

GEORGIA

Baldwin County

Fowler Apartments, 430 W. McIntosh St., Milledgeville, 97000861

Chattooga County

Sardis Baptist Church, GA 114, Jct. of GA 114 and Sardis Church Rd., Chattoogaville, 97000862

IDAHO

Bonneville County

Eleventh Street Historic District, Roughly bounded by S. Boulevard, 13th, 10th, and 9th Sts., S. Emerson and S. Lee Aves., Idaho Falls, 97000863

ILLINOIS

Cook County

Washington School, 7970 Washington Blvd., River Forest, 97000864

KENTUCKY

Campbell County

Sauer, August, House, 832 Central Ave., Newport, 97000873

Hardin County

Elizabethtown City Cemetery, E. Dixie Ave. Jct. of E. Dixie Ave. and Crestwood St., Elizabethtown vicinity, 97000872

Hart County

Battle of Munfordville, Roughly bounded by Green R., US 31, Rowletts, and L and N RR tracks, Munfordville, 97000866

Hopkins County

Darby House, The, 301 W. Arcadia Ave., Dawson Springs, 97000871

McLean County

Battle of Sacramento Battlefield, Jct. of KY 81 and KY 85, Sacramento vicinity, 97000875

Oldham County

Clifton, 4801 Greenhaven Ln., Goshen vicinity, 97000874

Owen County

Byrns Landing, Old Landing Rd., Owenton vicinity, 97000865

Hardin, Enos, Farm, Jct. of Rock Rd. and Kentucky R., Owenton vicinity, 97000868

Monterey Grade School, 9725 US 127 S, Owenton vicinity, 97000869

Monterey Historic District, Roughly bounded by US 127, High, Hillcrest, and Taylor Sts., Monterey, 97000867

Cedar Baptist Church, Old 1040 Claxon Ridge Rd., Owenton vicinity, 97000870

LOUISIANA

St. Martin Parish

Fontenette—Bienvenu House, 201 N. Main St., St. Martinville, 97000876

MASSACHUSETTS

Hampshire County

North Hatfield Historic District, Roughly along West St. and Depot Rd. Between I–91 and MA 10, Hatfield, 97000879

Middlesex County

Peirce, Edward, House—Henderson House of Northeastern University, 99 Westcliff Rd., Weston, 97000880

Suffolk County

Newton, Edward B., School, 45 Pauline St., Winthrop, 97000878

MICHIGAN

Keweenaw County

Johns Hotel, Washington Harbor, on Barnum Island, Isle Royale National Park, 97000877

NEBRASKA

Otoe County

Nebraska City Burlington Depot, Jct. of 6th and Corso Sts., Nebraska City, 97000881

OREGON

Malheur County

Birch Creek Ranch Historic Rural Landscape, Owyhee R., jct. with Birch Cr. and Gaging Stn., Jordan Valley vicinity, 97000882

TENNESSEE

Robertson County

Walton—Wiggins Farm (Historic Family Farms in Middle Tennessee MPS), 4020 Woodrow Wilson Rd., Springfield vicinity, 97000883

TEXAS

El Paso County

El Paso County Water Improvement District No. 1, Starting at the jct. of US 80 and US 85, along TX 20 to Alamo Alto, El Paso vicinity, 97000885

A Proposed Move is hereby made for the following Properties:

MICHIGAN

Wayne County

Elwood Bar, 2100 Woodward Ave., Detroit, 85001074

Century Building and Little Theatre, 58—62 E. Columbia, Detroit, 85000993

In order to assist in the preservation of historic properties the 15-day period has been waived for the Elwood Bar, and Century Building and Little Theater.

[FR Doc. 97–19210 Filed 7–17–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

[Order No. 2096–97]

Office of the Attorney General; Memorandum of Guidance on Implementation of the Litigation Reforms of Executive Order No. 12988

AGENCY: Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: This memorandum implements those provisions of Executive Order No. 12988 (the "Order") that govern the conduct of civil litigation with the United States Government, including the methods by which attorneys for the government conduct discovery, seek sanctions, and attempt to settle cases. The Order authorizes the Attorney General to issue guidelines carrying out the Order's provisions on civil and administrative litigation. The Order revoked Executive Order No. 12778 (October 23, 1991) and became effective May 6, 1996. These interim guidelines supersede guidelines issued under Executive Order No. 12778 (58 FR 6015, January 25, 1993). The Attorney General requests comments from federal agencies so that final guidelines may be drafted in light of the

agencies' experience in implementing Executive Order No. 12988.

EFFECTIVE DATE: These interim guidelines are effective on July 22, 1997. Comments are requested from federal agencies on or before October 20, 1997.

ADDRESSES: Comments should be sent to Colonel Richard D. Rosen, Civil Division, Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Colonel Richard D. Rosen, Civil Division, Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530, (202) 616–0929.

SUPPLEMENTARY INFORMATION: Executive Order No. 12988 (61 FR 4729, February 7, 1996), which President Clinton signed on February 5, 1996, is intended to "facilitate the just and efficient resolution of civil claims involving the United States Government." 61 FR 4729. The Order mandates, *inter alia*, reforms in the methods by which attorneys for the government conduct discovery, seek sanctions, and attempt to settle cases. Revoking Executive Order No. 12778 (56 FR 55195, October 25, 1991), these reforms apply to litigation begun on or after May 6, 1996.

The Order requires agencies to implement civil justice reforms applicable to each agency's civil litigation. Sections 5(a), 5(b), and 8(c) authorize the Attorney General to coordinate efforts by federal agencies to implement the litigation process reforms, to promulgate guidelines to promote just and efficient civil litigation and administrative adjudications, and to issue further guidance as to the scope of the Order. Final guidelines will be most useful, however, if they incorporate comments from federal agencies and their litigation counsel after they have had experience in applying Executive Order No. 12988. That experience will offer a valuable basis for deciding how the final guidelines can best refine implementation of the Order.

These guidelines provide interim direction for implementing the Order. They supersede the guidelines issued under Executive Order No. 12778. See 58 FR 6015 (January 25, 1993). Executive Order No. 12988 differs from Executive Order 12778 in a number of important respects, each of which is reflected in the new guidelines. For example, in contrast to Executive Order No. 12778, Executive Order No. 12988 does not include sections on "core" discovery, expert witnesses, and fee shifting. In addition, Executive Order No. 12988 enhances the section dealing with alternative dispute resolution, including lifting the prohibition against binding arbitration.

Agencies and their litigation counsel are requested to provide comments concerning their experience in carrying out the new Order and their recommendations for revising this interim guidance. Moreover, since this interim guidance incorporates, where applicable, the civil litigation guidelines implemented under Executive Order No. 12778, agencies and their litigation counsel should also consider their experience under those portions of Executive Order No. 12778 and its guidelines when developing their comments.

Agencies should note in particular the requirements imposed by both Executive Order No. 12988 and Executive Order No. 12778 concerning the designation of persons within each agency to act on litigation documents and sanctions motions. First, each agency must establish "a coordinated procedure"—including review by a "senior lawyer"—for the conduct of document discovery undertaken by that agency in litigation to determine that it meets the substantive criteria of the Order. Executive Order No. 12988, § 1(d)(1); see also Executive Order No. 12778, § 1(d)(2). Second, to implement the Order, each agency must designate a "sanctions officer" to review sanctions motions filed either by or against the government. Executive Order No. 12988, § 1(e)(2); see also Executive Order No. 12778, § 1(f)(2); see generally Fed. R. Civ. P. 11(c), 37(a)(4). The Attorney General recommends that each agency designate a specific individual to serve as the agency coordinator for implementation of Executive Order. No. 12988. Details regarding this designation and other guidelines are contained in this memorandum.

Although the Department is authorized to issue guidelines on administrative adjudications under sections 4 (b)–(d) of the Order, it is not presently planning to do so. If such guidelines become necessary or appropriate in the future, the Department may issue them at that time.

By virtue of the authority vested in me by law, including Executive Order No. 12988, I hereby issue the following memorandum:

Department of Justice Memorandum of Guidance on Implementation of the Litigation Reforms of Executive Order No. 12988

Introduction

Executive Order No. 12988 (the "Order"), which President Clinton signed on February 5, 1996, is intended to "facilitate the just and efficient resolution of civil claims involving the United States Government." 61 FR 4729 (February 7, 1996). The Order mandates *inter alia*, reforms in the methods by which attorneys for the government conduct discovery, seek sanctions, and attempt to settle cases. The Order applies to litigation begun on or after May 6, 1996, and supersedes guidelines (58 FR 6015, January 25, 1993) promulgated under Executive Order No. 12778 (56 FR 55195, October 25, 1991).

The Order authorizes the Attorney General to issue guidelines carrying out the Order's provisions on civil and administrative litigation. Final guidelines can most usefully be issued, however, if they incorporate comments from agencies after they have had experience in applying the Order. That experience will offer valuable insight into how the final guidelines can best implement the Order.

Therefore, this memorandum provides interim guidelines for implementing the Order's provisions governing the conduct of civil litigation by the United States Government. Agencies are requested to provide comments on or before October 20, 1997 concerning their experience in carrying out the Order and their recommendations for revising this interim guidance. In developing comments, agencies should also consider, where appropriate, their experience under Executive Order No. 12778 and its implementing civil litigation guidelines. Comments should be sent to Colonel Richard D. Rosen, who has been designated the Justice Department's coordinator for implementing the Order. Each agency should designate its own coordinator for implementing the Order.

Pre-filing Notice of a Complaint

[Section 1(a)]

The objective of section 1(a) of the Order is to ensure that a reasonable effort is made to notify prospective disputants of the government's intent to sue, and to provide disputants with an opportunity to settle the dispute without litigation. "Disputants" means persons from whom relief is to be sought by the government in a contemplated civil action.

Section 1(a) requires that either the agency or litigation counsel notify each disputant of the government's contemplated action, unless an exception to the notice requirement (set forth in section 8(b) of the Order) applies.

Under section 1(a), a reasonable effort to notify disputants and to attempt to

achieve a settlement may be made either by the referring agency in administrative or conciliation processes or by litigation counsel. For example, many debt collection cases, tax cases, and non-monetary disputes are the subject of extensive agency efforts to notify the other party or parties and to resolve the dispute before litigation. If the referring agency has provided notice, it should supply documentation of the notice to litigation counsel. Such efforts by the agency may satisfy the requirements of section 1(a). In those cases, litigation counsel need not repeat the notice, although litigation counsel should consider whether additional notice may be productive (for example, if a substantial period has elapsed since the prior notice).

The section requires a "reasonable" effort to provide notification and to attempt to achieve a settlement. The timing, content, and means of a "reasonable" effort depend upon the particular circumstances. Litigation counsel normally has the discretion to determine which is reasonable under the circumstances of each case. Unless notice is not required because one of the exceptions set forth in section 8(b) of the order applies, however, complete failure to make an effort is not "reasonable."

If pre-complaint settlement efforts by government counsel require information in the possession of disputants, litigation counsel or client agency counsel may request such information from such disputants before or during settlement efforts. If disputants refuse, or fail, to provide such information upon request within a reasonable time, government counsel shall have no further obligation to attempt to settle the case before filing suit.

Executive Order No. 12988 expressly exempts from the notice provision: (1) Actions to seize or forfeit assets subject to forfeiture or actions to seize property; (2) bankruptcy, insolvency, conservatorship, receivership, or liquidation proceedings; (3) cases in which assets that are the subject of the action or that would satisfy the judgment are subject to flight, dissipation, or destruction; (4) cases in which the disputant is subject to flight; (5) cases in which litigation counsel determines that "exigent circumstances" make providing notice impractical or that such notice would otherwise defeat the purpose of the litigation, such as actions seeking temporary restraining orders or preliminary injunctions; and (6) those limited classes of cases where the Attorney General determines that providing notice would defeat the purposes of the litigation.

"Exigent circumstances" include, but are not limited to, statute of limitations or laches concerns, prior dealings with the same party suggesting that notice would be futile, attempts by the disputant to avoid service or to hide or dissipate assets, and cases where immediate action—such as injunctive relief—is required to prevent imminent and irreparable harm so as to preclude notice and discussion before filing.

The Attorney General delegates to the Assistant Attorneys General her authority under section 8(b) to exclude classes or types of cases from the notice provision.

The Department of Justice retains authority to approve or disapprove settlements proposed by the client agency or litigation counsel consistent with existing law, guidelines, and delegations. The Order confers no litigating or settlement authority on agencies beyond any authority existing under law or provided for by an explicit agreement with the Department.

Settlement Conferences

[Section 1(b)]

Section 1(b) of the Order requires litigation counsel to evaluate the possibilities of settlement as soon as adequate information is available to permit an accurate evaluation of the government's litigation position. Thereafter, litigation counsel has a continuous obligation to evaluate settlement possibilities and to initiate a settlement conference when settlement discussions are appropriate.

Under section 1(b), litigation counsel shall evaluate settlement possibilities at the outset of the litigation. Litigation counsel shall thereafter, and throughout the course of the litigation, make reasonable efforts to settle the litigation, including by offering to participate in, or moving the court for, a settlement conference. Litigation counsel should determine, however, the most appropriate timing for a settlement conference consistent with the goal of promoting just and efficient resolution of civil claims by avoiding unnecessary delay and cost. To that end, and in keeping with section 1(f) of the Order ("Improved Use of Litigation Resources"), early filing of motions that may resolve the litigation is encouraged. In those cases, litigation counsel may initiate settlement conference efforts after resolution of dispositive motions, thereby avoiding the cost and delay associated with an unnecessary settlement conference.

Before any settlement conference, litigation counsel should consult both with the client agency and with his or her supervisor regarding appropriate terms of settlement. At the conference, litigation counsel should clearly state the terms upon which litigation counsel is prepared to recommend that the government conclude the litigation, but normally should not be expected to have the authority to bind the government finally. See Fed. R. Civ. Proc. 16(c) advisory committee's note ("[p]articularly in litigation in which government agencies * * * are involved, there may be no one with on-the-spot settlement authority, and the most that should be expected is access to a person who would have a major role in submitting a recommendation to the body or board with ultimate decision-making responsibility"). Some courts, however, by local rule or by order, may require that persons with full settlement authority be present at settlement conferences. Nothing in the Order should be construed to relieve litigation counsel or agencies of their obligation to comply with such a requirement. See Executive Order No. 12988, § 9.

Final settlement authority is governed by regulations and may be exercised only by the officials designated in those regulations. The Order does not change regulations governing final settlement authority.

The Order does not constrain the government's discretion to determine which government counsel will represent the government at a settlement conference. Normally, a trial attorney assigned to the case will attend on behalf of the United States. Section 1(b) does not permit settlement of litigation on terms that are not in the interest of the government; while "reasonable efforts" to settle are required, no unreasonable concession or offer should be extended. The section also does not countenance evasion of established agency procedures for development of litigation positions.

Alternative Methods of Resolving the Dispute in Litigation

[Section 1(c)]

Section 1(c) of the Order encourages prompt and fair settlement of disputes. Section 1(c)(1) states: "Whenever feasible, claims should be resolved through informal discussions, negotiations, and settlements rather than through utilization of any formal court proceeding. Where the benefits of alternative dispute resolution ("ADR") may be derived, and after consultation with the agency referring the matter,

litigation counsel should suggest the use of an appropriate ADR technique to the parties."

The Order recognizes that ADR is another tool to resolve disputes, subject to any applicable approval process. Specifically, ADR can be used to: expedite negotiations and hence settlement, obtain better settlements for the government, and obtain settlements in cases that would otherwise not settle. Moreover, ADR can be employed to resolve the issues underlying the dispute in the litigation and thus resolve future cases. ADR can also serve as an effective case management tool. ADR can help streamline discovery or be used to obtain discovery. It can also eliminate or narrow issues. Above all, however, ADR allows the parties and the government to fashion their own procedures for resolving disputes and their own resolutions of these disputes—creative resolutions beyond what courts can offer. In some cases, courts may even be able to dictate the use of alternative procedures in an attempt to resolve disputes without trial. See generally Fed. R. Civ. P. 16(c)(9) and note.

When considering ADR, litigation counsel should confer with his or her supervisor and with the referring agency; litigation counsel may also wish to confer with Senior Counsel for ADR at the Department of Justice. As with settlement conferences, litigation counsel should consider ADR as soon as adequate information is available to evaluate the litigation and settlement, as well as throughout the course of the litigation. Counsel may consider the full panoply of alternative procedures, including binding arbitration, when contemplating ADR. When considering binding arbitration, litigation counsel should consult their supervisors, the affected agency or agencies, and any applicable guidance on binding arbitration as may hereafter be promulgated. The Order's encouragement of the use of ADR does not, of course, authorize litigation counsel to agree to resolve a dispute in any manner or on any terms not in the interest of the United States.

Section 9 of the Administrative Dispute Resolution Act of 1996, Pub. L. No. 104–320, 110 Stat. 3879, 3872 (the "Act"), permanently reauthorized the Administrative Dispute Resolution Act of 1990. Section 8(c) of the Act requires agencies to promulgate, "in consultation with the Attorney General," guidelines on the appropriate use of binding arbitration to resolve *administrative* disputes. Nothing in these Civil Litigation guidelines are intended to affect or modify agency responsibilities under the Act or the agency's implementing guidelines.

The costs associated with ADR, such as the neutral arbitrator's fee and related expenses, may be payable as ordinary costs of litigation out of general litigation funds, out of funds designated for ADR, or out of funds provided by the agency, as appropriate.

Review of Proposed Document Requests

[Section 1(d)(1)]

Under section 1(d)(1) of the order, litigation counsel shall pursue document discovery only after complying with review procedures designed to ensure that the proposed document discovery is reasonable under the circumstances of the litigation.

When an agency's attorneys act as litigation counsel, the agency must establish a coordinated procedure for the conduct and review of document discovery, including review by a senior lawyer, before service or filing of any request for document discovery. The senior lawyer is to determine whether the proposed discovery meets the substantive criteria of section 1(d)(1). Each agency must designate senior lawyers to perform this review function. While the Order does not mandate a particular title, level, or grade of senior lawyer, the persons designated should have both substantial experience in document discovery and supervisory authority. If not already designated, such designations should be made forthwith. If a designated senior lawyer is personally preparing the document discovery, further oversight is not necessary.

The designated senior lawyer reviewing document discovery proposals is to determine whether the requests are cumulative or duplicative, unreasonable, oppressive, or unduly burdensome or expensive, taking into account the requirements of the litigation, the amount in controversy, the importance of the issues at stake in the litigation, and whether the documents can be obtained in a manner that is more convenient, less burdensome, or less expensive to the government or opposing parties than pursuit of the documentary discovery as proposed.

In conducting this review of document requests, the senior lawyer is entitled to rely in good faith upon factual representations of agency counsel and the trial attorney. Review by a senior lawyer should not deter the pursuit of reasonable document discovery in accord with the procedures established in the Order.

Discovery Motions

[Section 1(d)(2)]

Pursuant to section 1(d)(2) of the order, litigation counsel shall not ask the court to resolve a discovery dispute or impose sanctions for discovery abuses unless he or she first attempts to resolve the dispute with opposing counsel or *pro se* parties. If litigation counsel files a discovery motion, he or she must represent in the motion that pre-motion efforts at resolution were unsuccessful or impractical. See Fed. R. Civ. P. 26 (c), 37(a)(2)(A). Litigation counsel, however, should not compromise a discovery dispute unless the terms of the compromise are reasonable.

Sanctions Motions

[Section 1(e)]

Where appropriate, litigation counsel shall take steps to seen sanctions against opposing counsel and opposing parties for improper or abusive litigation practices, subject to the procedures set forth in section 1(e) of the Order regarding agency review of proposed motions for sanctions. See, e.g., Fed. R. Civ. P. 11(c), 37(a)(4). Before filing a motion for sanctions, litigation counsel should normally attempt to resolve disputes with opposing counsel. Sanctions motions should not be used as vehicles to intimidate or coerce counsel when the dispute can be resolved on a reasonable basis.

To implement section 1(e)(2) of the Order, each agency with attorneys acting as litigation counsel must designate a "sanctions officer" to review motions for sanctions that litigation counsel prepare for filing, as well as motions for sanctions filed against litigation counsel, the United States, its agencies, or its officers. The section requires that the sanctions officer or his or her designee "shall be a senior supervisory attorney within the agency, and shall be licensed to practice law before a State court, courts of the District of Columbia, or courts of any territory or Commonwealth of the United States." The sanctions officer or his or her designee should be a senior lawyer with substantial litigation experience and supervisory authority. By way of illustration, rather than limitation, a Senior Executive Service level attorney with substantial litigation experience should satisfy these criteria.

Persons acting as sanctions officers within each agency should be designated specifically by title or name. If not already designated, agencies with attorneys acting as litigation counsel shall designate sanctions officers

forthwith. Cabinet or subcabinet officers, such as Assistant Attorneys General or Assistant Secretaries, officials or equivalent rank, the United States Attorneys are authorized to designate sanctions officers meeting the criteria of this Memorandum.

Improved Use of Litigation Resources

[Section 1(f)]

Litigation counsel must use efficient case management techniques and make reasonable efforts to expedite civil litigation, as set forth in section 1(f) of the Order. Litigation counsel must move for summary judgment where appropriate to resolve litigation or narrow the issues to be tried. This rule is not intended to suggest, however, that summary judgment should be sought prematurely in a manner that will permit opposing counsel to defeat summary judgment.

Litigation counsel are also to make reasonable efforts to stipulate to facts that are not in dispute, and must move for early trial dates where practicable. Referring agencies should identify facts not in dispute and inform litigation counsel of the lack of dispute and the basis for concluding that there is no factual dispute, as soon as it is feasible to do so. Litigation counsel should seek agreement to fact stipulations as early as practicable, taking into account the progress of discovery and their sound judgment as to the most appropriate and efficient timing for such stipulations.

At reasonable intervals, litigation counsel shall review and revise submissions to the court to ensure that they are accurate and that they reflect any narrowing of issues resulting from discovery or otherwise, and shall apprise the court and all counsel accordingly. Litigation counsel also should make an effort, where appropriate, to involve the court early in case management and issue-focusing. This effort may include apprising the court, during conferences under Federal Rule of Civil Procedure 16, of core issues and contemplated methods of resolution, such as settlement, ADR, stipulation, dispositive motion, or trial. Counsel must consistently review and revise pleadings and other filings to ensure that unmeritorious threshold defenses and jurisdictional arguments that result in unnecessary delay are not raised, bearing in mind counsels obligation to bring defects in jurisdiction to the court's attention.

These requirements are not intended to suggest that litigation counsel should concede facts or issues as to which there is reasonable dispute or uncertainty, or which cannot be corroborated.

Principles to Promote Just and Efficient Administrative Adjudications

[Section 4]

Section 4 of the Order requires agencies to implement the recommendations of the Administrative Conference of the United States, entitled "Case Management as a Tool for Improving Agency Adjudication" (1 CFR § 305.86–7 (1991)), to the extent reasonable and practicable and not in conflict with any other provision of the Order. Proceedings within the ambit of section 4 are adjudications before a presiding officer or official, including, but not limited to, an administrative law judge.

The Order does not impose the requirements of section 1 on such agency proceedings; however, applying the relevant provisions of section 1 would have a salutary effect and would be in concert with the reforms required by the Order. Agencies are encouraged to extend the application of section 1 to administrative adjudications where appropriate (for example, where an evidentiary hearing is required by law and where, in litigation counsel's best judgment, such extension is reasonable and practicable).

In addition, agencies are to review their administrative adjudicatory processes and develop specific procedures to reduce delay in decision-making, facilitate self-representation where appropriate, expand non-lawyer counseling and representation where appropriate, and invest maximum discretion in fact-finding officers to encourage appropriate settlement of claims as early as possible. Agencies also shall review their administrative adjudicatory processes to identify any bias on the part of decision-makers that results in injustice to persons who appear before agency administrative adjudicatory tribunals; regularly train fact-finders, administrative law judges, and other decision-makers to eliminate bias; and establish appropriate mechanisms to receive and resolve complaints of bias.

Agencies should develop effective and simple methods—including through use of electronic technology–to educate the public about agency benefits and claims policies and procedures.

Although no specific guidelines are being issued at this time for section 4, they may be issued in the future if they become necessary or appropriate.

Exceptions to the Executive Order

The Order does not apply either to criminal matters or to proceedings in foreign courts, and shall not be construed to require or authorize litigation counsel or any agency to act contrary to applicable law. Sections 8(a) and 9. Attorneys for the federal government are directed to follow the requirements of the Order unless compliance would be contrary to the Federal Rules of Civil Procedure, Tax Court Rules of Practice and Procedure, federal or state law, other applicable rules of practice or procedure, or court order. Section 9.

The Order defines the term "agency" as the term "executive agency" is defined in 5 U.S.C. § 105. Section 6(a). Thus, agencies and litigation counsel, including private attorneys representing the government, are subject to the provisions of the Order, even where the agency is considered "independent" for other purposes. The President has the authority to supervise and guide the exercise of core executive functions such as litigation by government agencies.

The Order does not compel or authorize disclosure of privileged information or any other information the disclosure of which is prohibited by law. Section 10. The Order and these guidelines are solely intended to improve the internal management of the executive branch. Neither the Order nor these guidelines should be construed to create any right or benefit, substantive or procedural, enforceable against the United States, its agencies, its officers, or any other person. Further, neither the order nor these guidelines shall be construed to create any right to judicial review of the compliance or noncompliance of the United States, its agencies, its officers, or any other person with either the Order or these guidelines. Finally, nothing in the Order or these guidelines shall be construed to obligate the United States to accept a particular settlement or resolution of a dispute, to alter its standards for accepting settlements, to forego seeking a consent decree or other relief, or to alter any existing delegation of settlement or litigating authority. Section 7.

Dated: July 16, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–19232 Filed 7–21–97; 8:45 am]

BILLING CODE 4410–12–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby

given that a proposed consent decree in *United States* v. *Copper Range Company*, Civil Action No. 2:97–CV–204, was lodged on June 17, 1997 with the United States District Court for the Western District of Michigan. The proposed consent decree resolves claims against Defendant Copper Range Company pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. ("CERCLA") in connection with the Torch Lake Superfund site in Houghton County, Michigan. The settlement requires the defendant to pay $325,000.

The consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. § 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973 ("RCRA").

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. *Copper Range Company*, Civil Action No. 2:97–CV–204, and the Department of Justice Reference No. 90–11–3–1026. Commenters may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the Office of the United States Attorney, Western District of Michigan, The Law Building, 330 Ionia Avenue, NW., 5th Floor, Grand Rapids, Michigan, 49503; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $8.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–19170 Filed 7–21–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7 and 42 U.S.C. § 9622(d)(2), notice is hereby given that a proposed Consent Decree in *United States* versus *Stanley and Shirley Hodes*, Civil Action No. 95–1813–ST, was lodged on July 2, 1997 with the United States District Court for the District of Oregon. The complaint alleged that Defendants Stanley and Shirley Hodes are liable as owners of the Allied Plating Site in Portland, Oregon. Pursuant to Section 107(a) (1) and (2) of the CERCLA, 42 U.S.C. § 9607(a)(4)(A), the complaint also alleges that the Environmental Protection Agency ("EPA") incurred costs for response actions set at and in connection with the Site.

The proposed Consent Decree provides that the Defendants will pay $300,000 to the United States for the past investigation and removal costs incurred and paid by EPA. The proposed Consent Decree also provides that the United States covenants not to sue the defendants under both Sections 107(a) and 113(g) of CERCLA, 42 U.S.C. § § 9607(a) and 9613(g).

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *Stanley and Shirley Hodes*, DOJ Ref. #90–11–3–276A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 888 S.W. 5th Avenue, Suite 1000, Portland, Oregon 97204–2024; the Region X Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle Washington 98101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 97–19171 Filed 7–21–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Section 122(d) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9622(d), and the policy of the United States Department of Justice, as provided in 28 C.F.R. § 50.7, notice is hereby given that on July 10, 1997, a proposed Consent Decree in *United States* v. *Pepper's Steel & Alloys, Inc.*, Civ No. 85–0571–EDB–DAVIS, was lodged with the United States District Court for the Southern District of Florida. This Consent Decree concerns the Pepper's Steel Superfund Site in Medley, Florida. The Site, which was contaminated with lead and PCBs, has been fully remediated by Florida Power & Light under a separate Decree. Under the proposed Decree, the settling defendants, who are the owners of the Site, agree to the entry of a joint and several judgment against them for $6,194,317.90, which is the amount of the United States' unreimbursed response costs, including interest. That judgment will be satisfied, to the extent possible, by the Landowners' payment to the United States of (1) $962,500 from several previous settlements with some of their insurers, (2) 50% of the proceeds from future settlements with their remaining insurance carriers, and (3) 50% of the proceeds from their sale or lease of the Site, which they still own. The Landowners also agree to restrictions on the use of the Site that will ensure the protection of the completed remedy.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC, 20044, and should refer to *United States* v. *Pepper's Steel & Alloys, Inc.*, D.J. Ref. 90–11–2–62A.

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney for the Southern District of

Florida, 99 NE. 4th Street (2) the U.S. Environmental Protection Agency, Region 4, 100 Alabama Street, SE., Atlanta, Georgia; and (3) the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (telephone (202) 624–0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. For a copy of the Consent Decree with attachments please refer to the referenced case and enclose a check for $12.50 ($.25 per page reproduction charge) payable to "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 97–19169 Filed 7–21–97; 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

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Harold Shane*, Civil Action No. C–3–89–383, was lodged on May 12, 1997 with the United States District Court for the Southern District of Ohio. The proposed consent decree will resolve claims against twenty three parties for the recovery of response costs expended by the Environmental Protection Agency at the Arcanum Iron and Metal Superfund Site in Arcanum, Ohio pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* ("CERCLA"). EPA has determined that each of the settling parties qualifies for *de minimis* treatment in accordance with CERCLA Section 122(g), 42 U.S.C. § 9622(g). The settlement requires the settling parties to make payments totaling $462,480.

The consent decree includes a covenant not to sue by the United States under Section 106 and 107 of CERCLA, 42 U.S.C. § 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973 ("RCRA").

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Harold Shane*, Civil Action No. C–3–89–383, and the Department of Justice Reference No. 90–11–3–504. Commenters may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the Office of the United States Attorney, Southern District of Ohio, 200 West Second Street, Dayton, Ohio, 45402; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, NW., 45th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $10.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–19172 Filed 7–21–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 139–97]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to establish and publish a new system of records to be maintained by the Immigration and Naturalization Service (INS).

The Immigration and Naturalization Service "Designated Entity Information Management System (DEIMS), JUSTICE/INS–021" is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) has been published.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on proposed new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the proposal.

Therefore, please submit any comments by August 21, 1977. The public, OMB, and the Congress are invited to send written comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, DC. 20530 (Room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on this system.

Dated: July 1, 1997.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/INS–021

SYSTEM NAME:

The Immigration and Naturalization Service (INS) Designated Entity Information Management System (DEIMS).

SYSTEM LOCATION:

Headquarters, Regional, District, and other INS file control offices in the United States as detailed in JUSTICE/INS–999.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals applying for certification from INS as designated fingerprint service providers (DFS), including those who have in fact been certified as DFS providers in accordance with the terms of an application/agreement (Form I–850). Where application/agreement is made on behalf of such individuals by their employer, individuals covered by the system may also include the employer, owner, and manager (or other individual acting in a similar capacity).

B. Individuals contracted to inspect individuals and/or entities which provide such fingerprint services to INS.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. The computerized system contains personal identification data such as the name, social security number, date of birth, place of birth, and position of each owner/employee of a DFS.

B. The computerized system contains personal identification data such as the name, social security number, former agency affiliation, Inspector ID number, and level of security clearance of each inspector employed under contract to inspect DFS providers.

C. The hard copy DFS file includes evidence of United States citizenship or lawful permanent resident status for all DFS employees, evidence of completion of the required fingerprint training for such employees, and attestation to compliance with the requirements of 8 CFR 103.2(e) (Form I–850A).

AUTHORITY FOR MAINTENANCE OF RECORDS:

(1) Sections 103 and 290 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 8 U.S.C. 1360), and the regulations pursuant thereto; and (2)8 CFR part 2.

PURPOSE(S):

A contractor maintains on behalf of INS an information database of individuals/entities certified by INS as DFS providers. The contractor is also required to provide inspectors to conduct inspections of DFS providers and to include information on such inspectors in the database. (See Categories of Records in the System.) The system is used by INS to identify these individuals and to monitor their training/qualifications and performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. Where the record (whether on its face or in conjunction with other information) indicates a violation or potential violation of law (whether the violation or potential violation is civil, criminal, or regulatory in nature), to the appropriate Federal, State, foreign, or local agency charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

B. A record, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which INS is authorized to appear when any of the following is a party to litigation and such records are determined by INS to be arguably relevant to the litigation: (i) INS, or any subdivision thereof, or (ii) any employee of INS in his or her official capacity, or (iii) any employee of INS in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (iv) the United States, where INS determines that the litigation is likely to affect it or any of its subdivisions.

C. To a Federal, State, or local government agency in response to its request, in connection with the hiring or retention by such an agency of an employee, the issuance of a security clearance, the reporting of an investigation of such an employee, the letting of a contract, or the issuance of a license, grant, loan, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

D. To a Federal, State, or local government agency maintaining civil, criminal, or other relevant law enforcement information, or other pertinent information such as current licenses, if necessary to obtain information relevant to an INS decision concerning the certification of a DFS employee (employer/owner), and/or the issuance of a security clearance, and/or the conduct or reporting of an investigation of a DFS employee or inspector.

E. To the contractor, and/or the contract inspector, acting on INS behalf (1) to perform contractual responsibilities, or (2) to elicit information to enable INS to perform its adjudicative and oversight responsibilities.

F. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

G. To a Member of Congress, or staff acting on the Member's behalf, when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

H. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents are stored in file folders. Those records which can be accessed electronically are stored in a data base on magnetic disc tape.

RETRIEVABILITY:

These records are indexed and retrieved by name and/or social security number of the employee of the designated fingerprint service, and by name and/or social security number of the contract inspector.

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to premises is by official identification. All records are stored in spaces which are locked during non-duty office hours. Many records are stored also in locked cabinets or machines during non-duty office hours. Access to automated records is controlled by passwords and name identifications. In addition, contractual provisions require the contractor to adopt similar safeguards to protect these records from unauthorized disclosure. In order to ensure compliance, the contractor is subject to on-site inspection by INS.

RETENTION AND DISPOSAL:

The following INS proposal for retention and disposal is pending approval of the Department of Justice and by the Archivist of the United States. The electronic DEIMS record will be destroyed two years after the program ends. Hardcopy records (i.e., Forms I–850 and I–850A) will be destroyed two years after the DEIMS program ends or three years after separation or transfer of the employee/inspector, whichever comes first.

SYSTEM MANAGER(S) AND ADDRESS:

The Servicewide system manager is the Assistant Commissioner, Adjudications and Nationality, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

Address inquires to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the appropriate INS office identified in JUSTICE/INS–999, or to the INS FOIA/PA Officer at 425 I Street NW., Washington, DC 20536.

RECORD ACCESS PROCEDURES:

Make all requests for access in writing to the FOIA/PA Officer at the appropriate INS office identified in JUSTICE/INS–999. Such request may be submitted either by mail or in person. If a request for access is made by mail, the envelope and letter shall be clearly marked "Privacy Act Request." Include a description of the record sought, and provide name, social security number, and any other information which may assist in identifying and locating the record. In addition, provide a return address for transmitting the records.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information to the FOIA/PA Officer at the appropriate INS office identified in JUSTICE/INS–999. State clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Request." Similarly, identify the record in the same manner as described under "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Individuals covered by the system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 97–19173 Filed 7–21–97; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Public Comments and Plaintiff's Response

United States of America and the State of Colorado v. Vail Resorts, Inc., Ralston Resorts, Inc., and Ralston Foods, Inc.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that Public Comments and Plaintiff's Response have been filed with the United States District Court for the District of Colorado in *United States and the State of Colorado* v. *Vail Resorts, Inc., Ralston Resorts, Inc., and Ralston Foods, Inc.*, Civ. Action No. 97–B–10.

On January 3, 1997, the United States and the State of Colorado filed a Complaint seeking to enjoin a transaction in which Vail Resorts, Inc. ("Vail") agreed to acquire Ralston Resorts, Inc. ("Ralston"). Vail and Ralston are the two largest owner/operators of ski resorts in Colorado, and this transaction would have combined five ski resorts in Colorado. The Complaint alleged that the proposed acquisition would substantially lessen competition in providing skiing to Front Range Colorado skiers in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

Public comment was invited within the statutory 60-day comment period. Such comments, and the responses thereto, are hereby published in the **Federal Register** and filed with the Court. Brochures, newspaper clippings and miscellaneous materials appended to the Public Comments have not been reprinted here; however they may be inspected with copies of the Complaint, Stipulation, proposed Final Judgment, Competitive Impact Statement, Public Comments and Plaintiff's Response in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530 (telephone (202) 514–2481) and at the office of the Clerk of the United States District Court for the District of Colorado, 1929 Stout Street, Room C–145, Denver, Colorado 80294.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

United States District Court, District of Colorado, Lewis T. Babcock, Judge

[Civil Action No. 97–B–10]

United States of America and the State of Colorado, Plaintiffs, v. Vail Resorts, Inc., Ralston Resorts, Inc. and Ralston Foods, Inc., Defendants.

United States' Response to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (the "Tunney Act"), the United States responds to the public comments received regarding the proposed Final Judgment in this case.

I. Background

The United States and the State of Colorado filed a civil antitrust Complaint on January 3, 1997, alleging that the proposed acquisition of Ralston Resorts, Inc. ("Ralston Resorts") by Vail Resorts, Inc. ("Vail Resorts") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleged that Vail Resorts and Ralston Resorts are the two largest owner/operators of ski resorts in Colorado, and that the proposed transaction would combine under common ownership several of the largest ski resorts in this region. In particular, the acquisition would increase substantially the concentration among ski resorts to which several hundred thousand skiers residing in Colorado's "Front Range"—the major population areas along Interstate 25—can practicably go for day or overnight ski trips. As a result, this acquisition threatened to raise the price of, or reduce discounts for, skiing to Front Range Colorado consumers in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States and the State of Colorado also filed a proposed settlement that would permit Vail Resorts to complete its acquisition of Ralston Resorts, but requires a divestiture that would preserve competition for skiers in the Front Range. This settlement consists of a Stipulation and proposed final judgment.

The proposed final judgment orders the parties to sell all of Ralston Resorts' rights, titles, and interests in the Arapahoe Basin ski area in Summit County, Colorado to a purchaser who has the capability to compete effectively in the provision of skiing for Front Range Colorado skiers. The parties must complete the divestiture of this ski area and related assets within five (5) days after the entry of the final judgment, in accordance with the procedures specified in the proposed final judgment, unless an extension is granted pursuant to the final judgment. The stipulation and proposed final judgment also impose a hold separate agreement that requires defendants to ensure that, until the divestiture mandated by the final judgment has been accomplished, Ralston Resorts' Arapahoe Basin operations will be held separate and apart from, and operated independently of, Vail Resorts' and Ralston Resorts' other assets and businesses. Defendants must hire, subject to the prior approval of the United States, a person to serve as chief executive officer or Arapahoe Basin, who shall have complete authority to operate Arapahoe Basin in the ordinary course of business as a separate and independent business entity.

A Competitive Impact Statement ("CIS"), explaining the basis for the complaint and proposed consent decree in settlement of the suit, was filed on January 22, 1997 and subsequently published for comment, along with the stipulation and proposed final judgment, in the **Federal Register** on February 3, 1997 (62 FR 5037 through 5046), as required by the Tunney Act. Notice was also published in the newspaper, as required by the Tunney Act. The CIS explains in detail the provisions of the proposed final judgment, the nature and purpose of these proceedings, and the proposed acquisition alleged to be illegal.

The United States, the State of Colorado, Vail Resorts, and Ralston Resorts have stipulated that the proposed final judgment may be entered after compliance with the Tunney Act. The United States and defendants have now, with the exception of publishing the comments and this response in the **Federal Register**, completed the procedures the Tunney Act requires before the proposed Final Judgment can be entered.[1] The United States received 14 public comments.

The comments, which are collected in the appendix to this Response,[2] came from a variety of sources, such as representatives of other ski areas and

[1] The United States will publish the comments and this response promptly in the **Federal Register.** It will provide the Court with a certificate of compliance with the requirements of the Tunney Act and file a motion for entry of final judgment once publication takes place.

[2] The comments have been numbered, and a log prepared. See Appendix. For ease of reference, the Untied States in this Response refers to individual comments by the log number assigned to the comment.

individuals such as skiers, property owners, local business persons, local officials, and others.

II. Response to Comments

A. Overview

Most comments are not supportive of the proposed final judgment principally for the reason that the commenters do not believe that the divestiture of Arapahoe Basin ski area acts as a sufficient check on the combined Vail Resorts and Ralston Resorts. Specifically, these comments claim that:

1. The government did not define the market properly in analyzing the acquisition;
2. Data used in analyzing this acquisition are flawed; and
3. Divestiture of Arapahoe Basin is an inadequate remedy.

The comments in opposition to the proposed final judgment are addressed in the following sections of this response and are arranged by the antitrust issues they raise.[3] For each issue, we discuss briefly the standard for merger analysis generally, what the analysis was in this case, what the relevant comments were and the response to them.

As an initial matter, we note that some commenters (e.g. Comments 1 and 7) questioned the adequacy of the investigation. This investigation was conducted like any full-scale merger investigation. The Department and the State of Colorado reviewed thousands of documents, not only from Vail and Ralston but also from other ski resorts; interviewed numerous business people at other Colorado ski resorts; interviewed and deposed Vail and Ralson officials; and contacted numerous groups and individuals, including substantial numbers of skiers, government officials, and others who might have insight into skiing in Colorado. In addition, the Department evaluated substantial amounts of sales, price, and survey data. The investigation lasted for several months.

B. Downhill Skiing Is the Relevant Product Market for Antitrust Purposes

The Antitrust Division's review of mergers is governed by the Clayton and Sherman Acts, judicial precedent, and the Horizontal Merger Guidelines issued jointly by the Department and the Federal Trade Commission in 1992 (and slightly revised in 1997). The first step is defining a relevant product market. In this case the Complaint alleged that downhill skiing is the relevant product market. The Department's investigation showed that if prices at ski resorts went up a small but significant amount after the merger (for example, by five percent without inflation or any quality improvements), people would continue to ski rather than switch to other recreational activities. Typical downhill skiers would not switch to an activity such as ice skating, for example, just because the price of a downhill ticket increases by a small amount. No commenter disagreed with this relevant product market analysis.

C. The Relevant Geographic Market Is for Front Range Day and Weekend Skiers

The relevant standard for defining a relevant geographic market is set forth below:

> [I]f a hypothetical monopolist can identify and price differently to buyers in certain areas ("targeted buyers") who would not defeat the targeted price increase by substituting to more distant sellers in response to a "small but significant and nontransitory" price increase for the relevant product, * * * then a hypothetical monopolist would profitably impose a discriminatory price increase. * * * The Agency will consider * * * geographic markets consisting of particular locations of buyers for which a hypothetical monopolist would profitably and separately impose at least a "small but significant and nontransitory" increase in price.

Horizontal Merger Guidelines § 1.22; see also *Brown Shoe* v. *United States,* 370 U.S. 294 (1962).

Ski resorts may compete in several geographic markets at the same time. They may compete in local markets for day skiers, larger markets for weekend skiers, and quite large markets for extended vacations of destination skiers. The Department's investigation revealed that the defendants' ski resorts are able to identify different groups of skiers that ski at their resorts and to set prices differently for different groups. In the Guidelines' terms, these are "targeted buyers." "Destination" skiers, or those that come from outside of Colorado (and often outside of the United States), usually travel a significant distance to arrive at the ski resort and then ski for extended periods of time. Destination skiers usually are attracted to the resort by both the skiing itself and the resort's amenities. The defendants market to destination skiers by advertising outside of the Front Range area of Colorado and emphasizing package pricing which typically includes one or more of lift tickets, lodging, and airfare. Advertisements targeted at destination skiers also tend to emphasize resort amenities. The Complaint did not allege a violation in a market for destination skiers.

Front Range skiers, in contrast, come from the geographic area lying just east of the Rocky Mountains and usually take day or overnight ski trips in Colorado. Front Range skiers are typically interested in the mountain and skiing facilities more than resort amenities. The defendants advertise to Front Range skiers in the Front Range: For example, through direct mail within certain zip codes and through local newspapers and billboards. Front Range advertising emphasizes discount prices on lift tickets to Front Range skiers. Front Range skiers usually drive to the ski resorts. Front Range skiers are more constrained by distance than destination skiers in choosing among resorts and are not willing to travel an unlimited distance to ski.

The defendants' resorts use different pricing strategies depending on whether they are selling tickets to destination skiers or to Front Range skiers. The resorts sell lift tickets to destination skiers through ticket windows, as well as including tickets as part of destination package deals. In selling tickets to Front Range skiers, in contrast, the defendants' resorts use off-mountain retailers located within the Front Range, where tickets are discounted below the ticket window price. The ski resorts also offer discount coupons to Front Range skiers and frequent skier cards that provide discounts off of the window price and sometimes give a free day of skiing after a certain number of paid days of skiing. The defendants attempt to limit the availability to destination skiers of those promotions targeted at Front Range skiers. Because the defendants can identify and use different marketing and sales strategies for destination and Front Range skiers, the average lift ticket prices that the defendants charge to Front Range skiers are different from the prices that they charge to destination skiers.

Because Vail Resorts and Ralston Resorts can offer different prices in the different markets for destination and Front Range skiers, each market is

[3] This Response addresses all of the antitrust issues that are raised in the comments related to the substance of the Compliant and proposed Final Judgment. A number of comments raised issues that are not related to standard merger analysis and do not raise issues under the Tunney Act. For example, a comment expressed concern about the "Vail mentality" taking over in Summit County. Whatever the validity of such a concern, it is not one to which a Tunney Act response can be made—such a "mentality" could have been adopted by any owner for any ski resort at any time. Only changes that are directly and uniquely the result of the merger would be cognizable in an antitrust action. Also in this category are complaints about the demise of multi-mountain tickets (Ski-the-Summit), which the commenters claim occurred before the merger, and comments about the atmosphere, premerger prices, or management style of Vail Resorts. These views may be valid or not, but they are not antitrust issues raised by this merger.

appropriate for antitrust analysis. If Vail Resorts could impose a "small but significant and nontransitory" price increase on Front Range skiers after the merger (for example, five percent) without causing a sufficient number of Front Range skiers to switch to ski resorts in other geographic areas and defeat the price increase, then the appropriate geographic market includes these ski resorts.

It is in the market for Front Range skiing that the Department and the State of Colorado alleged likely anticompetitive harm from the proposed transaction in this case. Front Range skiers typically drive to their ski resort and limit the resorts they use for day trips to those which fall within a radius of about two-and-one-half-hour travel time from where they live, and a somewhat larger radius for overnight trips. The most popular of these resorts are located off Interstate 70 west of Denver. The Vail and Ralston resorts are located within this radius. Front Range skiers would not turn to resorts that fall outside of this two-and-one-half-hour radius in sufficient numbers to defeat a small but significant, non-transitory price increase imposed by resorts within this radius.

The investigation by the Department and the State of Colorado revealed that Vail and Ralston resorts compete directly to provide skiing to Front Range Colorado day and overnight skiers. During the 1995–96 ski season, Vail Resorts accounted for approximately 280,000 Front Range skiers days. (A "skier day" is one day or part of a day of skiing for one skier.) This is about a 12 percent share of the Front Range market. Overall, Vail's resorts had over 2.2 million skier days and had revenues of over $140 million. In this same season Ralston Resorts accounted for approximately 600,000 Front Range skiers days, or over 26 percent of the Front Range market. Overall, Ralston's resorts had more than 2.6 million skier days and had revenues of more than $135 million.

The provision of downhill skiing to Front Range residents is therefore a relevant market within the meaning of Section 7 of the Clayton Act, Vail and Ralston resorts compete directly in this market, and as the Complaint alleges, the effect of Vail Resorts' acquisition of Ralston Resorts would be to lessen competition substantially in the provision of skiing to Front Range skiers.

Commenters 1 through 4 suggest that one of the relevant regional geographic markets for purposes of analyzing this proposed acquisition is a local Summit County skier market, and that the Department should have alleged harm to local skiers. The United States and the State of Colorado conducted a thorough investigation of the proposed merger and ultimately filed a complaint that did not allege a violation of the Clayton Act for skiers other than Front Range skiers. In evaluating these comments, it is important first to note that the merger of the Vail and Ralston resorts does not combine any competing ski resorts in Summit County; Keystone, Breckenridge and Arapahoe Basin ski resorts were already under single ownership before this proposed merger, and the Vail resorts are not in Summit County.[4] Indeed, the divestiture relief in the proposed Final Judgment will deconcentrate ownership of ski resorts located in Summit County. More important, however, as discussed in more detail in Section III, the Tunney Act does not contemplate judicial reevaluation of the wisdom of the government's determination of which violations to allege in the Complaint. Thus, the Court may not look beyond the Complaint "to evaluate claims that the government did not make and to inquire as to why they were not made." Microsoft, 56 F.3d at 1459 (emphasis in original); see also Associated Milk Producers, 534 F.2d at 117–18.[5] A possible violation in a Summit County local skier market is a "claim the government did not make."

D. The Proposed Divestiture Solves the Anticompetitive Problem Alleged in the Complaint

The divestiture ordered in the proposed Final Judgment will resolve the substantial increase in concentration that is likely to be brought about by the proposed merger. In analyzing the proposed final judgment, "the court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest." *United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.), *cert. denied*, 114 S. Ct. 487 (1993) (emphasis added, internal quotation and citation omitted). The relief in the proposed Final Judgment is sufficient to preserve competition for Front Range Colorado skiers.

The Complaint alleges that the combination of Vail Resorts and Ralston Resorts would substantially increase concentration in the Front Range skier market, using the Herfindahl-Hirschman Index ("HHI")[6] as a measure of market concentration. The post-merger HHI, based on Front Range skier days derived from surveys of skiers conducted in 1994, 1995, and 1996, would be approximately 2,228 with a change in the HHI of about 643 points. During the 1995–96 skiing season, Vail Resorts accounted for about 12 percent and Ralston Resorts over 26 percent of Front Range skier days. If the proposed acquisition were consummated without divestiture, the combined company would account for over 38 percent of skier days in the Front Range market. The Complaint also alleges that successful entry or expansion in the skiing business is extremely unlikely for the reason that entry is difficult, time consuming and costly. Entry or expansion is unlikely to prevent any harm to competition.

Information about the Front Range Colorado skiing market permitted estimates of the relevant range of likely price increases that could result from the proposed merger without the divestiture of Arapahoe Basin. If the merger were allowed to take place without any divestiture, it was estimated there would be an overall

[4] Thus the merger could affect a possible Summit County market only if significant numbers of such skiers use Vail resorts frequently enough that they are a significant price constraint on Summit County prices, but other out-of-county resorts are not a comparable constraint. This possibility was considered in the investigation, but not accepted, and the theory was not incorporated in the Complaint. It is also worth noting that one commenter (Comment 3 at p. 4) confirmed that most local skiers buy season passes, which means that these skiers are committed to those resorts at which they have bought such passes. For such skiers, competition from Vail is not a significant constraint unless substantial numbers of Summit County skiers are likely to choose a Vail season pass instead of a Ralston season pass, which seems improbable.

[5] In the same vein as the comments about a possible Summit County market are comments about a "Multi-Mountain Ticket market" (Comment 3) (although multi-mountain tickets were considered carefully in analysis of their use in competition among ski resorts in the Front Range skier market); and a "Colorado market" (Comment 3) (although the investigation did consider, and reject, the possibility of an anticompetitive effect in the market for destination ski vacations). Similarly, concern that Vail may dominate a labor market for ski resort employees (Comment 11) is beyond the Complaint.

[6] The Herfindahl-Hirschman Index, or "HHI," is a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated.

average increase in Front Range discounted lift ticket prices on the order of 4%. This is an approximate average of about one dollar per lift ticket for all Front Range customers (considering actual average transaction prices for Front Range skiers, not list (ticket window) prices). It was also estimated that there would be higher price increases at the merging firms' resorts.

The divestiture ordered in the proposed Final Judgment is likely to resolve the anticompetitive problems raised by the proposed merger. Since Ralston Resorts has jointly owned Arapahoe Basin, Keystone, and Breckenridge, these three resorts have not been competing against each other for customers. Divesting Arapahoe Basin restores such competition and, more generally, permits Arapahoe Basin to serve as an independent competitor for Front Range skiers. The divestiture of the Arapahoe Basin ski area decreases the post-merger HHI for the Colorado Front Range skiing market to below 1800 and the defendants' post-merger market share in the Front Range to less than 32%. Given the post-divestiture HHI level, the combined firm's post-divestiture market share, and the number and size of independent competing ski resorts remaining in the affected markets, the proposed merger with divestiture is not likely to have a significant anticompetitive impact through a unilateral effect or through a higher probability of coordinated behavior.

1. Market Share Calculations Were Accurate

Commenters 1–8, 11, and 12 all had comments on the market shares and the predicted post-merger price increases calculated by the Department. Commenter 1 pointed out that some destination skiers purchase discount tickets at Front Range locations, which might skew calculations of actual Front Range skiers. Commenter 5 commented that the ticket systems at the resorts do not accurately record skier days. Commenters 2 and 3 suggested that Arapahoe Basin's longer season may have caused it to appear to have a higher market share than it actually has.

Front Range skier days were calculated using a variety of documents obtained not only from the merging parties, but also from other sources involved in the Front Range skiing industry in Colorado. The shares were calculated from these documents in several different ways to check for accuracy. Adjustments were made to the calculations to account for several different factors, including those identified by the commenters, such as the purchase by destination skiers of tickets from Front Range outlets, and the way in which the length of Arapahoe Basin's ski season might affect the significance of the number of skier days there. In addition, the availability of data from several different sources allowed the Department to verify the accuracy of the skier day numbers used to determine market shares. The Department considered in its calculations all of the Colorado resorts that are used by Front Range skiers. Thus the Department considered the issues now raised by the commenters in calculating its market shares, and adjusted for those variables.

Several commenters claimed that Vail Resorts would have anywhere from 40% to 61.7% market share (Comments 6, 7, and 9) or contended that the HHI figures calculated by the Department were incorrect. One of these commenters said that the Arapahoe Basin divestiture does not have meaning in the total skier market (Comment 7), and another stated that Arapahoe Basin only has 4% of the skier-days in Colorado (Comment 9). These commenters all seem to have been looking at statistics other than those for Front Range skiers. These comments apparently consider a "market" for all skiing in Colorado—which ignores the important distinction between destination and Front Range skiers. In the Front Range market, the merged Vail/Ralston Resorts (other than Arapahoe Basin) had under a 32% market share; Arapahoe Basin had approximately a 6–7% market share.[7]

2. Predictions of Price Increases Were Appropriate

A number of comments addressed the estimates made by the Department and Colorado regarding likely post-merger price increases and questioned whether the Department had considered certain issues that might affect the integrity of its calculations. Commenter 1 questioned the validity of the surveys used by the Department, stating that these surveys were not valid because the commenter did not know of any skiers who were surveyed and the surveys were probably supplied to the Department by the merging companies. As stated above, the Department used information from a variety of sources in calculating both market shares and predicted price increases. Of course, the estimates made by the Department of likely price increases necessarily are just that—estimates—but they were based on a variety of surveys, including those done by Vail and Ralston in the ordinary course of business before the merger negotiations as well as those done by others. The Department analyzed the data in as many different ways as possible. While developing such estimates is inherently an imperfect process, the process in this case was based on a standard methodology and prepared with the detail and care associated with projects expected to be tested in litigation.

One commenter (Comment 2) suggests that Copper Mountain and Arapahoe Basin will simply follow any price increase of Vail. Each competitor (in this or any market) sets a price considering whether a different price would be more profitable. A higher price, for example, may produce more revenue per customer but fewer customers, as some customers shift to other ski resorts and some ski less frequently. Each competitor must evaluate all these factors including other prices in the market. Thus a competitor will not necessarily follow every price increase, especially if it believes that it can increase revenues by retaining a lower price and capturing skiers that leave another resort in response to a price increase. For a general description of the methodology used in the Department's price increase estimates, see Carl Shapiro, Mergers with Differentiated Products, 10 Antitrust 23 (1996).

Some commenters (Comments 1, 2, 4, 8, 11, 12, and 13) felt that the Department relied too heavily on market share and HHI numbers, and opined that the Department used 35% market share as a benchmark market share for making a decision regarding the transaction. While the Department certainly uses market share numbers and HHIs as one way to look at mergers, these are only two among numerous factors considered when analyzing this, or any other, merger. As stated above, the Department and the State of Colorado performed a complete and thorough investigation that lasted several months, and analyzed all aspects of the transaction.

3. The Divestiture Relief is Likely to be Sufficient to Constrain Average Prices

Many commenters expressed the concern that the divestiture of Arapahoe Basin would not be enough to resolve the likely anticompetitive effects of the merger, and stated that if the Department and the State of Colorado had concerns about the merger of the Vail and Ralston resorts they should have required Vail and Ralston to divest a larger resort than Arapahoe Basin,

[7] Two commenters (Comments 3 and 11) inquired about the post-divestiture HHI. Using the same data as in the Complaint, the post-divestiture HHI would be approximately 1800.

such as Breckenridge or Keystone. Commenters stated that there are many unique aspects of Arapahoe Basin that they felt would make Arapahoe Basin insufficient to constrain any post merger price increase by Vail Resorts. Commenters 2, 3, 5, 6, and 7 cited qualities of Arapahoe Basin such as its terrain, altitude, ski lifts, extreme weather, and remoteness as factors making Arapahoe Basin very different than Vail Resorts, Keystone, and Breckenridge. These commenters cited in addition other qualitative differences between Arapahoe Basin and other ski resorts, such as lodging, dining, and other amenities, as reasons why skiers who left Vail Resorts after the merger in response to a price increase would not go to Arapahoe Basin. In addition, several of these commenters noted that Arapahoe Basin has a high proportion of advanced or expert skier slopes and therefore cannot cater to many of the skiers that will ski at Vail Resorts after the merger. Some commenters (Comments 2, 3, 5, 6, 10, and 11) focused on Arapahoe Basin's size as a reason for which Arapahoe would not constrain any post-merger price increase by Vail Resorts. These commenters pointed out that Arapahoe Basin does not have the capacity to serve the skiers that would leave Vail Resorts in response to a price increase.

As these commenters note, Vail, Breckenridge, and Keystone each is bigger than Arapahoe Basin. The relevant question, however, is not absolute size but the resort's relative significance in the Front Range skier market. While Arapahoe Basin is smaller than the other Ralston resorts in acreage and in total skier days, it has a high proportion of Front Range skiers. In this market, Breckenridge and Keystone together account for about 20% of skier days, Vail Resorts about 12% and Arapahoe Basin 6–7%. Arapahoe Basin accounted for approximately one-quarter of Ralston Resorts' Front Range skier days during the 1995–96 ski season.[8]

It is true, as commenters note, that Arapahoe Basin is more oriented to the intermediate or advanced skier than are other ski areas. Currently, approximately 7–10% of Arapahoe Basin's skiing terrain is considered beginner level, compared to 13% of Keystone, 22% of Copper Mountain, 22% of Winter Park and 17% of Breckenridge. In addition, 50% of Arapahoe Basin's terrain is considered intermediate level and 40% is advanced. This terrain does not mean that Arapahoe Basin is not attractive to Front Range skiers, however. The very characteristics that some commenters say detract from Arapahoe Basin's competitiveness actually are appreciated by many Front Range skiers. A very substantial portion of Front Range skiers are intermediate or advanced skiers. Indeed, with a large percentage of its terrain attracting intermediate and advanced skiers. Arapahoe Basin skiing compares closely with the bowl and glade skiing experience offered at a number of Vail Resorts' mountains. Skier surveys revealed that a substantial number of skiers who ski Vail, Breckenridge or Keystone also ski Arapahoe Basin, and vice versa. As commenters note, Arapahoe Basin is not all things to all skiers. But the Department's investigation revealed that a relatively small shift in skier days to Arapahoe Basin, when taken together with the shift in skier days to other independent resorts, would make any significant price increase by the merged firm unprofitable. Therefore, Arapahoe Basin does not have to be the ski resort to which every Front Range skier would go after leaving Vail Resorts in response to a price increase. The Department concluded that Arapahoe Basin is an appropriate divestiture because it appears to be sufficiently attractive to enough Front Range skiers who also use Vail, Breckenridge and Keystone that it can be a competitive alternative in the market. Therefore, once Arapahoe Basin is divested, any increase in average discounted prices to Front Range skiers is likely to be negligible, according to the same analytical framework that produced the estimates of post-merger price increases.

4. The Divested Assets Are Likely To Be Viable

Several commenters expressed concern that Arapahoe Basin cannot survive except as part of a large ski resort company, or at least as part of Keystone. A few of these commenters (Comments 1, 2, 5, 10, 13) thought that Arapahoe Basin should be left with keystone rather than being divested. Commenters 2 and 10 felt that Arapahoe Basin would suffer if it did not receive the destination skier business that it received through its affiliation with Ralston Resorts. They also noted that Arapahoe Basin currently is the beneficiary of certain services because it is affiliated with Keystone. Commenter 3 also mentioned that Arapahoe Basin would no longer benefit from the advertising efforts of Keystone and Breckenridge, which historically included all mountains within the multi-mountain group. Commenter 1 felt that Arapahoe Basin could not stand alone with 250,000 skiers per year and no town or amenities.

These comments ignore, however, the fact that there are several other ski areas of comparable or smaller size, such as Loveland and Eldora, which have been able to survive as stand-alone entities. These ski areas appeal particularly to Front Range skiers, the group that the relief in this case is intended to protect. Furthermore, there are other collaborative marketing arrangements that exist, such as "Gems of the Rockies," a joint marketing program of a number of Colorado ski resorts, including Arapahoe Basin, so Arapahoe Basin need not be cut off from all joint marketing activities. In addition, the divestiture must be made to a new owner capable of operating a viable ski area business, which includes the ability to advertise and market Arapahoe Basin.

One commenter (Comment 6) observed that Arapahoe Basin is not likely to be able to expand or to "reposition" itself in the market. Another commenter (Comment 11) inquired whether the Department assumed that certain permits would be granted to allow expansion at Arapahoe Basin. While the Department fully investigated such relevant aspects when considering Arapahoe Basin as a possible divestiture entity, the Department did not assume that any expansion or repositioning would take place. The analysis considered current facts.

5. Predictions of Other Anticompetitive Actions by Vail Either Are Unfounded or Are Subject to Later Relief

Commenters 3, 6, and 11 suggest that Vail may engage in anticompetitve conduct after the merger. For example, one commenter (Comment 6) alleges that Vail Resorts either can engage in predatory conduct or can be a price leader that discipline other ski resorts. First, in predicting predation, this comment (from a competitor) claims that the merger will result in prices that are too low—not too high, as alleged in the complaint. Predation is a violation of the antitrust laws, albeit one more often alleged than proved; an injured competitor is not without remedy for true predation. Second, the allegations of possible disciplining conduct in support of price leadership discuss a risk that is part of the risk of anticompetitive outcomes considered in the investigation. In the judgment of the

[8] Of course it is true, as one commenter (Comment 6) notes, that many Front Range skiers also value the many amenities that are important to destination skiers; the relative significance of these amenities is greater to the average destination skier than the average Front Range skier, however.

Department, considering the post-divestiture market shares in the relevant (Front Range) market, the nature of the industry, the market in which a violation was alleged, and the number of competitors in the market, this risk did not warrant any additional remedy.

One commenter (Comment 3) addresses several possible post-merger actions by Vail Resorts that it claims could affect competition. Included are making package deals with airlines (which does not relate to the Front Range market), affecting the placement of competitors' radio, television, and print advertisements (which appears to be part of the ordinary give-and-take of competition and media scheduling practices (in the normal course of business, competitors' advertisements are not placed close together)), and contracting with retailers for exclusive distribution arrangements for ski tickets (which appears to be either part of the ordinary give-and-take of competition or, if it truly forecloses retail distribution, may itself be an antitrust violation.[9] In short, these additional concerns do not amount to significant criticisms of the proposed Final Judgment and the relief it contains.

One commenter claims that the government considered, but did not discuss, other possible relief in the form of other divestitures (Comment 6). The text of that comment itself, however, recognizes that any other such option that the government could have considered would have involved a full trial on the merits (with relief to be determined by the court after trial). A full trial on the merits is the alternative explicitly mentioned in Section VI of the Competitive Impact Statement filed with this Court. As stated there, the Department rejected that option because it was satisfied that the divestiture contained in the proposed Final Judgment will preserve competition and will there achieve the result that the government would have sought through litigation, but without the time, expense, and uncertainty of litigation.

The antitrust issues that commenters have raised were considered by the Department and the State of Colorado during the course of a thorough and extensive investigation into the proposed merger. Ultimately, the Department and Colorado found that any likely significant anticompetitive effect resulting from the merger would involve Front Range skiers, and the Plaintiff accordingly alleged such harm to Front Range skiers in their Complaint in this action. As described in detail above in response to the specific concerns voiced by commenters, the divestiture of Arapahoe Basin should resolve any anticompetitive effect associated with the merger and should restore significant competition to the Front Range market in Colorado.

III. The Legal Standard Governing the Court's Public Interest Determination

Once the United States moves for entry of the proposed final judgment, the Tunney Act directs the Court to determine whether entry of the proposed final judgment "is in the public interest." 15 U.S.C. § 16(e). In making that determination, "the court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest." *United States* versus *Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.) *cert. denied*, 114 S. Ct. 487 (1993) (emphasis added, internal quotation and citation omitted).[10] The Court should evaluate the relief set forth in the proposed Final Judgment and should enter the Judgment if it falls within the government's "rather broad discretion to settle with the defendant within the reaches of the public interest." *United States* versus *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); accord *United States* versus *Associated Milk Producers*, 534 F.2d 113, 117–18 (8th Cir.) *cert. denied*, 429 U.S. 940 (1976).

The Court is not "to make *de novo* determination of facts and issues." Western Elec., 993 F.2d at 1577. Rather, "[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General." *Id.* (internal quotation and citation omitted throughout). In particular, the Court must defer to the Department's assessment of likely competitive consequences, which it may reject "only if it has exceptional confidence that adverse antitrust consequences will result—perhaps akin to the confidence that would justify a court in overturning the predictive judgments of an administrative agency." *Id.*[11]

The Court may not reject a decree simply "because a third party claims it could be better treated." Microsoft, 56 F.3d at 1461 n.9. The Tunney Act does not empower the Court to reject the remedies in the proposed Final Judgment based on the belief that "other remedies were preferable." *Id.* at 1460. As Judge Greene has observed:

> If courts acting under the Tunney Act disapproved proposed consent decrees merely because they did not contain the exact relief which the court would have imposed after a finding of liability, defendants would have no incentive to consent to judgment and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as an antitrust enforcement tool, despite Congress' directive that it be preserved.

United States v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) (Mem.).

Moreover, the entry of a governmental antitrust decree forecloses no private party from seeking and obtaining appropriate antitrust remedies. Defendants will remain liable for any illegal acts, and any private party may challenge such conduct if and when appropriate. The issue before the Court in this case is limited to whether entry of this particular proposed final judgment, agreed to by the parties as settlement of this case, is in the public interest.

Furthermore, the Tunney Act does not contemplate judicial reevaluation of the wisdom of the government's determination of which violations to allege in the Complaint. The government's decision not to bring a particular case on the facts and law before it at a particular time, like any other decision not to prosecute, "involves a complicated balancing of a number of factors which are peculiarly within (the government's) expertise." *Hecklen* v. *Chaney*, 470 U.S. 821, 831 (1985). Thus, the Court may not look beyond the Complaint "to evaluate claims that the government did not make and to inquire as to why they were not made." *Microsoft*, 56 F.3d at 1459 (emphasis in original); see also Associated Milk Producers, 534 F.2d at 117–18.

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[9] One commenter (Comment 3) suggests Vail Resorts' possible local transportation service may diminish the likelihood of the continuation of a local tax that funds a local bus service running to other ski areas. Such a change would have complicated effects, and the likelihood of any such change flows primarily from the previous Keystone-Breckenridge merger, not from this transaction.

[10] The Western Electric decision concerned a consensual modification of an existing antitrust decree. The Court of Appeals assumed that the Tunney Act was applicable.

[11] The Tunney Act does not give a court authority to impose different terms on the parties. *See, e.g., United States* versus *American Tel. & Tel. Co.*, 552 F Supp. 131, 153 n.95 (D.D.C. 1982), *aff'd sub nom. Maryland* versus *United States*, 460 U.S. 1001 (1983) (Mem.); *accord* H.R. Rep. No. 1463, 93d Cong., 2d Sess. 8 (1974). A court, of course, can condition entry of a decree on the parties' agreement to a different bargain, *see, e.g., AT&T*, 552 F. Supp. at 225, but if the parties do not agree to such terms, the court's only choices are to enter the decree the parties proposed or to leave the parties to litigate.

Finally, the government has wide discretion within the reaches of the public interest to resolve potential litigation. E.g., Western Elec. Co., 993 F.2d 1572; AT&T, 552 F. Supp. at 151. The Supreme Court has recognized that a government antitrust consent decree is a contract between the parties to settle their disputes and differences, *United States* v. *ITT Continental Baking Co.*, 420 U.S. 223, 235–38 (1975); *United States* v. *Armour & Co.*, 402 U.S. 673, 681–82 (1971), and "normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation." Armour, 402 U.S. at 681. This judgment has the virtue of bringing the public certain benefits and protection without the uncertainty and expense of protracted litigation. Armour, 402 U.S. at 681; Microsoft, 56 F.3d at 1459.

IV. Conclusion

After careful consideration of these comments, the United States concludes that entry of the proposed final judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the complaint and is in the public interest. The United States will therefore move the Court to enter the proposed final judgment after the public comments and this response have been published in the **Federal Register**, as 15 U.S.C. § 16(d) requires.

Dated: July 10, 1997.

Respectfully submitted,

Craig W. Conrath,

Chief

Reid B. Horwitz,

Assistant Chief

Susan Wittenberg,

*Trial Attorney**

John M. Lynch,

Trial Attorney, U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, NW, Suite 4000, Washington, DC 20530, (202) 307–0001.

*Counsel of Record.

In the United States District Court for the District of Colorado

[Case No. 97–B–10]

United States of America and the State of Colorado Plaintiffs, v. *Vail Resorts, Inc., Ralston Resorts, Inc., and Ralston foods, Inc. Defendants*

Certificate of Service

I hereby certify that on this 10 day of July 1997 a true and correct copy of the foregoing United States' Response to Public Comments and Appendix was delivered by overnight mail to the following persons:

Bruce F. Black,

Holme, Roberts & Owen, LLP, 1700 Lincoln, Suite 4100, Denver, Colorado 80203

and

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and

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and

J. Michael Cooper, Daniel C. Schwartz,

Bryan Cave, LLP, 700 13th Street, N.W., Washington, D.C. 20005.

Counsel for Ralston Resorts, Inc. and Ralston Foods, Inc.

Susan Wittenberg

In the United States District Court for the District of Colorado

Lewis T. Babcock, Judge

[Civil Action No. 97-B-10]

United States of America and the State of Colorado Plaintiff, V. *Vail Resorts, Inc., Ralston Resorts, Inc. and Ralston Foods, Inc., Defendants*

Appendix: Public Comments

Craig W. Conrath,
Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530

Dear Sirs: We are writing this letter to you regarding the proposed merger between Vail Resorts and Ralston Resorts. We do not think the decision that was made, to allow Vail to purchase Keystone and Breckenridge, while merely spinning off Arapahoe Basin in the name of Competition, is a good one, NOR IS IT IN THE PUBLIC INTEREST!

It's a pretty well-accepted fact that only about four percent of people complain or write about issues for which they have a legitimate complaint. Since we have talked to many people here about this issue, unlike the Department of Justice, let this letter represent the feelings of a lot more skiers and residents than just the two of us. We know there are business/real estate people here who see the merger favorably, but they are concerned ONLY about increased dollars for themselves.

What must be a bigger JOKE than the sixty day appeal period is the decision itself! We realize that appealing this decision is probably useless, as everything we see and hear about the merger points to it being a "done deal." This includes the IPO already done this past week by the parent company of Vail; how could they even do that before the sixty day appeal period ended, and a "final" decision is made??? Other things that point to a done deal are employee pass interchange, KAB pass interchange with additional dollars, special buses put on, and insufficient publicity that there is a sixty day appeal period before a final decision. *The Denver Post* says Vail now owns Keystone and Breck.

Nevertheless, we have the time to write, as we are retired. Being retired, we are watching our funds closely, and it is a foregone conclusion by everyone here we talked to that prices for EVERYTHING will be going up substantially with Vail involved in our valley. Haven't we learned from Aspen, Vail and Telluride that present locals here will be driven from our area. Many people here in Summit County have two or three jobs to make ends meet, and it will be much worse for them after Vail exerts their influence. It doesn't take a genius to know that prices, not only for lift tickets, but everything else, will rise steadily once Vail exerts their power and money. They will destroy the economy for middle level fixed-income and lower income residents/workers. Just look at the Vail area NOW!

This decision is the worst scenario of all possibilities the DOJ could have come up with. The best decision would have been as we requested in our original letter to the DOJ, a copy of which is attached. Barring that as an answer, if only Brechenridge would have gone with Vail, it may not have been too bad. Or, if Keystone went with Vail, and not Breckenridge, then A-Basin could have stayed with Keystone. Or, if you really thought Breckenridge and Keystone should go with Vail (which we'll never understand), then you should have left A-Basin with the other areas.

You have sounded the death knell of Arapahoe Basin. There is not a local we have talked to yet who thinks it will survive on its own. It will not survive in today's economy with the decision you allowed. To spin off only A-Basin is absurd! It has approximately 250,000 skiers in a season, no base area and no town. The other two areas have about 1,000,000 skiers each and have a "town" and all the other amenities for year round activities and recreation. THEY CAN STAND ALONE.

Furthermore, the comparison of A-Basin to Vail and Copper because of glade and bowl skiing is completely invalid. For skiing, it compares more closely to Loveland. Has anyone involved in making this decision ever skied at A-Basin, or anywhere in Summit County? Also, on many days Loveland Pass on the Denver side to A-Basin is closed for various reasons, mostly avalanche work. Thus, the Front Range skiers go some place else. Their numbers will not support the area, and it is popular with destination skiers—and many of the locals who use it—only because it is part of another package.

Why such emphasis on Front Range skiers? Your release dated Jan 3 state. "Justice Department set conditions that will preserve lower prices for hundreds of thousands of

skiers". The locals and the destination skiers are going to be GREATLY affected by your decision. According to your documents the locals aren't even considered. Destination skiers we've talked to are already upset that they no longer have Ski-The-Summit ticket available to them to provide good rates to all four Summit County areas; it's one of the things that brought us here in the first place. We have a four-areas STS season pass that's available for early-season-buyers, locals or others. but the number is limited. We're certain that this wonderful Ski-The-Summit opportunity will be gone after this season.

We feel the surveys that were used as the basis for your Front Range skier numbers are not valid. We ski often, and we know of no surveys taken, nor do we know of others who ski often that were surveyed. Furthermore, we know many destination skiers, including family and friends from back East, who always pick up discount tickets or "Colorado Cards" at FRONT RANGE locations before they come up here. I am a retired engineer, and I know that numbers can be juggled to obtain desired results. To have used those numbers to arrive at a decision this monumental, looking at only a few percentage points difference, is ludicrous.

The numbers were supplied to you by the ski corporations who want this merger and will profit greatly from it. This decision will not benefit the average citizen. Your people did not contact our county commissioners, Summit County's town officials, the Forest Service here, the large senior population, or average families to question what effects Vail may have in our valley.

The ski companies are their own worst enemies! They complain that skier numbers are flat. But, the companies are constantly raising prices, including parking. Families are especially hard-hit by these increases. In the last few years, many destination skiers are skiing less days in their ski week, like four instead of six, and they are finding other things on which to spend their time and money. The number one reason why skiers—destination, Front Range and locals—are skiing less is the HIGH PRICE OF LIFT TICKETS!

This decision is NOT IN THE PUBLIC INTEREST. It is in the interest of big corporations only. Adam Aron, the CEO at Vail, has arrived on the Vail scene only as of July, 1996 after three years as president of NCL, where mergers were being effected, too. Before that it was UAL. Do you really think he cares about the real people here, or is he thinking of his career, his name and his big dollars—already guaranteed $250,000 bonus alone?

As an aide to this decision, maybe the DOJ should be looking at better Bankruptcy Laws. Ironically, George Gillett who filed two bankruptcies at Vail only four years ago, is not only receiving $2,500,000 annual salary from Vail, but has been named prominately as a possible buyer for our very own Arapahoe Basin. How many people got hurt in those bankruptcies? He and his two sons have already bought into about nine other ski areas around the country. Vail may even ignore an agreement they had with Gillett not to own a Colorado ski resort until 1998! How does this compute? Wheeling and dealing as usual!!!

Please give this merger a closer, second look because of its far-reaching ramifications.

Sincerely,

Joel R. Bitler,

Mern V. Bitler

cc:

Senator Ben Campbell
Representative Scott McInnis
Colorado Attorney General Gail Norton

U.S. Department of Justice, 10th and Constitution Avenues, Room 3304, Washington, DC 20530

Attn: Ms. Juthymas Harntha

Dear Ms. Harntha: We are writing to you regarding the possible merger whereby Vail would take over most of the Ralcorp ski properties of Breckenridge, Keystone and Arapaho Basin in Summit County, Colorado. We are adamantly opposed to this merger.

I, Joel, am a retiree of AT&T, and in 1984, as I'm sure you are aware, AT&T was torn apart by the Federal Government in the name of competition. We won't debate that case. But, it and the more recent case of ski areas in the East set examples for competition. Let's not allow this merger so that we may continue to have competition here.

Furthermore, we moved to Summit County because we like the "atmosphere" here. We don't like the Vail area for many reasons, including its high costs. We don't want that kind of thinking transferred here to Summit County. We won't be able to live here.

We are retired and don't want to see costs continuing to escalate as they have. With Vail involved it can only get worse. The only ones to really benefit from this will be "big money" people, not your average consumer. You can tell how important it is to the money people, as no sooner was the plan announced and a famous, and no-doubt high-priced lobbyist, was assigned to push for it in Washington.

Please do everything in your power to halt the merger. We were dissatisfied, along with many other consumers and workers, when Ralcorp was allowed to buy Breckenridge, which then formed quite a monopoly here in Summit County. There will be six resorts owned by the new group between Eagle and Summit Counties, leaving only Copper Mountain to try to survive the "big guys".

Thank you.

Sincerely,

Joel R. Bitler,

Mern V. Bitler

cc: Representative Scott McInnis

Jeffrey S. Bork,
914 Ruby Road, P.O. Box 23169, Silverthorne, CO 80498–3169

February 18, 1997.

Via Facsimile and First Class Mail

Mr. Craig W. Conrath,
Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Room 4000, Washington, D.C. 20530

Re: United States and State of Colorado v. Vail Resorts, Inc., Ralston Resorts, Inc., and Ralston Foods, Inc., No. 97B–10 (D. Co.)

Dear Mr. Conrath: I submit this letter to share with you my preliminary observations about Vail Resorts' proposed acquisition of the ski areas owned by Ralston Resorts. As a full-time resident of Summit County, Colorado, I can offer an unique and important perspective on this proposed business transaction.

I am troubled by two of the conclusions in your Division's Competitive Impact Statement, 62 Fed. Reg. 5037 (Feb. 3, 1997)("CIS"). First, I cannot agree with your unexplained conclusion that local skiers like myself would not be adversely impacted by the merger. Second, I cannot agree with your conclusion that Vail Resorts' acquisition of Breckenridge and Keystone without Araphoe Basin would "resolve the anticompetitive problems raised by the proposed transaction." CIS at 15. Based on the facts available to me, your Division's "partial" merger proposal would not resolve the problems raised by the proposed transaction. To the contrary, as explained below, the "partial" merger alternative appears to have more flaws than the defendants' original proposal.

Here is the principal problem I face: your Division did not disclose in its CIS the key facts and assumptions it used in arriving at its conclusions. Thus, I (or any other member of the public, for that matter) have no basis to assess the validity of the Department's conclusions.

I would like to exercise my right under the Antitrust Procedures and Penalty Act, 15 U.S.C. § 16(b)–(h), to submit informed comments. Both of the transactions now on the table—the original, "acquire-all-three-resort" proposal, or your partial, "acquire-only-the-big-two" alternative—will negatively impact me, my family, and my neighbors.

However, I cannot meaningfully exercise this right unless I have access to the material facts and assumptions your Division used in its analysis. So I have time to prepare informed comments before the close of the current filing deadline. I ask that you submit to me by Tuesday, March 4, 1997 the data identified below. I would, of course, be willing to execute any reasonable confidentiality agreement which you may deem appropriate.

I have two final requests. First, I would appreciate your notifying me immediately if your Division, or any other party, makes a filing with the District Court in this matter. Second, please identify and explain in your response any statements in this letter which you believe are erroneous or irrelevant. The public interest obviously is not advanced if anyone makes representations inconsistent with known facts.

I. Factual Background

In July 1996 Vail Resorts, Inc. announced it had reached it had reached an agreement to acquire the ski resort business of Ralston Resorts, Inc. for approximately $310 million. Vail Resorts is the largest owner of ski resorts in Colorado, owning all three resorts in Eagle County: Vail, Beaver Creek, and Arrowhead

Mountain.[1] Ralston Resorts is the second largest owner of ski resorts in Colorado, owning three of the four ski resorts in adjacent Summit County: Arapahoe Basin, Breckenridge, and Keystone.[2] A Vail Resort press release has claimed that, with its acquisition of the Ralston Resorts ski properties, it will become the largest ski resort operator in the world.[3]

On January 3, 1997, the State of Colorado and your Department, on behalf of the United States, filed a civil antitrust complaint against the two resorts alleging that their merger would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The complaint alleged that the combination of the two largest ski resort owner/operators in Colorado would end the current "aggressive" competition between them and would, as a result, "increase substantially the concentration among ski resorts" in Colorado. Complaint at ¶¶ 1, 3, and 4. More specifically, the complaint alleged:

This merger would eliminate the price constraining impact each has on the other. In particular, the combined Vail and Ralston resorts would be likely to raise prices or reduce the level of discounts offered to skiers from the Colorado Front Ridge. In addition, the transaction would give other ski resorts serving the Front Range the incentive to raise their lift ticket prices to Front Range skiers following a price increase at the combined Vail and Ralston resorts. *Id.* at ¶ 21.

The Complaint asked that this proposed acquisition "be adjudged to violate Section 7 of the Clayton Act" and that "the defendants be permanently enjoined from carrying out the Stock Purchase Agreement . . . or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the businesses or assets of Vail Resorts and Ralston Resorts." *Id.* at 11 ¶¶ 1 and 2.

Also on January 3, 1997 the plaintiffs moved for entry of a stipulation and order in which all the parties agreed to entry of a proposed Final Judgment. In the proposed Final Judgment, Vail Resorts agrees to divest Arapahoe Basin within 150 days or within five business days after notice of entry of the Final Judgment, whichever is later. Proposed Final Judgment at 4–5 ¶ A. In return, the plaintiffs agree to drop their antitrust lawsuit and to permit Vail Resorts to acquire Breckenridge and Keystone.

In a press release also issued on January 3, 1997, your Department stated that, notwithstanding its acquisition of the large Breckenridge and Keystone resorts, Vail Resort's divestiture of Arapahoe Basin would "keep prices lower for skiers":

[T]he Justice Department set conditions that will preserve lower prices for hundreds of thousands of skiers. * * * Without the divestiture, the deal likely would have resulted in higher prices to skiers who live in Colorado's Front Range. * * * The proposed settlement requires the sale of Ralston's Arapahoe Basin ski resort to an entity capable of operating the resort as a long-term, viable competitors in the market. The divestiture will prevent Front Range skiers from paying higher lift ticket prices.

Three weeks later, on January 22, 1997, your Department filed its Competitive Impact Statement ("CIS") in compliance with the requirements of the Antitrust Procedures and Penalties Act. In this CIS, the Department repeated in position that Vail Resorts' acquisition of the Ralston Resort ski properties would "violate Section 7 of the Clayton Act." CIS at 2. The Department further explained that the provision of downhill skiing is a relevant market and that customers of the defendants' ski resorts "include two type of skiers; destination skiers and Front Range skiers," the later defined as skiers residing in "the geographic area lying just east of the Rocky Mountains." CIS at 5–6, Complaint at ¶ 11. According to the Department, the proposed acquisition would have no impact on "destination skiers [who] come from outside Colorado," but would negatively impact "Front Range skiers [who] are day or overnight skiers" and who drive to resort and "limit the resorts they use for day trips to those which fall within a radius of about two-and-one-half hour travel time from where they live."[4] CIS at 6.

Ignored altogether in the complaint, and without explanation in the CIS, the Department stated that the merger would have no impact on "the local skier market." *Id.* at 6 n.2.

In its CIS, the Department repeated its views that the merger of Vail Resorts and Ralston Resorts "would reduce competition significantly in the market for Colorado Front Range skiers," and it identified four separate adverse impacts from such a merger:

1. Competition generally in providing skiing to Front Range skiers would be lessened substantially;

2. Actual competition between Vail and Ralston in providing skiing to Front Range skiers would be eliminated;

3. Discounting to Front Range skiers by Vail and Ralston would likely be reduced; [and]

4. Prices for skiing to Front Range Colorado skiers would likely be increased. CIS at 10.

The Department further observed that the merger would have negative impacts beyond the specific ski resorts at issue: "Moreover, once Vail and Ralston resorts charge higher prices, other resorts in the market have an incentive to raise their prices somewhat in response to less intense price competition for Front Range customers."[5] *Id.* at 13–14.

The Department stated, however, that a partial merger—that is, Vail Resorts' acquisition of Breckenridge and Keystone, but not Arapahoe Basin—"would preserve competition" and "resolve the anticompetitive problems raised by the proposed transaction";

Divesting Arapahoe Basin restores significant competition among these mountains and, more generally, permits Arapahoe Basin to serve as an independent competitor for skiers throughout the Front Range. While Arapahoe Basin is smaller than the other Ralston resorts in absolute size, it has a high proportion of Front Range skiers . . . and is thus relatively more competitively significant in the Front Range skiing market than its overall number of skier days might suggest. *Id.* at 14–15.

According to the Department, "[a] relatively small shift in skier days to Arapahoe Basin would make any significant price increase by the merged firm unprofitable." *Ibid.* The Department further stated that, without Arapahoe Basin, the defendants' market share of Front Range skiers "will be less than 32%." *Id.* at 16.

II. The Department's Conclusion That Local Skiers Would Not Be Adversely Impacted by the Merger Is Unexplained

The Department has stated that its "investigation did not reveal any likely anticompetitive effect from the proposed merger . . . in other relevant markets such as the local skier market," CIS at 6 n.2. The Department did not explain this conclusion in the CIS. Because I believe local Summit County residents would be impacted more negatively by the merger than any other category of skier, I ask you to produce all the evidence you relied upon in reaching this conclusion.

The residents of Summit County are relatively small in number; I estimate the number of full-time residents approximates 18,000. However, Summit county residents are very avid skiers (in part explaining why they willingly suffer through a long mountain winter, with snow from October to June or July). We locals ski often—far more often than either destination or Front Range skiers.[6] While locals are perhaps small in number, we generate a considerable number

[1] As you know, Arrowhead Mountain is small, and Vail Resorts operates Arrowhead as part of Beaver Creek. Consequently, in this letter I will refer to Beaver Creek to include both Beaver Creek and Arrowhead.

[2] Ralston acquired Keystone during the 1970s and Arapahoe Basin in 1978. It did not acquire Breckenridge, which had been operated independently, until 1994 or 1995. Please identify in your response the date Ralston acquired Breckenridge and the name of the person or firm which sold Breckenridge to Ralston.

[3] Other state that Vail Resorts would "only" become the second largest operator, with the French Compagnie des Alpes retaining the top spot. In your response to this letter, please identify how big the merged Vail Resorts would become (with or without A-Basin) *vis-á-vis* other ski resort owner/operators in the world.

[4] The definition appears over broad; I know few people who are willing to sit in a car five hours in one day to ski that same day. Please produce all facts which you considered in developing this definition, and identify by name all the resorts which the Division believes are viable alternatives for Front Range skiers wanting to ski a single day. I can think of only five resorts other than those at issue here: Copper Mountain, Eldora, Loveland, Ski Cooper, and Winter Park.

[5] The Department has estimated that the merger would likely raise lift ticket prices "on the order of 4%, or about $1 per lift ticket." CIS at 14. However, it nowhere explains how it computed this 4%/$1 figure. A 4% increase in the amount of $1.00 would suggest that current ticket prices are $25.00 per day, but daily passes at Breckenridge and Keystone are currently $45.00. In your response, please include the data you used to compute this "4%/$1" figure. Also please share the assumptions you used in arriving at this estimate (*e.g.*, how you determined the likely impact would be 4%/$1 as, for example, 8%/$2—or 12%/$3)?

[6] As but one small example, my 12-year-old son skis each weekend day. During his Christmas break, he skied on 16 of 18 available days.

of skier days and represent a sizable market for skiing in Summit and Eagle Counties.

Local skiers have two basic choices today: we can ski (1) at Copper Mountain, or (2) at one of the three Ralston Resorts: Breckenridge, Keystone, and Arapahoe Basin. Few locals ski A-Basin until the spring; the other three resorts are so much larger and offer so much more diverse terrain.[7] Simply put, A-Basin is simply not large enough for most people to ski an entire day.

Because of distance (25+ miles including Vail Pass), locals do not ski regularly at the Vail Resorts in adjacent Eagle County, perhaps one or two visits per season. Nevertheless, Vail Resorts has an enormous, positive impact on Summit county residents. Based on my past experience, none of the big three local resorts—Copper, Breckenridge, and Keystone—will charge lift ticket prices higher than that charged by Vail Resorts.[8]

At first blush, local skiers would appear to have three choices under the partial merger alternative advocated by the Department: we could ski (1) at Copper Mountain, (2) at an independently-owned Arapahoe Basin, or (3) at Breckenridge or Keystone, both of which would be owned by Vail Resorts. The reality is that, before the spring, A-Basin is not a meaningful alternative; as explained above, it is simply too small to accommodate a full day of robust skiing. As a practical matter, then, before the spring when other resorts are closing down, local Summit county skiers will continue to have the same two alternatives they have today: (1) Copper, or (2) Breckenridge/Keystone.

The difference in this new scenario is that Breckenridge and Keystone would now be owned by Vail Resorts, and the competitive pricing pressures Vail Resorts had once imposed on the Summit county resorts will have vanished. Given its massive size, it is reasonable to assume that, if the District Court ultimately approves Vail Resort's acquisition of Breckenridge and Keystone, Vail Resorts will increase the lift ticket prices at these two resorts to match that charged at its ski areas in Eagle County. Indeed, given that Vail Resorts (even excluding A-Basin) would be nearly five times larger than any other ski resort in Colorado, Vail Resorts could easily increase the prices of all of its lift tickets once the consummation of the merger becomes final.[9]

The competitive alternatives for locals in this situation would be to ski instead at either Copper Mountain or Arapahoe Basin—assuming these two resorts did not increase their prices as well in response to a price increase by Vail Resorts. A responsive price increase by these two areas would appear likely. For example, Copper has been enjoying substantial growth; during the 1995–96 season, it enjoyed a total of 967,074 skier days—a 25% increase over the previous year (1994–95: 770,973). If I managed Copper Mountain in these growth circumstances and my major competitor raised its prices, I would find the more attractive business alternative to raise Copper's prices as well.[10] After all, each one dollar increase in a lift ticket would generate nearly $1 million for Copper.

Thus, the most likely outcome of the Department's proposed partial merger on local Summit County skiers would be that we would (1) pay higher prices at Breckenridge, Copper, and Keystone; or (2) ski half days at Arapahoe Basin (assuming it can survive as discussed in Part IV below). Consequently, I cannot agree with your unexplained conclusion that local skiers would not be negatively impacted by either the defendant's proposed complete merger or the Department's alternative, the partial merger. At least for locals, neither alternative "will preserve lower prices" as the Department represented in its January 3, 1997 press release.

It is precisely for this reason that I ask you to produce all facts in your possession (whether you considered them or not) which relate to the size of the local skier market and the impact of the proposed merger on local skiers. In addition, your CIS limits its analysis to future pricing behavior to the five resorts that would be owned by enlarged Vail Resorts. What analysis have you performed about Copper's likely response to a price increase by an enlarged Vail Resorts? What analysis have you performed about the likely response an independent Arapahoe Basin would make to a price increase by an enlarged Vail Resorts? Please produce this data as well in your response to this letter.

III. Available Facts Suggest There Is a Substantial Question Whether an Independent Arapahoe Basin Would Restrain the Pricing Behavior of a Combined Vail Resorts/Breckenridge/Keystone Operations

According to the Department, while a complete merger would violate Section 7 of the Clayton Act, a partial merger—acquisition of Breckenridge and Keystone without Arapahoe Basin—would be lawful and pro-competitive. In the Department's view, the divestiture of A-Basin would "restore significant competition among these mountains and, more generally, [would] permit Arapahoe Basin to serve as an independent competitor for skiers throughout the Front Range." CIS at 15. This divestiture, the Department states, "will prevent Front Range skiers from paying higher lift ticket prices" and "will preserve lower prices for hundreds of thousands of skiers in one of America's most popular winter sports areas." DoJ News Release at 1 and 2 (Jan. 3, 1997).

The Department's assertion that an independent Arapahoe Basin will provide "significant" competition to a combined Vail Resorts/Breckenridge/Keystone operations and would, as a result, restrain the pricing behavior of this new giant does not appear to be credible. Consider the facts when an independent Arapahoe Basin is compared with the combined Vail Resorts/Breckenridge/Keystone operations:

	Arapahoe Basin	Combined Vail resorts/ Breckenridge/ Keystone operations
Total Skiable Acres	490	9,421
Acres of Snowmaking	None	2,284
Total Number of Trials	61	441
Longest Run (in miles)	1.5	4.5
Total Lifts	5	79
Total No. of Gondolas/High Speed "Quads"	0	26
Night Skiing	No	Yes
Total Uphill Capacity (skiers per hour)	6,066	121,064
1995–96 Skier Days	241,435	4,615,358

	A-Basin	Breck	Keystone	Vail	Beaver creek
Total Skiable Acres	490	2,031	1,749	4,112	1,529
Acres of Snowmaking	None	369	859	347	709

[7] This difference in size among the four resorts is reflected in their lift ticket prices. A one-day lift ticket honored at any of the three Ralston ski areas is $45. A one-day ticket limited to Arapahoe Basin is $39.

[8] Please produce the one-day ticket prices charged by all Summit and Eagle County resorts over a period of time (*e.g.*, 5 years) so I can verify the accuracy of the statement.

[9] It is for this reason I need all the data you considered and assumptions you made in determining the likely impact on pricing that would occur if the defendants' original (all three) merger proposal were consummated. *See* note 5 *supra*.

[10] Historically, Copper Mountain has set its lift ticket prices lower than that charged at the Ralston Resort areas, the other ski resorts in Summit County. If Vail Resorts were to increase the prices at the former Ralston Resorts, Copper Mountain could easily increase its prices as well—and still be somewhat cheaper than the competition.

	A-Basin	Breck	Keystone	Vail	Beaver creek
Total Number of Trials	61	138	91	121	91
Longest Run (in miles)	1.5	3.5	3	4.5	3.5
Total Lifts	5	19	20	26	14
Total No. of Gondolas/High Speek "Quads"	0	4	6	12	5
Total Uphill Capacity (skiers per hour)	6,066	26,030	26,582	45,213	23,739
1995–96 Skier Days	241,435	1,357,790	1,057,568	[1] 2,200,000	

[1] Combined.

The Department implies that Arapahoe Basin is a "close competitive alternative" to each of the other four resorts at issue. This unexplained conclusion is also difficult to square with the facts:[11]

It is my experience that all three categories of skiers—locals, destination, and Front Range—each view Arapahoe Basin as fundamentally different than each of the four other ski areas at issue:

1. *Local Skiers.* Because Arapahoe Basin is so small and more different to reach, locals generally ski A-Basin in two of two circumstances: (a) when they want to ski for several hours only; or (b) in the spring when, because of its location and elevation, A-Basin has much better conditions than at other resorts (even if they are open).[12]

2. *Destination Skiers.* Arapahoe Basin is not an alternative for destination skiers because it is completely undeveloped—that is, there are no shops; restaurants (other than the single lodge); hotels, or condominiums. Besides, even if it had a developed base, A-Basin is not large enough and does not have a complete set of terrain to attract families and groups of skiers with diverse skiing ability.

3. *Front Range Skiers.* While I am not personally familiar with the practices and preferences of many Front Range Skiers, I suspect they ski A-Basin under circumstances similar to local skiers. In addition, they may ski A-Basin for half a day, and use their ticket to ski Keystone the rest of the day.[13]

Thus, if my experience is accurate, it is unlikely that skiers preferring to ski at Breckenridge or Keystone would ski instead at A-Basin as a result of a price increase by a merged Vail Resorts (even assuming A-Basin does not make a responsive price increase as well). Indeed, as the Department stated last fall, "[t]he typical downhill skier who goes to [large] resorts for the qualitative experience is unlikely to stop skiing or switch to smaller resorts with less aties because ticket prices increase by a small amount."[14]

I therefore ask the Department to produce all data in its possession (whether or not it was considered) which pertains to the question whether Arapahoe Basin is, or is not, a "close competitive alternative" to each of the other four resorts at issue. I suspect your Department has prepared "elasticity" studies to show the correlation between the prices charged at the other resorts and the likelihood that skiers would respond to a price increase by skiing instead at A-Basin. Please produce these studies, the underlying data, and the source of the underlying data (*e.g.*, whether it was produced by the defendants, the industry, or third-party sources).

The Department's sole explanation for opposing a complete merger but approving a partial merger is that with a complete merger the new giant would control 38% of all Front Range skiers, while with a partial merger this Front Range market share would be split between the new giant, with 32%, and Arapahoe Basin, with 6%. It is this sharing of the Front Range market that forms of the basis of the Department's representation that the divestiture of Arapahoe Basin "would preserve competition" and "keep prices lower for skiers." In support, the Department undertook a Herfindahl-Hirschman Index (HHI) analysis, but it chose not to disclose the data used in this HHI analysis so the public could examine the accuracy of the Department's analysis—and, in the process, the legitimacy of the Department's conclusions.

At the outset, the Department never explains in its Complaint or its CIS how it arrived at its "Front Range market share" data—that is, the data used both to assess the total size of this market, and to allocate market share among different resorts. The accuracy of this data is obviously critical: it is this data on which the Department uses in its HHI analysis which, in turn, is used to explain the Department's willingness to approve the so-called partial merger.

The reason I ask is that your estimates do not correspond, even closely, with my own experience. According to your data, Front Range skiers constitute less than 13% of total skier days at Vail Resorts and less than 20% of total skier days at Breckenridge and Keystone.[15] My experience is that these numbers are understated substantially—perhaps as much as 50%.[16] While I am not very familiar with the HHI analysis, I suspect that understating the Front Range skier market share would skew the HHI results.

However, even assuming the accuracy of the market share data you used, the Department's statement that Arapahoe Basin currently serves 6% of the Front Range market is misleading, and may be misleading in a material way. The CIS does not acknowledge that, because of its elevation, A-Basin generally stays open months after other ski resorts close (including all other resorts in Summit and Eagle Counties).[17] I suspect a sizable number of A-Basin's total number of skier days—virtually all of whom are Front Range or local skiers—are generated after other ski resorts have closed. If this is the case, Arapahoe Basin may serve less of the Front Range skier market during the competitive period than the Department asserts.

I therefore ask the Department to submit skier day data by month, so I can ascertain how many of A-Basin's skier days are generated in a competitive environment and now many are generated when the competition has closed. This data may,

[11] This conclusion is also difficult to square with the Department's position last fall in reviewing another (but much smaller) merger in New England. There is stated that '[m]any of the other smaller resorts lack the qualitative aspects previously identified (number of trails and lifts, variety and difficulty of trails, snowmaking, night skiing, and other amenities) to constrain a small but significant price increase after the merger" of larger resourts. Plaintiff's Response, *U.S.* v. *American Skiing Co.*, 61 Fed. Reg. 55995, 55998 (Oct. 30, 1996). *See also* Competitive Impact Statement, *U.S.* v. *American Skiing Co.*, 61 Fed. Reg. 33765, 33771 (June 28, 1996) ("Smaller ski resorts . . . cannot and after this transaction would not constrain prices charged to weekend skiers living in eastern New England. Although eastern New England skiers occasionally choose to ski at such smaller . . . resorts, skiing at such resorts is not a practical . . . alternative for most eastern New England skiers most of the time.").

[12] Some locals ski A=Basin for a third reason: to "extreme" ski in out-of-bounds areas. Because this activity is not legal, I suspect the Department cannot consider it.

[13] In your response to this letter, please advise whether you and your staff (a) are downhill skiers, and (b) have skied at any of the Summit/Eagle. County resorts (and, if so, which ones). Someone unfamiliar with the different ski areas may have a very different perspective than one who has actually skied the terrain in question. No skier I know of would say that A-Basin is "comparable" to the other resorts owned by either Ralston Resorts or Vail Resorts.

[14] Plaintiff's Response, *U.S.* v. *American Skiing Co.*, 61 Fed. Reg. 55995, 55999 (Oct. 30, 1996).

[15] The Department states that the six resorts owned by Vail Resorts and Ralston Resorts "account for over 38 percent of skiers days in the Front Range market." CIS at 10. If this were true, then the other five resorts which serve Front Range skiers—Copper Mountain, Eldora, Loveland, Ski Cooper, and Winter Park—serve the remaining 62% of the market. This does not appear to be possible given that Eldora, Loveland and Ski Cooper are so small—with each being perhaps each smaller than A-Basin.

[16] Your production of this data may help explain this apparent discrepancy. For example, there are a substantial number of Front Range residents who own condominiums in Summit or Eagle Counties and who ski most weekends. Perhaps your data erroneously classified these skiers as "destination" skiers, although they obviously are more appropriately classified as Front Range skiers, if not local skiers.

[17] Most ski resorts in Summit and Eagle Counties generally close between mid-April and early May, depending upon the conditions in a given year. My recollection is that in 1996 A-Basin closed on July 4 and that in 1995 it closed on August 10—months after the other ski resorts had closed.

moreover, impact materially your HHI analysis.

At the core of the Department's "partial-merger-is-OK" position is that an independent Arapahoe Basin would provide "significant competition" with the four much larger resorts which would be owned by Vail Resorts because, if Vail Resorts increased its prices too much, Front Range skiers would instead ski at A-Basin:

A relatively small shift in skier days to Arapahoe Basin would make any significant price increase by the merged firm unprofitable. The calculations of profit-maximizing behavior described above suggest that, after the merger, once Arapahoe Basin is divested, any increase in average discounted prices to Front Range skiers would be negligible. CIS at 15–16.

The Department does not explain this conclusion, and objective facts would suggest otherwise.

To provide this "significant competition." Arapahoe Basin must have the physical capacity to handle a sufficient number of additional skiers interested in skiing there rather than at one of the Vail Resort areas.[18] Put another way, the issue is not that A-Basin currently services 6% (or 4%) of the Front Range skier market; rather, the issue is whether A-Basin has the capacity to serve additional skiers who decide not to pay the high prices charged at the four much larger Vail Resorts.[19] It does not appear that A-Basin has such capacity—at least enough to make a difference.[20]

Arapahoe Basin's best season was in 1986–87, when it enjoyed total skier days of 269,399. According to the Department, last season A-Basin served approximately 150,000 Front Range skiers. *See* CIS at 4 and 15. Thus, even if A-Basin were able to repeat its best season, it would be able to accommodate only 120,000 or so additional Front Range skiers—approximately 5% of the total Front Range market.[21] Given that a combined Vail Resorts/Breckenridge/Keystone operations would average over 4.6 million skier days, and that the combined operations would still possess 27% of the Front Range market (even assuming A-Basin reaches its capacity by taking another 5% of the Front Range market), it is not realistic to think that an independent A-Basin will constrain Vail Resorts' pricing decisions in any way—much less "prevent Front Range skiers from paying higher lift ticket prices" as your Division represented in its January 3 press release.

In summary, I ask the Department to provide all available facts in its possession which relate to how an independent Arapahoe Basin can restrain the pricing behavior of a combined Vail Resorts/Breckenridge/Keystone operations. I also ask the Department to explain why, in response to a price increase by Vail Resorts and given its significant capacity constraints, A-Basin would not increase its prices as well—thereby defeating the very role the Department intends A-Basin to play.

IV. There Appears to be a Substantial Question Whether an Independent, Stand-Alone Arapahoe Basin Can Succeed as a Long Term Competitor to a Combined Vail Resorts/Breckenridge/Keystone Operations

There is a second, critically important component to the Department's theory that a partial merger "resolves the anticompetitive problems" raised by a complete merger—namely, that an independent Arapahoe Basin can be "economically viable." CIS at 15. Even if, as the Department apparently believes, A-Basin can provide meaningful competition upon its divestiture. A-Basin can play this important price-constraining role only if it can survive over the "long-term." DoJ Press Release at 2 (Jan. 3, 1997). If A-Basin cannot survive, consumers would be penalized twice under the Department's partial merger plan; (1) they will pay higher prices, *and* (2) they will lose the opportunity to ski at A-Basin altogether—in which case they will likely pay even higher prices at the remaining resorts.

There is a substantial question whether Arapahoe Basin can survive, much less provide "significant" competition, as ski resort on its own, especially when it must compete with a giant like the combined Vail Resorts/Breckenridge/Keystone operations. First, there is no recent history in which to evaluate the viability of Arapahoe Basin as an independent operation; Ralston Resorts acquired A-Basin almost 20 years ago to complement its Keystone operations. Consequently, anyone's representations about A-Basin's long term viability as an independent resort is, at best, speculation.

Second, the trend of the ski industry in recent years has been towards larger and larger consolidations, as evidenced by the merger proposed in this proceeding.[22] According to a recent news article, the number of ski resorts in this country has dropped by 63% over the last 20 years (from 1,400 to 519).[23]

Presumably, there are economic forces in the ski industry compelling this consolidation activity.[24] Divesting such a small resort as Arapahoe Basin to operate independently and to compete against so much larger rivals bucks this trend.

Third, Arapahoe Basin has not enjoyed the growth experienced by most other ski resorts in the Summit/Eagle County area.[25] During last ski season (1995–96), Arapahoe Basin had a total of 241,435 skier days—an 8% decrease over the previous, 1994–95 season (262.240). Indeed, A-Basin's skier day total last season was less than that 10 years ago (1985–86: 267,200) or even 14 years ago (1981–82: 254,618). Without growth, A-Basin may not generate the revenues it needs to make improvements (*e.g.*, install snowmaking equipment, newer lifts, electronic ticketing, and the like).

Four, as an independent, self-contained resort, it should be anticipated that Arapahoe Basin will lose much, if not all, of its destination skier business—approximately 35% of its current business.[26] The Department nowhere explains how A-Basin can survive with the likely loss of this business.

As noted, Arapahoe Basin does not have any base facilities to accommodate any destination skiers. In the past, A-Basin has been able to survive because it has been owned by Keystone, a major destination resort located five or so miles away, and Ralston Resorts has always operated the two resorts as one (*e.g.*, one life ticket honored at both resorts.). Ralston facilitated destination skiing at A-Basin by offering a free shuttle bus so destination skiers staying at Keystone could ski part of a day at A-Basin and by including A-Basin "Ski the Legend" advertising in its general advertising. Keystone, because of its large size, presumably offers A-Basin many other operating cost efficiencies such as joint purchasing.

This Keystone/A-Basin connection (*e.g.*, one ticket, free shuttle, extensive advertising) undoubtedly will be severed if Vail Resorts is allowed to acquire Keystone, but not A-Basin. To a layman like me, A-Basin must be

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[18] During a dry season, Arapahoe Basin may provide no competition to any resort, because it has no snowmaking capabilities.

[19] Indeed, because of its major capacity constraints, the new owner of A-Basin may decide that the better course is to follow any price increases made by the Vail Resorts. The Department does not address this likely contingency in any of its papers.

[20] *See, e.g.*, Plaintiffs' Response, *U.S.* v. *American Skiing Co.*, 61 Fed. Reg. 55995, 55999 (Oct. 30, 1996) ("[M]any of the smaller resorts are unlikely to be able to expand facilities within a timely fashion to defeat an anticompetitive price increase. For example, to increase the number of lifts and trails or add snowmaking or night skiing capability would take these resorts more than two years in most cases and/or require a long regulatory approval process if their resort is on national forest land."). To my knowledge, A-Basin is located on national forest land.

[21] A-Basin's capacity is limited both by its small skiable area and its small capacity to take people up the mountain. Given the terrain surrounding A-Basin, it is doubtful whether any expansion is possible.

[22] This consolidation trend is also demonstrated by the December 1996 announcement that the fourth Summit County resort, Copper Mountain, would be acquired by Intrawest and by the merger last year of American Skiing Company and S-K-I Limited, which own many large resorts in New England.

[23] *See* Penny Parker, *Vail Resorts, Inc. Sports New Power Thanks to Merger, The Denver Post On-line* (Feb. 2, 1977). Indeed, numerous small resorts in Colorado, including Berthoud Pass which once served one-third of all skier days in Colorado, have closed because of their inability to compete with larger resorts.

[24] Most industry observers believe the driving forces behind both consolidation and attrition are the need to gain access to capital to maintain state-of-the-art facilities, the need to retain professional management, and the inability of numerous resorts to keep pace with the competition with respect to one or both of these market forces. The trend among leading resorts is toward investing in improving technology and infrastructure so as to deliver a more consistent, high quality product.

[25] Nationally, growth in the ski industry over the last decade has been stagnant. Colorado resorts, and the resorts in Summit/Eagle Counties in particular (with the exception of A-Basin) have generally fared better.

[26] This 35% is based on the fact that A-Basin had a total of 241,435 skier days during the 1995–96 season and that, according to the Department, 150,000 of those skiers were Front Range skier days—leaving 90,000 days involving skiers other than Front Range skiers. *See* CIS at 4 and 15. Some of these 90,000 skier days were generated by local skiers, so the 35% estimate may be overstated.

concerned about the potential loss of up to one-third of its skier customer base.

I therefore ask you to produce data identifying all the services Keystone has provided to Arapahoe Basin before announcement of the acquisition, and to explain how the severing of the Keystone connection will impact A-Basin's future, including the likely loss of destination skiers.

Arapahoe Basin, currently celebrating its 50th anniversary, is a national treasure, and it is important that nothing be done to undermine its long-term viability. In my judgment, A-Basin is such a marginal player in the ski resort market that, given its beauty and unparalleled conditions for spring skiing, the Department should permit A-Basin to continue to be owned by the operator of Keystone—even if Vail Resorts eventually acquires Keystone. Put another way, from the perspective of the public interest, it would be preferable to approve the defendants' original, complete merger plan than to implement the Department's partial merger alternative. If the choice is paying higher prices or losing altogether the opportunity to ski at A-Basin, I would prefer to pay higher prices. I believe the vast majority of my fellow skiers would agree. Besides, if the partial merger is consummated, we will likely pay higher prices anyways.

V. Conclusion

For the foregoing reasons, I ask you to reconsider your unexplained conclusion that local skiers would not be negatively impacted by the merger. In addition, based on the data available to me, I believe that the State of Colorado and the Department should withdraw their support of the proposed Final Judgment and advise the defendants that they intends to to prosecute the complaint if the defendants decide to proceed with their merger. As discussed above, it would appear that the Department's partial merger alternative would not resolve the anticompetitive problems with the proposed acquisition.

I freely admit my current position may be based on incomplete facts, and it is precisely for this reason that I have identified the facts I need to submit informed comments. However, so I can meaningfully exercise my statutory right to submit comments. I ask that you produce the data requested by Tuesday, March 4, 1997.

Yours truly,

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March 13, 1997.

Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street N.W., Suite 4000, Washington, DC 20530

Re: Proposed Merger of Vail Resorts, Inc. and Ralston Resorts, Inc.

Gentlemen: Please be advised that this firm represents Copper Mountain, Inc. ("Copper Mountain"). This letter is in response to your Stipulation and proposed Final Judgment filed in the United States District Court for the District of Colorado in the case of United States of America and the State of Colorado v. Vail Resorts, Inc., Ralston Resorts, Inc. and Ralston Foods, Inc., Civil Action No. 97–B–10 (the "proposed Final Judgment") and the Competitive Impact Statement filed in connection therewith (the "CIS"). This letter sets forth Copper Mountain's opposition to Vail Resorts, Inc.'s ("Vail") acquisition of the ski resorts in Summit County, Colorado owned by Ralston Resorts, Inc. ("Ralston"). Vail and Ralston are the two largest owner/operators of ski resorts in Colorado and the proposed acquisition would combine several of the largest ski resorts in that region. CIS page 2. Copper Mountain believes that the proposed acquisition, even if consummated in the manner contemplated in the proposed Final Judgment, will create and enhance market power in Vail and will greatly facilitate Vail's unilateral exercise of such market power. Copper Mountain respectfully disagrees with your conclusions that the proposed divestiture of Arapahoe Basin ("A-Basin") will preserve competition and resolve the anticompetitive problems raised by the proposed transaction. We respectively request that the Department of Justice (the "Department") reconsider its position regarding the Vail/Ralston merger based on the following information.

I. Statement of Interest

Copper Mountain owns and operates the Copper Mountain ski resort located at Copper Mountain, Colorado off of Interstate Highway 70 at the intersection of State Highway 91 ("Copper"). The Vail resorts (i.e., Vail, Beaver Creek and Arrowhead) are located to Copper's west and the Ralston resorts (i.e., Keystone, Breckenridge and A-Basin) are located to Copper's east.

II. Statement of Position

Copper Mountain believes that the effect of the proposed acquisition will, if consummated, substantially lessen competition, create a monopoly and increase substantially the concentration among ski resorts to which Eagle County, Summit County and Front Range (as defined on page 2 of the CIS) residents practicably will go for day ski trips and to which skiers will go for destination skiing in Colorado. Copper Mountain believes that the proposed acquisition, if consummated, will create and enhance market power in Vail and greatly facilitate Vail's unilateral exercise of such market power. This acquisition threatens to raise the price of, or reduce discounts for, day skiing and destination skiing to consumers and is likely to result in other adverse competitive effects, all in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Copper Mountain does not believe the Department's proposed remedy of requiring the divestiture of A-Basin will rectify these adverse competitive effects.

III. Inadequate Remedy

The Department's Complaint, the proposed Final Judgment and the CIS all acknowledge and allege that the proposed acquisition would substantially increase concentration in the market, reduce competition in the market, and eliminate the price constraining impact Vail and Ralston currently have on each other. The economic models referred to in the CIS predict that such factors will result in higher prices and/or a reduction in the discounts offered to skiers in the relevant market. Copper Mountain does not believe the Department's proposed remedy of requiring the divestiture of A-Basin will rectify these adverse competitive effects to any meaningful degree. First, Copper Mountain believes the Department has substantially misstated the market share of A-Basin with respect to Front Range skiers. A substantial portion of the skier days at A-Basin occurs after the other Summit County and Eagle County ski resorts have closed. All of A-Basin's "post-season" skier days are part of a market in which the surrounding resorts do not compete and should be excluded in computing Front Range market share. Using such seasonally adjusted information, A-Basin's share of the Front Range market has to be less than currently calculated by the Department, and conversely, Vail's and Ralston's other resorts must have a greater market share. The logical conclusion from these facts is that a post-merger divestiture of A-Basin will have less of an impact on the Front Range market than that apparently presumed by the Department in the proposed Final Judgment and the CIS.

Second, several factors indicate that A-Basin's market presence after the proposed divestiture will be significantly less than that indicated by A-Basin's historical operating performance. After the divestiture A-Basin will lose the substantial benefit of being part of a Multi-Mountain Ticket (see below). A-Basin's historical operating performance has been enhanced by its pairing for many years with Keystone and more recently with Breckenridge. There is no question that skiers perceive a Multi-Mountain Ticket as a better value and we anticipate an appreciable drop-off in A-Basin's total ridership once it is severed from the remainder of the Ralston family. Also, A-Basin will no longer benefit from the huge advertising efforts of Keystone and Breckenridge (and now Vail) which historically have included all mountains within the multi-mountain group.

Moreover, prior to the current ski season, many of the skier days at A-Basin have been snowboarders who were prohibited from snowboarding at Keystone. Historically Keystone has been a skiers-only mountain and snowboarders holding Ralston's Multi-Mountain Tickets would utilize the close-by A-Basin facilities. Keystone's ban on boarders has been lifted effective with the 1996-1997 ski season. Since Vail's announcement of the proposed acquisition we believe many of the snowboarders who formerly boarded at A-Basin have migrated to Keystone. Copper Mountain understands that skier days at Keystone are up from last year while skier days at A-Basin are down from last year, and believes this is largely attributable to the change in Keystone's policy on snowboarders. Accordingly, the lost snowboarder days and anticipated loss of multi-mountain skier days should be factored

in when computing A-Basin's estimated Front Range market share after the proposed divestiture. Again, A-Basin's share of the Front Range market after the proposed divestiture must be signifcantly less than that calculated by merely extrapolating A-Basin's historical operating data.

Third, A-Basin has fewer lifts, trails, skiable area and other amenities than the other Eagle/Summit County resorts. These qualitative differences are so great that it is unlikely that those skiers who ski at the other Vail mountains after the divestiture would accept A-Basin as an alternative if Vail significantly raises prices. The Department specifically recognized in the recent *United States* v. *American Skiing Company* case that if there are significant qualitative differences between the resorts, price competition by the lesser resort will not be effective to constrain price increases by a dominant firm having resorts with more and better facilities. Neither the proposed Final Judgment nor the CIS discuss the overwhelming qualitative differences between A-Basin and the other Vail and Ralston mountains. A reader of the proposed Final Judgment and the CIS who is not familiar with these facilities could well assume that A-Basin's facilities and amenities are fungible with those of the other Vail and Ralston resorts. In fact, A-Basin has more in common with the lesser Front Range resorts which the proposed Final Judgment indicates are disdained by most skiers of the Vail and Ralston resorts. Please explain how A-Basin falls out of the general rule so forcefully put forward in the *United States* v. *American Skiing Company* case that such qualitatively disadvantaged competitors are unable to constrain price increases by their stronger competitors.

We find it interesting that neither the proposed Final Judgment nor the CIS quantify the "post-divestiture" HHI or the resulting change in HHI. We believe that both numbers (especially after making the appropriate seasonal and historical adjustments referred to in this section) will remain well in excess of the benchmarks which presumptively raise antitrust concerns under the Department's 1992 Horizontal Merger Guidelines. Please provide such calculations so that all parties will be better able to assess the anticipated effect of an A-Basin divestiture.

IV. Market Definition, Measurement and Concentration

A. Product Market Definition; Multi-Mountain Tickets

Copper Mountain agrees with the Department's definition of the business of skiing as set forth at pages 5 and 6 of the CIS and agrees that one of the relevant products for both Vail and Ralston in the instant case is downhill skiing. However, Copper Mountain believes that the Department has failed to consider another relevant product. In Colorado, several ski resorts offer a multi-mountain multi-day ski life ticket (a "Multi-Mountain Ticket"). A Multi-Mountain Ticket allows a skier to ski on several mountains over a period of several days instead of just skiing at one location, thereby offering the purchaser of the ticket a greater variety of skiing opportunities. The price of the Multi-Mountain Ticket is usually cheaper than an equal number of one day lift tickets for the mountains the subject of such Multi-Mountain Ticket. A Multi-Mountain Ticket is perceived as a better value by a skier, and several such Multi-Mountain Tickets are offered in Colorado (e.g., Ski-The-Summit (discussed below), a multiple mountain ticket offered by Vail (Vail Mountain and Beaver Creek prior to the proposed acquisition and, as recently announced, Breckenridge and Keystone also), Ski The Gems (consisting of Silver Creek, Loveland, Ski Sunlight, Monarch, Powderhorn, Ski Cooper, Arapahoe Basin and Eldora), Aspen (Aspen Mountain, Aspen Highlands, Buttermilk and Snowmass) and Ski 3 (A-Basin, Breckenridge and Keystone prior to this proposed acquisition)). The firms offering a Multi-Mountain Ticket can price discriminate with respect to that ticket because it is a different product. Since both Vail and Ralston offer Multi-Mountain Tickets, Multi-Mountain Tickets are also a relevant product.

B. Geographic Market Definition

Both Vail and Ralston sell downhill skiing, including Multi-Mountain Tickets, to day skiers and destination skiers at each of their ski resorts. These skiers originate from many different geographic locations. The Department apparently has determined that the only relevant market which would experience anticompetitive effects from the proposed acquisition is the Front Range day and weekend skier market. Copper Mountain respectfully disagrees and believes that there are additional relevant geographic markets which will suffer anticompetitive effects from the proposed acquisition.

1. Local Skier Markets

Vail provides skiing to Eagle County, Colorado skiers at all three of its resorts and Ralston provides skiing to Summit County, Colorado skiers at all three of its resorts. Copper Mountain believes that these skiers are a significant element of Vail's and Ralston's ski resort income. Eagle County residents (which number approximately 25,000) generally turn to the Vail resorts for day skiing trips and Summit County residents (who number approximately 18,000) generally turn to the ski resorts located in Summit County (which are Copper, Breckenridge, A-Basin and Keystone) for day skiing trips since these are the resorts that are within a reasonable and economic traveling distance for these skiers. Local skiers generally purchase season passes to a local ski resort. This creates a "lock-in" effect and, once purchased, a local skier has little incentive to ski someplace else. Further, if the Eagle County local skiers did decide to ski elsewhere, the logical choice would be Summit County, which means they would be required to drive over Vail Pass (elevation 10,660 feet) twice, which can be treacherous during winter storms. If the Summit County local skier decided to ski outside of Summit County, assuming he headed east, he would be required to drive over Loveland Pass (elevation 11,990 feet) or through the Eisenhower Tunnel (elevation 11,160 feet) twice, both of which can be treacherous during winter storms. A trip in the other direction to Vail would be further and would require a drive over Vail Pass. Finally, local residents ski their local resorts due to the convenient access. A skier wanting to ski during his lunch hour, or work in the morning and ski in the afternoon (or vice versa), will ski locally and not at a more distant ski resort. As such, ski resorts located outside Eagle County and Summit County cannot (and would not after the proposed Vail/Ralston acquisition is consummated) constrain a significant non-transitory price increase charged to day skiers living in those Counties. It is of importance however that Vail currently influences the rates charged by the Summit County ski resorts. Summit County resorts generally set their prices beneath those charged by Vail. This constraint will be removed by consummation of the Vail/Ralston merger with respect to three of the four ski resorts in Summit County.

Eagle County and Summit County skiers can be identified easily by the ski resorts that are reasonable alternatives for these day skiers. Ski resorts can charge these skiers prices that differ from prices charged to out-of-county skiers or to destination skiers generally by increasing the cost of a season pass or reducing the discount offered on a season pass. This is done by, among other things, advertising in the Vail Trail, a local newspaper circulated in Eagle County or in the Summit Daily News and the Summit County Journal, local newspapers circulated in Summit County or by direct mailings to P.O. boxes in Eagle and Summit Counties and mailings to past season ticket holders. A single firm controlling all of the ski resorts in Eagle County and Summit County would be able to raise prices a small but significant amount to the local skiers without losing so much business as to make the price increase unprofitable.

Of further concern is transportation between these two Counties. In 1995, Vail began operating a bus from Breckenridge to Vail Mountain. Vail has announced its intentions to expand this bus service and thereby increase the interaction between the two counties. If Eagle County skiers do travel to other counties for skiing, the logical locations of choice are the ski resorts in Summit County, and vice versa. Nearby resorts outside of Eagle and Summit Counties are: Eldora, Loveland Basin, Silver Creek, Ski Cooper and Winter Park. Four of these five alternative resorts outside of the Eagle/Summit County area (i.e., Eldora, Loveland Basin, Silver Creek and Ski Cooper) generally have fewer lifts, trails, skiable area and amenities than the Eagle/Summit County resorts and are not of the same qualitative choice. Winter Park is comparable in size and amenities to the Eagle/Summit County resorts, but it is further away. Gasoline costs to any of the other five alternative ski resorts, on a round trip basis, would exceed a significant 5% increase by Vail to the one day lift ticket price. Finally, none of these five resorts are as convenient to local skiers as those in Eagle and Summit Counties for the reason set forth above. As such, ski resorts located outside Eagle/Summit County would not after the proposed Vail/Ralston acquisition is consummated constrain a

significant price increase charged to local skiers living in Eagle County or Summit County, Colorado.

2. The State of Colorado

Both Vail and Ralston provide skiing to day skiers and destination skiers (both residents and non-residents of Colorado) at all of their resorts, as do most ski resorts in Colorado. The ski resorts in Colorado specifically market Colorado as a skiing market, not only to residents of Colorado but also to skiers around the country and the world. The majority of the ski resort owners in Colorado are members of Ski Country. Ski Country publishes, among other things, a Consumer Ski Guide. According to this Ski Guide, Ski Country "functions as the information source for the Colorado ski industry and serves as the voice for Colorado Skiing with many entities, including the travel trade, legislators, government officials, regulatory agencies, the media and skiers."

Others also consider Colorado to be a separate market, even Vail. Adam Aron, Vail's new chairman and chief executive officer, has been quoted as saying: "It's time to increase the number of people coming to Colorado to ski. . . ."[1] Mr. Aron was also quoted that one of his goals was to "[g]o right to work in promoting Colorado skiing to see if the market can be expanded."[2] Finally, he stated: "If Colorado wants to remain a strong player, its resorts need to come together to keep the spotlight on the state as a destination."[3] Vail spokesperson Pat Peoples was quoted as saying: "[T]his would make an incredible merger and keep Colorado in the forefront of world-class skiing. . . . Marketing will be directed toward the sport and Colorado and to the individual resorts."[4] Ralston also identifies Colorado as a distinct market: "Jim Felton, communications director for Ralston resorts, said the merger 'helps us to fortify Colorado's stance as the gold standard in skiing.'"[5]

Skiers ski in Colorado because of the abundance and quality of the snow, the variety of skiing conditions and the amenities offered at the destination resorts. In addition, Colorado is easily accessible from most places in the country. Colorado day skiers generally have no other place to go. Destination skiers generally fly to Colorado to ski and spend an average of seven nights on their ski trip. A price increase for lift tickets of five percent would not be sufficient to cause destination skiers to choose another state in which to ski.

Please provide more information to justify your conclusion that no relevant market other than the Front Range day and weekend skier market will be competitively disadvantaged by the proposed acquisition.

[1] *Vail 'will grow and grow'*, Michele Conklin, Rocky Mountain News, July 24, 1996, p. 4B.

[2] *Skiing behemoth formed*, Penny Parker, The Denver Post, July 24, 1996 p. 6C.

[3] *Aron Takes Reins at Vail Resorts; Firm Merges With Ralcorp*, Felicity Long, Travel Weekly, August 15, 1996, p. 15.

[4] *Vail Resorts buys into 3 local ski areas*, Marc Angelo, Summit Daily News, Volume VII, Number 339, July 24, 1996, p. 1.

[5] *Vail to buy three Summit resorts*, Madaeleine Osberger, Snowmass Sun, July 24, 19996, p. 1.

C. Calculating Market Share

In the downhill skiing business, market share has historically been determined on the basis of skier days (i.e., one person visiting a ski area for all or part of one paid day or night for the purpose of skiing). As such, skier days generally are the appropriate measure of market share for downhill skiing and Multi-Mountain Tickets. However, although total skier day information for Colorado resorts is readily available through Ski Country, definitive information breaking down skier days for Colorado resorts for the various relevant markets is not, to our knowledge, publicly available. As such, we have made some assumptions as to the local markets and the Multi-Mountain Ticket markets shares.

Vail currently owns all of the ski resorts in Eagle County. As stated above, local residents generally only ski in their own county. If that is true, then Vail's market share of Eagle County resident day skiers is close to 100%. As to the Multi-Mountain Ticket market in Eagle County, since Vail offers the only Multi-Mountain Ticket in Eagle County, its market share of Multi-Mountain Ticket users in Eagle County must also be 100%.

There are only four ski resorts in Summit County. Ralston currently owns three of the ski resorts and Copper Mountain owns the fourth. Since there is more than one firm participating in this relevant market, market share should be determined by skier days. Again, we do not have definitive information regarding skier days at the Ralston resorts (other than total skier days). However, we believe Ralston's market share of Summit County local day skiers is approximately 75%. Ralston's records should substantiate this. There are only two Multi-Mountain Tickets offered in Summit County, i.e., the Multi-Mountain Ticket offered by Ralston and the Multi-Mountain Ticket offered by Ski-The-Summit (see the discussion below). Since Ski-The-Summit has effectively been eliminated with respect to local skiers, Ralston has 100% of the Multi-Mountain Ticket market in Summit County.

The relevant indicator of market share for the entire Colorado market is total skier days (i.e. day skiers and destination skiers). The calculation of market share for all Colorado resorts for the 1995/1996 season is as follows:

Resort	Market share (percent)
Ralston resorts	23.39
Vail resorts	19.56
Copper	8.49
Silver Creek	0.80
Winter Park	8.89
Eldora	1.50
Loveland Basin	2.68
Ski Cooper	0.58
Aspen	11.78
Crested Butte	4.45
Monarch	1.19
Purgatory	2.70
Steamboat	8.93
Cuchara Valley	0.17
Howelson Hill	0.16
Powderhorn	0.46
Ski Sunlight	0.80
Telluride	2.38
Wolf Creek	1.09
Total	100.00

Vail, Ralston, Ski The Gems and Aspen are the only firms effectively offering Multi-Mountain Tickets in Colorado. We do not know the number of skier days attributable to Multi-Mountain Tickets at these locations. However, based upon total 1995/1996 skier days, Vail, Ralston, Ski The Gems and Aspen would have the following Multi-Mountain Ticket market shares pre-merger:

Firm	Skier days	Percentage (percent)
Vail	2,228,419	30.10
Ralston	2,665,307	36.01
Ski The Gems	1,166,461	15.76
Aspen	1,342,109	18.13
Total	7,402,296	100.00

The Department should be able to obtain the actual information from Vail, Ralston and the other resorts.[6]

D. Proposed Acquisition (HHI Analysis)

In the local markets and the Colorado market, it appears that Vail's post-merger market share will result in an HHI factor substantially in excess of 1800. In addition, it appears that Vail's increase in the HHI after the merger will be in excess of 3000 points in the case of the Eagle/Summit County market, 4000 points in the case of the Eagle/Summit County Multi-Mountain Ticket market, 900 points in the case of the Colorado market and 2000 points in the case of the Colorado Multi-Mountain Ticket market. These HHI numbers and increases in concentration are substantially in excess of what the Department considers acceptable.

V. Potential Adverse Competitive Effects of the Proposed Acquisition

Market share and concentration as well as the HHI factor provide only the starting point for analyzing the competitive impact of a merger. Other factors to review are: the firm's ability to unilaterally increase prices; the ability of other firms to enter the market; the efficiencies achieved through the merger; and whether one or more of the firms are failing or their assets will be leaving the market. A merger may diminish competition because the merging firms may find it profitable to alter their behavior unilaterally following the acquisition by elevating price. Based on the prior acts of Ralston after its acquisition of the Breckenridge ski resort (as described

[6] It is interesting to note that the Ski The Gems ticket is a season pass at each of its participating resorts as opposed to a multi-day ticket. Generally the multi-day ticket is practical only at the same mountain or at mountains in close proximity to each other. Looking strictly at true multi-day tickets (as opposed to a season pass), the top three firms in Colorado (based on skier days) offer the Multi-Mountain Ticket.

below), and some of the announced intentions of Vail if the proposed acquisition is consummated, we believe that Vail will take these unilateral acts. The Department has stated in the CIS that its "unilateral effects" economic models predict significant post-acquisition price increases at the Vail and Ralston resorts. In addition to these effects on price, we believe the proposed acquisition will have numerous other deleterious effects on competition.

A. Multi-Mountain Tickets; Ski-The-Summit

In May 1984, Keystone organized the Ski-The-Summit ("STS") program for Summit County. STS allowed skiers to visit any of the four participating areas (A-Basin, Breckenridge, Copper and Keystone) for a package price pursuant to a Multi-Mountain Ticket. Summit County restaurants, hotels and condos were also advertised together. The idea behind STS was that skiers would find a ticket usable at four mountains more favorable than a ticket usable at only one mountain. From the mid 1980's until after the Breckenridge merger, STS sold season passes and Multi-Mountain Tickets, as well as selling cards (the "STS Club Card") which allowed discounts off of various purchases at participating ski resorts, lodges and merchants in Summit County. STS marketed Summit County to Front Range and out-of-state skiers.

After Ralston acquired Breckenridge in 1993, the Ralston effectively excluded Copper from a Multi-Mountain Ticket. Ralston set its price for its season pass to the Ralston resorts below the season pass price of STS, thereby drawing the multiple-mountain season pass holder away from STS.[7] Prior to the 1993 Breckenridge/Keystone acquisition, STS offered a four or six day Multi-Mountain Ticket. After the 1993 Breckenridge/Keystone acquisition, Ralston refused to allow any STS Multi-Mountain Ticket for a period shorter than ten days, while at the same time Ralston marketed its own Multi-Mountain Tickets from 2 to 14 days. These actions have effectively eliminated STS as a viable competitor, the result of which is to exclude Copper Mountain from Multi-Mountain Tickets. The only area in which STS still has remaining viability is in the international arena.

STS used to offer the STS Club Card for $30 per skier per season. STS used the revenues from the sales of the card for STS marketing. As noted above, the STS Club Card allowed skiers discounted ski tickets and discounts for food and lodging in Summit County. After the Breckenridge merger, Ralston created its own "Ski 3" cards, and distributed over 100,000 of the Ski 3 cards free of charge to local and Front Range skiers via mass mailings. The Ski 3 card could only be used at the Ralston resorts. This undercut the STS Club Card, STS Club Card sales went to zero and the STS Club Card was discontinued, eliminating an important source of revenue to market STS.

[7] STS still sells some season passes (approximately 2,000 for the 1995/1996 season, with less than 1,500 expected for the 1996/1997 season).

Ralston's actions have effectively precluded Copper Mountain's access to a Multi-Mountain Ticket other than in the international market. A Multi-Mountain Ticket is perceived by the skier as a better value. Vail's tentative plans call for creating a Multi-Mountain Ticket for all five resorts if the acquisition is consummated. Copper will be excluded from this ticket also, thereby eliminating a choice to skiers in the Multi-Mountain Ticket market. Furthermore, these past actions predict that A-Basin will be excluded from the Vail Multi-Mountain Ticket after the proposed divestiture.

B. Lift Ticket Marketing

Copper Mountain and Ralston sell their lift tickets both on-site and through off-site merchants. Copper Mountain sets its on-site price, but Copper Mountain's off-site vendors are allowed to set their own lift ticket prices. Copper Mountain establishes the amount per off-site ticket which must be passed back to Copper Mountain by the off-site vendor, but the off-site vendor is free to establish whatever retail price it desires. We believe, however, that Ralston may exercise significant resale price maintenance with respect to its off-site lift tickets. Several vendors have expressed to Copper Mountain dissatisfaction with Ralston's setting of prices, but the vendors felt they had no choice but to go along with Ralston's requirements because of Ralston's huge market presence.

Ralston also may have entered into contracts with off-site merchants which preclude the merchants from selling other lift tickets, including Copper Mountain's lift tickets and Ralston may have used its market power to discourage the selling of Copper tickets by vendors. The means used by Ralston to achieve these ends we believe are several. First, Ralston may have entered into exclusive contracts with retailers which provide that the retailer can only sell tickets to the Ralston resorts. Second, Ralston may set favorable commissions, or discounts for the retailer's purchases from Ralston, which are available only if the retailer agrees to sell Ralston tickets exclusively. Finally, Ralston may provide incentives, such as additional tickets, season tickets, lodging packages, free transportation, joint advertising promotion, public relations or other forms of consideration, if the retailer sells more Ralston tickets than Copper tickets, or has a sliding scale of consideration based on their selling a high, or increasing percentage of, Ralston tickets. These methods would effectively reduce competition by preventing the off-site sale of other ski resort lift tickets or by providing a greater incentive to sell only Ralston resort tickets. Because of these practices, Copper Mountain has been able to find only a few retailers in Breckenridge who will sell Copper Mountain's tickets, and none in Keystone. Copper is concerned that Vail may exclude Copper Mountain from selling its tickets in all of the Vail resorts and Ralston resorts, and will continue the anticompetitive attempts with Front Range vendors if the proposed acquisition is allowed to proceed.

C. The "Summit Stage" Local Bus Issue

STS used to expand a large portion of its budget to pay for buses running between the four ski areas in Summit County. Several years ago, Summit County passed a one-half per cent sales tax to pay for public buses (the Summit Stage) that drive to all four ski areas and intermediate towns and carry passengers without charge. After the merger between Keystone/A-Basin and Breckenridge in 1993, Ralston started operating buses that drive only between the Ralston resorts. Summit County residents are now suggesting a repeal of the tax,

D. Other Concerns

One of the more important benefits which a ski resort can offer its employees is a season multi-mountain pass. With the demise of STS, Copper Mountain can no longer offer this benefit, potentially resulting in a loss of a substantial number of employees. This problem will become even more acute if Vail offers a five-mountain lift ticket. Vail is expected to have a $20,000,000 advertising budget. Cooper Mountain is concerned that Vail could dictate the placement of print advertisements and time slots for radio and television. Finally, Copper Mountain is concerned that Vail can make package deals with the airlines which other ski resorts cannot match or will not be given the opportunity to match. Further, Copper Mountain currently has an agreement with United Airlines whereby United provides discount airline tickets to Copper Mountain in exchange for Copper Mountain meeting a set quota for tickets sold to Copper customers. Copper Mountain is concerned that Vail will cause United to increase the quota or increase the penalty for falling short of the quota. In effect, Vail would be raising a rival's costs.

VI. Conclusions

Vail has and will continue to have a virtual monopoly on ski resorts in Eagle County, Colorado. In addition, Ralston currently has (and Vail will have if the proposed acquisition is consummated) a substantial portion of the market in Summit County, Colorado. As to the Eagle/Summit County market. Vail will own six (or five if the A-Basin divestiture is completed) of the seven ski resorts in that two-county market. Finally, the proposed merger will decrease the number of participating firms in the Colorado market and will decrease the number of participating firms in the Multi-Mountain Ticket markets as follows: which could leave Copper without a transportation system. The Summit Stage is very important to transport both guests and employees to Copper, and its elimination or replacement with a system that did not serve Copper would harm both guests and employees. Vail's tentative plans call for creating bus service among all five resorts. Copper Mountain believes this will bring further pressure to eliminate the tax that supports the Summit Stage, thereby eliminating an important source of transportation in Summit County. In addition, Copper Mountain is concerned that it would be precluded from such bus service, meaning that skiers using such service would not have readily available access to skiing at Copper or other resorts if they so chose.

Market	From	To
Eagle/Summit County	2	1
All Front Range Resorts	3	2
Colorado	4	3

In summary, Copper Mountain agrees with the Department as to the likely anticompetitive effect of the merger on the Front Range skiers. There will be significant nontransitory price increases and past behavior in this market indicates that numerous other anticompetitive effects in the Front Range market will follow. However, Copper Mountain also believes there will be an anti-competitive effect on local skiers as well as Colorado skiers in general, and in the Multi-Mountain Ticket market as well. Finally, Copper Mountain respectfully disagrees with the Department's conclusion that a post-acquisition divestiture of A-Basin will do anything to ameliorate the deleterious effects of the Vail/Ralston combination. A-Basin is too small and too ill-equipped to constrain price increases by its monopolistic neighbor and otherwise is unlikely to be an effective competitor. Nothing short of prohibiting the merger or at least requiring the divestiture of either Breckenridge or Keystone will adequately lessen the anti-competitive effects which otherwise will ensue.

Sincerely,

Douglas D. Hommert

January 18, 1997.

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H St., N.W., Room 4000, Washington, D.C. 20530.

Dear Mr. Conrath, I am extremely disappointed to hear of your preliminary approval of Vail Associates quest to buy Breckenridge and Keystone ski areas. I am a native Coloradan and Denverite. I have been skiing here for 30 years. I share the opinion of many that this is a monopolistic move by Vail Associates. The figures published in the paper indicate Vail Associates will have "between 32% and 34% of the front range ski market". The article in the January 4, 1997 Rocky Mountain News goes on to say that 35% market share is a benchmark used in federal law to determine when a company can raise prices unilaterally.

I would like you to consider my argument from a local skiers point of view. Consider that these acquisitions are along the I–70 corridor. A front range skier considers the winter road conditions as we decide where to ski. We travel I–70 past Idaho Springs (approximately 45 minutes from Denver) to the major fork where US 6 and US 40 split. Hundreds of millions of federal and state dollars have been spent to improve I–70, including the building of the Eisenhower Tunnel. Little if any money (beyond maintenance) has been used to make the road over Berthoud Pass any easier in tough winter conditions. Obviously it is a much more difficult trip to go skiing.

The majority of the money has been spent on roads in the I–70 corridor. Therefore, that is the easiest route to take skiing. Vail's acquisition of Keystone and Breckenridge gives them *dominance* in the heart of Colorado's prime ski market. They have continued to raise prices and it is difficult for my family or four to ski more than once per month at best. Arrowhead, under Vail's management, has gone from an affordable family resort to a prohibitively expensive place to ski.

I ask you to consider my argument and reconsider this decision. It's not healthy for one organization who is known for catering to out of state wealthy people to suddenly have reign over two more strategic ski areas so near to the Denver market. As a last request, ask them to keep Arapahoe Basin but divest of Keystone or Breckenridge. That would leave a larger resort like Keystone or Breckenridge independent. If Vail Associates is effective in their marketing as they always have been, what happens when their market share of 32% to 34% grows to 35% to 40%? Will they have the ability to raise prices unilaterally? Will you have any control at that point?

Please rethink this issue. It's not good for Colorado's ski industry. I'll look forward to your reply.

Sincerely,

Greg Horstman,

5892 E. Geddes PL., Englewood, Colorado 80112.

1101 Market Street, 29th Fl., Philadelphia, PA 19107.

March 14, 1997.

Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street N.W., Suite 4000, Washington, D.C. 20530

Re: Vail Resorts, Inc., C.I.S., Civ. Action No. 97–B–10

Dear Mr. Conrath: This is a comment on the above-captioned Competitive Impact Statement as filed by the Department of Justice ("DOJ") in U.S. and Colorado v. Vail Resorts, Inc. et al.

Having just returned from my annual ski trip to the Front Range, I must advise you that a major topic of conversation out there was how the DOJ got sucked into accepting that the sale of A-Basin (the Front Range name for Arapahoe Basin) could save us from the inevitable lift ticket increases which will surely come about with Vail's acquisition of Keystone and Breckenridge.

The CIS for this transaction, and the lack of factual detail therein is fascinating. I'll wager that not one of the attorneys or economists representing the Government in this matter has ever ridden the Pavliacini lift! Therefore, some "real skier" (and antitrust lawyer) facts:

1. A-Basin is a bowl. It is high, stark, open and tough. It tends to magnify adverse weather conditions, notably wind, cold and flat-light white-outs. A large number of those who ski The Basin do so to ski non lift-serviced terrain. This is very different skiing from the standard groomed and semi-groomed runs which constitute the bulk of skier business at Keystone, Breckenridge and Copper Mountain. In addition, A-Basin is a much smaller resort than the others.

2. Because of the items set forth in 1. above, A-Basin has traditionally been a cheaper place to ski than the other Summit County resorts. Even after Ralston bought it, an A-Basin only ticket (not usable at Keystone) was cheaper than the Keystone/A-Basin combined ticket.

3. No one goes to A-Basin to ski because the weather is bad at Keystone. It is, however, common for skiers to go to Keystone, buy a ticket, take the little shuttle from Keystone up to The Basin, and check out the conditions frequently by taking the bottom chair up to the bottom of the bowl which allows a skier to check out the bowl conditions without having to actually ski the bowl. The significance of this pattern is that such a skier's ticket would be recorded at the bottom of A-Basin as an A-Basin skier, although the skier almost immediately leaves the hill and returns to Keystone. Note that the CIS statistics are skier-days, not skier-runs. Having bought tickets and ridden ski lifts in this area since before electronic scanning existed, I do not believe that either Keystone or A-Basin has sufficiently sophisticated systems to draw the kinds of differentiations which would really indicate the degree to which A-Basin is a meaningful skiing alternative to Keystone.

4. Breckenridge and Keystone do in fact compete with Copper and Vail in the minds and planning of Front Range skiers. Copper Mountain has for a number of years been cheaper than the others, but that may change given Copper Mountain's new ownership. Vail has for many years placed large quantities of Vail/Beaver Creek deep discount coupons and lift tickets in the Dillon/Silverthorne/Frisco/Breckenridge areas serviced by Breckenridge, Keystone/A-Basin and Copper. However, even with the deep discounting, Vail/Beaver Creek lift tickets are much more expensive than the Summit County alternatives. A half-day ticket purchased at Beaver Creek on March 7 was $44. On the same day, a half-day ticket at the other resorts would have cost as follows: Breckenridge or Keystone/A-Basin, $36; Copper, $33. (Due to high winds at no time during the course of a week could we ski at A-Basin alone).

5. The only resort with which A-Basin alone (without Keystone) might be considered competitive by local Front Range skiers is Loveland Basin (which is on the other side of the continental divide (and the Eisenhower Tunnel) from A-Basin).

In conclusion, I offer another wager: allow this transaction to proceed and within 2–3 seasons lift ticket prices at Keystone and breckenridge will have gone up and prices at Vail/Beaver Creek will not have gone down. In addition, those of us who love A-Basin are seriously concerned that being contaposed to the big resorts it will not survive. It is readily understandable that Vail is delighted to not have to carry the burden of this small and peculiar operation. However, if the Department of Justice wants to allow this transaction to occur, please do not orphan A-Basin—make Vail buy it and keep it.

Very truly yours,

Jones, Day, Reavis & Pogue

Metropolitan Square, 1450 G Street, N.W., Washington, DC 20005–2088

April 4, 1997.

Via Hand Delivery

Craig W. Conrath,
Esquire, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW Ste. 4000, Washington, DC 20530.

Re: United States v. Vail Resorts, Inc.

Dear Craig: I have enclosed for filing the Tunney Act comments of the City and County of Denver and the Winter Park Recreational Association. Please acknowledge your receipt of these materials by signing and dating one original of this letter and returning it with our messenger.

Needless to say, we would be happy to answer any questions you might have.

Sincerely,

Charles A. James

Received by the Antitrust Division:

(Name)

(Date)

United States v. *Vail Resorts, Inc.*

[Civil Action No. 97–B–10]

United States District Court for the District of Colorado

Comments of the city and county of Denver and the Winter Park Recreational Association in opposition to the proposed final judgment.

Submitted to the Antitrust Division of the U.S. Department of Justice pursuant to 15 U.S.C. 16(b)–(h).

April 4, 1997, Washington, D.C.

The City and County of Denver ("Denver"), together with the Winter Park Recreational Association ("Winter Park"). hereby comment in opposition to the proposed final judgment resolving *United States* v. *Vail Resorts, Inc.*, Civil Action No. 97–B–10, (D.Col.). We fully agree that Vail's acquisition of Ralston Resorts threatens substantial harm to competition in the Front Range ski market. The proposed relief, however, falls well short of what would be required to eliminate that threat and restore competition.

This matter involves the combination of the two premier ski resort operators serving Colorado Front Range skiers. The transactions places under single ownership the three top ski resorts in North America and four of the top six resorts serving the Front Range skier. Following the transaction, Vail will own properties that accounted for 61.7 percent of total 1995–96 visits to ski areas serving Front Range skiers, as measured by Colorado Ski Country USA data. Five of the remaining eleven Front Range resorts each reported 305,000 or fewer 1995–96 visits, an amount that represented less than twenty percent of the 1995–96 visits to Vail's largest single resort alone. After an extensive investigation, the U.S. Department of Justice found that the merger would allow Vail, single-handedly, to raise prices above competitive levels.

The proposed consent decree calls for the divestiture of Arapahoe Basin, a small, remote ski area that is little more than a few ski trails and a parking lot. It has none of the amenities that characterize the year-round, full service resorts that have been combined under the Vail/Ralston transaction, and has virtually no potential to expand into a major resort property. Because of its location, altitude and ski conditions, Arapahoe Basin has a limited following, even among advanced Front Range skiers. The divestiture of this small "niche" ski area cannot be expected to check the enormous economic power that will be gained through the Vail/Ralston merger. Accordingly, we urge the Antitrust Division to reconsider its decision to accept this paltry divestiture or, failing that, we urge the Court to reject the proposed decree.

The Commentors

Denver is the local governing authority for the 153 square mile land area encompassing the City and County of Denver and is responsible for a population of approximately 484,000. The City Attorney is the chief local attorney responsible for civil matters affecting Denver residents.

Denver is vitally interested in the competitive health of the Colorado ski industry. By virtue of its Rocky Mountain location and climate, winter sports, especially skiing, are a major engine of economic activity and development for the Denver area. Skiing generates tourist trade, as well as tax revenues associated with lodging, travel, dining, entertainment, equipment purchases and other ski-related expenditures. Winter Park estimates that the ski industry is worth about $2.5 billion to the Colorado economy. Perhaps even more importantly, skiing is a vital component of the recreational life of the community. The availability of winter sports is a major factor in drawing residents and industry to the Denver area.

Having closely evaluated the Vail/Ralston transaction, Denver believes that the combination will harm resident skiers. Among other things, Denver concurs in the Antitrust Division's conclusion that Vail will have the ability to raise prices charged to Front Range skiers.

Winter Park is a not-for-profit corporation formed in 1950 by Denver to operate, maintain and develop the Winter Park Recreational Area for the benefit of the people of the City and County of Denver and the general public. By virtue of its charter, the Winter Park resort operates to advance the public interest by providing an enjoyable winter sports experience at reasonable prices, providing unique programs for special populations, such as young skiers and the disabled, and subsidizing non-ski recreational activities throughout the community. The Winter Park Board of Trustees believes that its corporate charter is furthered by the preservation of a fully competitive ski industry in the Colorado Front Range area.

Like Denver, Winter Park is concerned about the market power created by the Vail/Ralston transaction. It believes that, having acquired the Ralston resorts, Vail will have the ability to discipline other ski areas so as to discourage aggressive price and service competition. Further, Winter Park believes that Vail will be well positioned to pursue predatory strategies directed at other ski areas and resorts toward the ends of eliminating competitors and perhaps softening potential acquisition targets.

The Front Range Ski Market

The complaint supporting the proposed final judgment defines the relevant market as the provision of skiing services to residents of the Front Range. The Front Range is defined as the geographic area just east of the Rocky Mountains, including, from north to south, the metropolitan areas from Fort Collins to Pueblo. The complaint goes on to allege that most Front Range skiers limit their day trips to resorts within two and one-half hours travel time, and somewhat longer for overnight trips. For all practical purposes, this definition excludes thirteen of the twenty-four Colorado ski areas, including the major resorts at Aspen and Steamboat Springs. The remaining market participants are: Arapahoe Basin, Beaver Creek/Arrowhead, Breckenridge, Copper Mountain, Eldora, Keystone, Loveland, Silver Creek, Ski Cooper, Vail and Winter Park. Five of them—Arapahoe Basin, Breckenridge, Beaver Creek/Arrowhead, Keystone and Vail—are now owned by Vail.

Although there are eleven ski areas that serve the Front Range Skier, the market has been dominated by the Vail and Ralston resorts, which are now a single competitive entity. Since consummation of the merger, Vail controls three of the four resorts that attracted 1 million or more 1995–96 skier visits. Indeed, according to the prospectus accompanying Vail's most

recent stock offering, Vail, Breckenridge and Keystone, in that order, are the three most popular ski resorts in North America. Together the four Vail resorts, excluding Arapahoe Basin, accounted for just under 62 percent of total skier visits to resorts serving the Front Range. According to the complaint in this matter, they accounted for over 38 percent of skier days in the Front Range market.

Among the remaining Front Range resorts, only Winter Park had one million or more skier visits in the 1995–96 season. Three resorts—Copper Mountain, Beaver Creek/Arrowhead and Loveland—had skier visits between 970,000 and 300,000. The remaining four competitors—Arapahoe Basin, Eldora, Silver Creek and Ski Cooper—each had 250,000 or fewer 1995–96 skier visits, with Silver Creek and Ski Cooper each having less than 100,000.

The four Vail resorts dominate the Colorado ski market for a variety of reasons. Each is a modern winter sports complex, offering a variety of ski terrains and non-ski recreational facilities. Each is located within a well-developed resort community, featuring lodging, dining and entertainment. According to the White Book of U.S. Ski Areas, the Vail Resort, for example, offers a full-service school with 1100 instructors, has 20,000 beds for lodging on the resort and in the immediate community, offers nine restaurants on the mountain itself and over 100 in the surrounding community and has over 250 shops and services in the area. Even Beaver Creek/Arrowhead, Vail's smallest property, offers a full-service ski school with 400 instructors, 4700 beds for lodging and six on-mountain restaurants.

By way of contrast, the smaller areas, such as Arapahoe Basin and Eldora, offer no lodging and few other amenities. Indeed, the White Book directs Arapahoe Basin skiers to the Keystone Resort for lodging, dining and entertainment.

The Antitrust Division's Competitive Analysis

The competitive impact statement accompanying the proposed final judgment states that the Antitrust Division's opposition to the Vail/Ralston merger is premised upon the "unilateral effects" model. Competitive Impact Statement at 12. This model, as articulated in the 1992 DOJ/FTC Horizontal Merger Guidelines, posits that a merger may enable the surviving firm to raise prices where "a significant share of sales in the relevant market are accounted for by consumers who regard the products of the merging firms as their first and second choices and that repositioning of the non-parties' product lines to replace the localized competition lost through the merger (is) unlikely." Merger Guidelines at 23.

The Antitrust Division described the application of the unilateral effects model to this case as follows:

> (B)efore a merger, if two resorts are significant competitors to each other and one of these resorts increases its prices, a significant portion of this resort's customers would be "lost" to the other resort. After a merger between these two resorts, however, some customers who switch away from the resort that raises its price would no longer be lost, but rather would be "recaptured" at the newly-acquired resort. Price increases that would have been unprofitable to either firm alone, therefore, would become profitable to the merger entity.

Competitive Impact Statement at 12. Based upon its analysis of costs and demand in the market, the Antitrust Division estimated the adverse price effect of the merger to be an increase of roughly four percent or about $1 per lift ticket. Competitive Impact Statement at 14.

The conclusion that the Vail resorts would be able to increase prices following the merger necessarily means that the six non-party ski areas (excluding Arapahoe Basin) do not provide a sufficient constraint upon the combined Vail and Ralston resorts to discipline pricing in the Front Range market. That conclusion also means that the Antitrust Division has concluded that none of the non-party resorts could "reposition" their service offerings so as to enhance localized competition between their resorts and those of Vail. An effective remedy, therefore, requires the creation of a new competitive entity attractive enough to Vail patrons to capture sales to consumers switching away from the Vail resorts in response to a price increase.

Inadequacy of the Proposed Final Judgment

By the very terms of the Antitrust Division's competitive effects analysis, the divestiture of Arapahoe Basin would serve to constrain price increases at the Vail resort only to the extent that Arapahoe Basin is a close competitive substitute for each of the Vail properties. Otherwise, the run-off resulting from a Vail price increase at one of its resorts would be recaptured by another Vail resort. It would be virtually impossible to find anyone acquainted with the various ski areas serving Front Range skiers who would even suggest that Arapahoe Basin is a close substitute for any of the Vail properties.

Arapahoe Basin has the highest altitude base among the ski areas serving the Front Range. This, together with the fact that much of it is situated above the timberline, means that is suffers extreme weather conditions, including frequent "white-outs," more intense winds and much colder temperatures than other Front Range properties. Additionally, unlike most of the other resorts serving Front Range skiers, Arapahoe Basin is not located on the Interstate 70 corridor. Indeed, the most direct route to and from Arapahoe Basin requires traversing one of the highest and most frequently closed highway passes in the United States.

As a winter sports experience, Arapahoe Basin bears not even the slightest resemblance to the Vail resorts. First and foremost, Arapahoe Basin is not a resort at all. It is more properly characterized as a pure ski area. Unlike the Vail resorts, which boast full-service ski schools, cross country skiing, curling, ice skating, indoor tennis, sledding and snowcat riding, among other activities, Arapahoe Basin has ski lifts and trails, a snack bar and a parking lot. Unlike the Vail resorts, which feature a balanced skiing experience to accommodate skiers of varying skill levels, 90 percent of Arapahoe Basin's trails are listed as intermediate or advanced.

Moreover, contrary to the suggestion in the competitive impact statement that Front Range skiers are less interested in amenities than destination skiers, the social aspects of a ski trip often are just as important to the Front Range skier as they are to those who travel from more distant locations. Front Range skiers are as diverse as destination skiers. They are not just ski fanatics willing to drive two and one-half hours simply to take a few runs down the mountain and return home. Thus, it would be preposterous to suggest that Front Range skiers, even those travelling on a day-trip basis, have no interest whatsoever in non-ski winter sports activities, dining, entertainment and shopping.

The Vail resorts and Arapahoe Basin simply are at opposite ends of the spectrum of ski experiences available to Front Range skiers. Front Range skiers who are inclined toward the Vail resorts obviously are attracted by the full package of services and amenities they offer. It taxes the imagination to believe that Front Range skiers would find a "no-frills" ski area like Arapahoe Basin to be the next best thing to a visit to any one of the Vail properties.

Nor can it be believed that Arapahoe Basin, if placed under new ownership, can be transformed into a more significant competitive rival to the Vail

resorts than it is at present. As an initial matter, all of the lands at and around Arapahoe Basin are owned by the federal government, meaning that government permission would be required for any major development effort. Moreover, by virtue of its remote location, altitude and terrain, Arapahoe Basin is a highly unlikely site for major development. These conditions not only increase construction costs by several orders of magnitude, but also call into question whether any meaningful development effort would have any prospect of success. Finally, even if the governmental approval, engineering, construction and financial obstacles could be overcome, it would take decades to develop sufficient lodging, dining establishments, entertainment venues, and shopping facilities necessary to even approach the type of resort communities available at the Vail resorts. In the terminology of the Merger Guidelines, Arapahoe Basin cannot be "repositioned" to become a close competitive substitute for any of the Vail properties.

Arapahoe Basin has functioned as a specialized satellite operation of the Keystone resort, catering to a small cadre of hardcore, advanced skiers who appreciate its unique ski conditions and no-frills character. Indeed, in the 1996–97 edition of Colorado Ski Country USA Travel Agent Guide, Arapahoe Basin is advertised as a part of the Keystone resort; it is not listed as having any independent existence. Travel Agent Guide at 52–3. Given this history, it is unclear that Arapahoe Basin can even survive on its own, much less offer the type of competition necessary to check the economic power of the Vail resorts.

For all of the foregoing reasons, a strategic price increase by one of the Vail resorts would not cause any significant shift of patronage to Arapahoe Basin. By the Antitrust Division's own theory, the switch likely would be to one of the more similar resorts within the Vail resorts family. The proposed divestiture of Arapahoe Basin, therefore, fails miserably as a means of preventing an exercise of market power by Vail. Short of seeking to untangle the now-consummated merger, the only remedy that would stand any chance of constraining Vail's market power would be the divestiture of one of its more substantial resorts—*i.e.*, one that has scale, ski characteristics and amenities comparable to the resorts Vail will continue to operate.

Other Competitive Issues

In challenging the proposed merger solely under the unilateral effects model, the Antitrust division either rejected or ignored other possible adverse consequences of this transaction. It is worth noting that the transaction, which increases the Herfindahl-Hirschman index by 643 points to over 2200, is presumptively anticompetitive under the Merger Guidelines, without regard to any unilateral effects scenario. Denver and Winter Park believe that the proposed merger has created a market force in the Vail resorts that can wield power in a variety of anticompetitive ways, ranging from discouraging aggressive price competition by smaller rivals to outright predatory conduct.

Through this merger, Vail has brought under common ownership four of the premier ski resorts available to Front Range skiers. They are geographically dispersed along the Interstate 70 corridor in varying proximity to the other ski areas. Vail has complete freedom to price each resort separately or to bundle resorts together in special promotional packages. Under these circumstances, Vail has both the incentive and the ability to target particular competitors with disciplinary or predatory conduct.

For example, as the market share leader, Vail has the most to lose from any softening of prices in the market. Should any other ski area seek to increase its share through special promotions or other competitive initiatives, Vail has the economic power to respond with pricing counter-measures that would render the other resort's pricing initiative useless. Given the prospect of a Vail pricing response, the other ski area would recognize that a decrease in price would neither increase revenues nor increase market share. In this way, Vail has the ability to stabilize market pricing. While the other ski areas might benefit in the short term from this price stability, it simultaneously locks them into a subordinate economic position, since any attempt to grow their business relative to Vail can be crushed. Alternatively, Vail has the ability and incentive to target smaller ski areas with predatory prices, at least to the point where they might become acquisition targets.

These potential adverse effects are the direct result of combining so many of the premier Front Range resorts under the Vail banner. The transaction gives Vail enough distinct resorts to pursue selective strategies directed at individual competitors and the ability to subsidize such strategies at one property with supracompetitive profits earned at another. The divestiture of the Arapahoe Basin ski area does nothing to address these potential competitive effects. Once again, Arapahoe Basin is far too remote, small and specialized to provide any meaningful constraint on Vail's market power.

Alternatives to the Final Judgment

The competitive impact statement asserts that the only alternative the Antitrust Division considered to the proposed final judgment is a full trial on the merits of the complaint. Competitive Impact Statement at 19. These commentors, however, find it hard to believe that the Antitrust Division did not at least consider requiring the divestiture of one of Vail's more prominent resorts. Given the process the Antitrust Division says it went through to analyze the effects of the merger—a close examination of localized competition between each possible pairing of resorts—it would be surprising indeed that no similar analysis was performed with respect to the remedy or, if such an analysis were performed, that it would lead so definitely to the conclusion that Arapahoe Basin is the ideal divestiture candidate.

Very clearly, the Antitrust Division considered, and perhaps sought, other possible divestitures, but were rebuffed by the parties. Vail likely would not give up one of its premier resorts without a fight, but probably commenced the Hart-Scott-Rodino process willing to divest Arapahoe Basin if challenged on the merger. It is equally clear that any sane businessperson would readily give up a tiny resort like Arapahoe Basin in exchange for the opportunity to own the top three resorts in the market and four of the top six.

Although we can see why this is a more than satisfactory settlement from Vail's perspective, we fail to see how it protects the public interest. If the adverse effects the Antitrust Division alleges in the complaint are real ones, and we most certainly believe they are, then they merit an effective remedy. Here the proposed remedy is completely hollow. Having asserted that the merger likely would cause anticompetitive effects if the parties were not willing to offer meaningful divestiture in settlement, the Antitrust Division should have been willing to obtain meaningful relief through litigation.

Conclusion

There is absolutely no sense in which the divestiture of Arapahoe Basin can be expected to remedy the severe economic harm likely to be caused by the Vail/Ralston merger. Accordingly, we urge the Antitrust Division to insist upon

more meaningful relief in the form of more extensive divestiture. The divestiture of either Breckenridge or the Keystone/Arapahoe Basin combination would provide more appropriate relief.

Dated: April 4, 1997.

Respectfully Submitted,

Daniel E. Muse,

City Attorney, Denver, Colorado.

Gerald F. Groswold,

President, Winter Park Recreational Association.

532 Oakwood Drive, Castle Rock, CO 80104

15 January 1997.

U.S. Department of Justice,
1401 H St. N.W., Room 4000, Washington, DC 20515.

Attn: Mr. Craig W. Conrath, Merger Task Force Antitrust Division.

Re: Vail's acquisition of Breckenridge, Keystone, and A–Basin

Dear Mr. Conrath: I offer this in opposition to the above acquisition. Justice Department approval has been granted so this effort will be nothing but an expression of frustration and incredulity. Why does Justice think this is good for Colorado skiing? Such an acquisition (merger is a euphemism) places Vail in control of 40% (not 35% as you say) of the Colorado ski market. Your denial of A-Basin from the acquisition has no meaning in total skier market. A-Basin is absolutely a great ski area but for expert skiers—a small group by comparison. Breckenridge or Keystone has to remain a competitor of Vail to keep any sense of fairness for the skiing public. Otherwise, Vail will control the most accessible and significant skiing in Colorado. That is plainly enough reason to deny such concentration of market. How can anyone see Colorado skiing being better served with this acquisition than without it?

The acquisition by Vail eliminates the need to compete with Summit County ski areas. It is that simple and it is Vail's true purpose. Vail's incentive is to maximize profit, not to improve the skiing experience. Vail has the highest ticket prices of all these areas. There is no way Vail will not equalize prices among a combine they control. Vail is buying what they could not otherwise get thru competition. After skiing here 25 years I can say few mid-westerners (I recently moved from Illinois) ski Vail for more than a day or two. Vail is congested, overdeveloped, elitist, very expensive and one goes away feeling taken. Most people I talk to in this area feel the same thing will happen to Breckenridge and Keystone.

Skiers prefer skiing to bigger and grander resorts or more extravagant hotels. Where base areas build out, as Vail has, further growth is thru acquisition and/or market consolidation. It will not benefit less affluent skiers to allow Vail to exploit a market segment they cannot otherwise attract. Instead of Justice rewarding Vail for poor business decisions, you should encourage them to address skier concerns and attract more skiers. Skiers have not disappeared. The population is bigger today than yesterday. If ski areas gave attention to providing reasonable access, accommodations, parking and ticket prices, a huge market exists.

Some say skiing is recreation and unimportant in a bigger picture of important business activity. That argument is specious and ignores significant contribution to the economy. So isn't this grab by Vail just another step towards the insidious and relentless pressure to control by elimination of competition? There are few business consolidations that improve the product with consequent lower user prices? The incentive to do that is absent! Consolidation is for the benefit of the surviving company. Like other business, ski areas should take the consequences for bad business decisions. Overdevelopment rather than improving access to their product is the problem.

I have seen the cost of lift tickets increase from $6.00 in mid-1970 to $48/$50 to date in Breckenridge and Vail. That calculates as 32% per year. In comparison with other business, ski area prices are way ahead of inflation. While that increase is huge the market has expanded till recent years. I will continue to pay for the pleasure but I worry for younger skiers. The point is, few new ski areas are likely to open to the public, because skiing growth has been made flat. Cost has something to do with flat growth but other factors enter the equation as well. Further public land availability is improbable. Yet, most, if not all, ski areas are on public land and enjoy the benefits of low rent and good profitability. Ski areas do not have to provide the capital for land ownership. The government provides it to them at a bargain from the taxes of skier and non-skier alike. Should consolidation of these ski areas, on public land, be approved in what is already a limited market with limited entry for new ski areas?

Governments already subsidize in the form of low rent, highways and maintenance, snow removal, tax abatements, utilities and other subsidies that do not come to mind. It is apparent to the most uninformed that healthy competition is what is needed to keep this industry vying for skier business. What is wrong with competition among the ski areas? It serves both skier and ski area well? Vail has opted for the top income bracket skier and has exploited their base operation to such an extent they can attract only the most affluent skiers. Now with Justices blessing they buy their competition. You cannot tell me this will be an improvement for Breckenridge, Keystone or the skiing public.

As said above, public comment will not halt the Vail acquisition because the Justice Department has rolled over to mega mergers and mega business. They now bless mega ski corporations. It is sad to see the demise of Breckenridge and Keystone because of the resultant loss to skiers. Skiers are served best as competition now exists. Each area vigorously competes for the skier and although ticket prices have soared year after year each area offers special prices that help to stabilize costs. Justice now says this will continue if Vail owns it all. How gullible do you think the public is? You allow this because skiing is small concern to big government but most of all because you are lazy. It is easier to accept this as an unimportant merger than to do your job of preserving balance in the marketplace. Vail is buying out their competition pure and simple and it is sad for the loss to skiers.

Disappointed in Denver,

Mr. Craig W. Conrath,
Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H St., N.W., Room 4000, Washington, D.C. 20530.

Dear Sir: I am writing to protest the proposed Vail Associates buyout of Breckenridge and Keystone ski resorts. I understand the standard for determining an antitrust violation is control of 35% of the market. In this case, the Denver Front Range skier is the market considered. It may be true that by selling off Arapahoe Basin, that percentage falls below the magic percentage, but an important aspect is being ignored.

If one makes the more realistic evaluation comparing the big resorts as a group (toss in Winter Park and Cooper as biggies), the market controlled by Vail Associates would be a much higher percentage. It is not realistic to include Arapahoe Basin, Eldora, Loveland, and Ski Cooper in the same market. They are fun little areas, but these niche areas are already much cheaper than the biggies and do not have a major effect on pricing. Vail Associates has been advertising their good intentions in supporting the local skier. It looks good in print. Then one should take a look at what happened to Arrowhead lift prices once VA purchased them. Prices went up . . . way up. Image what happens when Vail introduces the All VA ticket for Beaver Creek, Breckenridge, Vail, and Keystone. Ski Keystone for the price of a Vail ticket!

I do believe Breckenridge and Vail Associates make a good fit—I'm not anti-everything. I just believe the entire package cannot help but increase lift prices. Please prevent it.

Regards,

David LeBlang.

James E. Leibold, MD,

3458 S. Columbine Cr., Englewood, CO 80110.

Jan. 14, 1997.

Mr. Craig W. Conrath,
Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H St., N.W., Room 4000, Washington, D.C. 20530.

Dear Mr. Conrath: When word of Vail's plan to buy Breckenridge, Keystone and Arapahoe Basin Ski Areas appeared in the press, we wrote to your department protesting this plan. As senior citizen skiers we are very concerned about lift ticket prices as their cost continually increase whereas our income is fixed. Vail does not offer skiers over age 60 the same discounts as Breckenridge and Keystone presently do. Therefore, we are fearful of losing these discounts if Vail owns these resorts also. We simply have not been able to afford to ski at Vail the past few years.

To think that asking Vail to divest Arapahoe Basin will prevent a monopoly in

Summit County is ludicrous. Arapahoe is a small ski area with only 4% of the skier days in central Colorado. If you truly wanted to avoid monopoly issues, divestiture of either Keystone or Breckenridge would have been far more effective.

Vail's clout in marketing will surely have a severe adverse impact on Central Colorado ski areas not under Vail's mantle and this is bound to eventually cause a rise in lift ticket prices. Surely, this is not in the public interest. We again urge you to disapprove the buyout plans as now proposed. Thank you for your consideration of this matter.

Your truly,

James E. Leibold,

Angela M. Leibold.

James W. Margolis

1250 Golden Circle, #509, Golden, CO 80401

January 6, 1997.

Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H St., N.W., Room 4000, Washington, D.C. 20530.

Dear Mr. Conrath: As an economist and regular skiier in Summit County for nearly 20 years now, I have followed the news about Vail's purchase very carefully.

Based on the limited coverage in the Denver newspapers, I must say that I am dumbfounded that the "regulators" determined the proposed merger would have anti-competitive effects and that the solution would be to sell A-Basin. Although I certainly believe that the merger would be anti-competitive (by whatever definition), the proposed solution to sell off A-Basin makes no sense. A-Basin is simply too small to make a difference. If you are not going to force Vail to sell Keystone or Breck, you are better off doing nothing.

The public interest is best served by keeping Keystone and A-Basin together and treating them as a single unit for analyses purposes. Without Keystone, A-Basin has no lodging or transportation link. Also, even hard core skiiers have been known to go to Keystone on white-out days when it is very difficult to ski at A-Basin due to flat light. Keystone and A-Basin are wonderful complements to each other. It is unfortunate that in your efforts to quantify "market share and competition" you have simply ignored common sense.

Is there any report that your office could mail to me? I would be interested in reading the details of your assumptions and analyses.

If you have any questions about the trade-off between quantitative analyses and common sense, please feel free to contact me.

Thank you,

James W. Margolis

Summit County

Joe Sands, District 3, County Commissioner

January 8, 1997.

Mr. Craig Conrath,

Chief, Merger Task Force, U.S. Department of Justice, Anti-Trust Division, City Center Building #4000, 1401 H Street, N.W., Washington, D.C. 20005.

Dear Mr. Conrath: Speaking as a commissioner, not for the Summit County Board of Commissioners, this letter is a further interrogatory and follow-up to my September 30, 1996, letter of concern about the proposed Vail Resorts-Ralcorp merger. I have compliments to your team mixed with puzzlement about issues unanswered. I am having to write this before the Competitive Impact Statement is released, but based on my conversations with the Taskforce, I would be surprised if that document answers these questions.

First the compliments. My staff and myself are pleasantly surprised at the availability and responsiveness of your task force members to whom we have inquired. We haven't always agreed with their answers, but that is not due to any obfuscation on your team's part.

Most importantly, from a community need, ski culture diversity, and front range experienced skier need, the divestiture of Arapahoe Basin is great. I hope that order in your decision does not assume some very hotly debated proposed additions to the A-Basin permit (controversial alpine slide, and major new water works for snowmaking). You need to clarify this. If I am reading correctly that the trustee is paid a commission on this sale, that becomes an immense issue.

Almost as important, is if your order means Andy Daly and Vail Resorts can start to manage the former Ralcorp remaining properties, then I'm all for that. The outgoing Ralcorp leadership caused many societal controversies; their own employees, guests, and the local community is ready to give a parade for any new management.

Unfortuntely, there is also puzzlement. I haven't found *anyone* who thinks A-Basin has enough unused skier day capacity to be a market competition leveling effect as the stipulation and order indicate. If the five million skier day Apollo consortium does anything negative to its customers, at most the 100,000 new skier day absorption at A-Basin, is not a significant competitive alternative. Plus a lot of Vail/Apollo's skier days are closely tied to real estate purchases and lodging geography. Both of which make the remote A-Basin less of an alternative. I also predict the H.H.I. formula you used could create a new round of jokes at an economics convention (make them forget the C.P.I. controversy). Divesting the non-compatible A-Basin so as to sneak your H.H.I. to 1781 and just below the 1800 points of a concentrated market appears hollow. Taking this into consideration, I would hope you would see that A-Basin does truly offer competition to the other mountains in the merger. Therefore the stipulation offered with A-Basin's divestiture does nothing to guarantee competition.

Probably my biggest personal puzzlement is your team's efficiency assumptions. Many items they see as savings passed on to the customer, I see as expanding the corporate profit margin, not going to the customer, because the competition's ability to be an alternative is inconsequential. I've seen nothing in these documents that addresses my September 30th, 1996, concerns on:

- controlling airplane seats, transportation access, etc.;
- ad/promoting control;
- lodging reservation favoritism;
- labor market, control of salaries;
- societal impacts (healthcare, donations, infrastructure support);
- and their past practices of "shutting out others" in a lot of these areas.

Even if I were to allow the Department of Justice's assumption that the efficiency will benefit the customer, I would have to challenge the assumption that this necessarily will be maintained long term or sustain competition from A-Basin or the other ski resorts. The efficiency will give the merged mountains the power to undercut prices to the point of eliminating your so called competition.

The good news of this proposed settlement, is I had challenged Vail/Apollo in a Labor Day thesis of community concerns to answer some of this. Maybe without the excuse they have used your process for, they will finally address these matters. But my conclusion today is doubtful. All of this is about the profit to be gained when Vail goes public in I.P.O. I hope the judge who decides this sees that.

My closing thought is an objection to a far-fetched insulting statement (enclosed) quoted to Colorado's First Assistant Attorney General. I'd accept an apology if offered. For the second most politically motivated state office to present this thought, * * * while ignoring the powerful 17th Street law firm and political handler who were hired "to facilitate" this matter, is the ultimate in hypocrisy. Possibly this last sentence is incorrect, the judge ruling should also question if the ultimate hypocrisy is the campaign contributions from Leon Black, Apollo parties, Vail, Ralcorp, etc., to all interested political groups since this has started.

I would hope the Department of Justice would have a change of heart/position and consider more action before the United States consent to entry of the Final Judgment.

Sincerely,

Joe Sands,

County Commissioner.

Enclosure

6299 E. Caley Dr., Englewood, CO 80111

Feb. 11, 1997.

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H St. NW., Room 4000, Washington, DC 20530.

Dear Sir: I am writing to protest the proposed Vail Associates buyout of Breckenridge and Keystone ski resorts. I understand the standard for determining an antitrust violation is control of 35% of the market. In this case, the Denver Front Range skier is the market considered. It may be true that by selling off Arapahoe Basin, that percentage falls below the magic percentage, but an important aspect is being ignored.

If one makes the more realistic evaluation comparing the "big" resorts as a group (toss in Winter Park and Copper as biggies), the market controlled by Vail Associates would be a much higher percentage. It is not realistic to include Arapahoe Basin, Eldora,

Loveland, and Ski Cooper in the same market. They are fun little areas, but these niche areas are already much cheaper than the biggies and do not have a major effect on pricing.

Vail Associates has been advertising their good intentions in supporting the local skier. It looks good in print. Then one should take a look at what happened at Arrowhead lift prices once VA purchased them. Prices went up * * * way up. Imagine what happens when Vail introduces the *All VA* ticket for Beaver Cresk, Breckenridge, Vail, and Keystone. Ski Keystone for the price of a Vail ticket!

I do believe Breckenridge and Vail Associates makes a good fit—I'm not anti everything. I just believe the entire package cannot help but increase lift prices. Please prevent it.

Regards,

Dick Thompson,

Front Range skier.

Thomas J. Tomazin, P.C.

Attorney at Law, 5655 South Yosemite, Suite 200, Englewood, Colorado 80111

January 17, 1997.

Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Room 4000, Washington, D.C. 20530.

Re: *Vail/Ralcorp Merger*

Dear Mr. Conrath: I am a life-long resident of the State of Colorado. While I was born in the rural part of Colorado, I have lived in the Denver metropolitan area for the past thirty-one years. Both myself and my five children have enjoyed skiing in Colorado since 1969.

I am writing regarding the proposed merger between Vail and Ralcorp. I have skied at all of the ski areas that are involved. Overall, I am in favor of the merger and do not believe that there is any risk of a monopoly being created by permitting the merger. To the contrary, all of the Colorado ski areas cater tremendously to the Colorado skier. All of the ski areas are well-aware that their customer base and profit are to a large extent dependent upon the Colorado skier rather than the out-of-state skier.

My only objection to the merger as proposed is that Vail and Ralcorp must divest Arapahoe Basin. From comments I have read in the newspaper, it is conceded that the requirement for the divestiture of Arapahoe Basin makes no sense. Rather, the reasons assigned in the newspaper was that it was a negotiated settlement. One account I read indicated that by taking out the annual number of Arapahoe Basin skiers, approximately 258,000, it would reduce the percentage share of Vail/Ralcorp from approximately thirty-eight percent to approximately thirty-four percent.

Regardless of the rationalizations, reasons or negotiations, as a practical matter, the requirement that Arapahoe Basin be divested spells a death knell for Arapahoe Basin. Any proposed purchaser will essentially be unable to maintain the area in the manner in which Ralcorp has done to date nor will the purchaser be able to compete effectively. Arapahoe Basin will surely deteriorate and, I am fearful, cease to exist.

In an era where Keystone, Breckenridge and Vail continue to grow and become more technologically advanced, it was always refreshing to have Arapahoe Basin as a throwback to an era long since past.

I would strongly request that reconsideration be given in this matter and that as part of the merger, Vail and Ralcorp *not* be required to divest Arapahoe Basin.

Should you have any questions, please do not hesitate to contact me. Thank you in advance for your cooperation and assistance in this regard.

Very truly yours,

Thomas J. Tomazin, P.C.

Town of Montezumza

P.O. Box 1476 Dillon, Colo. 80435

Hon. Lewis T. Rebcock,

District Judge, United States District Court for the District of Colorado, 1961 Stout Street, Denver, Colo. 80202.

Re: U.S. v. Vail Resorts, 97B–10

Dear Judge Babcock, The Town of Montezumz opposes Vail's acquisition of the Ralston Resorts ski areas of Breckenridge, Keystone, and Arapahoe Basin. We apologize for not submitting our comments earlier, but likemost people in Summit County we believe the merger was a done deal and had closed without the opportunity for public comment. Our apparent misconception was corrected by a recent article in our local newspaper, The Summit Daily, indicating that the City of Denver had recently opposed the merger.

Montezuma is an incorporated Town (1862) 6 miles from the Keystone ski area at 10,400's in the center of 5 major Forest Service trailheads and by their 1996 count 15,000 persons pass through here annually. One concern is the increased vehicle traffic that will impact the Town with the obvious growth expected from the merger. The additional recreational users in the area can only harm the delicate surrounding forest. This 100 year old growth is very susceptible to fire. The only road to Montezuma and these trailheads off Hwy 6 is narrow and winding causing additional concern of the increased traffic.

Hwy 6 is the main artery for trucks carrying hazardous material crosscountry East and West. They must, at the bottom of Loveland Pass, drive through the already congested skier traffic. This situation with the additional development can only create further dangers to the public safety.

We are a working class population proud of the modest homes we live in, but fearful the rising taxes the merger will create could prohibit local ownership as has happened in other communities. We realize we are only a very small voice in this vast expansion but we are the voice of people and ask you to consider the far reaching effects this "monopoly will have on our communities, the work force, the skiers, and the State of Colorado. Adam Arron of Vail Resorts has acknowledged the present problems and has said new problems could be on the horizon if the company's plans for increased growth are realized.

Thank you for your time and consideration.

Sincerely,

Town Trustee,

Town of Montezuma.

[FR Doc. 97–19164 Filed 7–21–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

NIC Service Plan for Fiscal Year 1998

The National Institute of Corrections (NIC), U.S. Department of Justice, has published the NIC Service Plan for Fiscal Year 1998. The document describes the technical assistance, training, and information services to be available to the corrections field during the next fiscal year, which begins October 1, 1997, and ends September 30, 1998.

The Service Plan combines two previously issued annual NIC documents: the Annual Program Plan and the Schedule of Training Services. It describes all NIC seminars and videoconferences to be available for state and local practitioners in adult corrections and contains application requirements and forms. A separate Schedule of Training Services will not be issued this year.

The Service Plan is available on the Internet at www.bop.gov. From the menu, select the National Institute of Corrections, then Publications. The document may also be obtained by contacting NIC at 320 First Street, NW. Washington DC 20534; telephone 800–995–6423; fax 202–307–3361; or the NIC Longmont, Colorado, offices at 800–995–6429; fax 303–682–0469.

Morris L. Thigpen,

Director.

[FR Doc. 97–19165 Filed 7–21–97; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 17, 1997.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of the ICR, with applicable supporting documentation,

may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 143) or by E-Mail to OMalley-Theresa@dol. gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Employment Standards Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Notice of Termination, Suspension, Reduction, or Increase in Benefit Payments.

OMB Number: 1215–0064 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 325.

Total Responses: 9,000.

Estimated Time Per Respondent: 12 minutes.

Total Burden Hours: 1,800.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $3,150.

Description: The Notice of Termination, Suspension, Reduction, or Increase in Benefits Payments, CM–908, notifies the Department of Labor of the change in the beneficiary's benefit amount and the reason for the change. Information received from this form will assure that Responsible Mine Operators (RMO) are paying appropriate Black Lung benefits to the coal miner or the miner's surviving family.

Theresa M. O'Malley,

Department Clearance Officer.

[FR Doc. 97–19222 Filed 7–21–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the Worker Adjustment Formula Financial Report, ETA 9041. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 22, 1997. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Gus Morrison, Office of Worker Retraining and Adjustment Programs, Office of Work-Based Learning, Employment and Training Administration, U.S. Department of Labor, Room N–5426, 200 Constitution Avenue NW., Washington, DC 20210, 202–219–5577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The collection of the information in the Worker Adjustment Formula Financial Report (WFFR) is necessary in order to satisfy the requirements of the provisions of the Job Training Partnership Act (JTPA), as amended. The provisions are related to the Secretary's responsibilities and authority for monitoring performance and expenditures, and for recordkeeping and reporting related to JTPA Title III.

II. Current Actions

This is a request for OMB approval of an extension of an existing collection of information previously approved by OMB. The extension will allow the Department to continue: (1) To monitor performance of the formula programs under Title III of JTPA, (2) to report to Congress and the Treasury, and (3) to prepare annual budget reports.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Worker Adjustment Formula Financial Report.

OMB Number: 1205–0326.

Affected Public: State, Local or Tribal Government.

Total Respondents: 52.

Frequency: Quarterly.

Total Responses: 208.

Average Time per Response: 8.75.

Estimated Total Burden Hours: 1,820.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 16, 1997.

Peter E. Rell,

Acting Administrator, Office of Work-Based Learning, Employment and Training Administration.

[FR Doc. 97–19221 Filed 7–21–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 97–44]

Agency Information Collection Activities: Proposed Collection; Comment Request; Lead in General Industry

AGENCY: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the Lead in General Industry standard 29 CFR 1910.1025. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the addressee section of this notice. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection technique or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted by September 22, 1997.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 97–44, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Health Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3718, telephone (202) 219–7075. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Barbara Bielaski at (202) 219–8076 or Todd Owen at (202) 219–7075. For electronic copies of the Information Collection Request on Lead in General Industry contact OSHA's WebPage on the Internet at http://www/osha.gov/ and click on standards.

SUPPLEMENTARY INFORMATION:

I. Background

The Lead in General Industry standard and its information collection is designed to reduce occupational lead exposure in general industry. Lead exposure can result in both acute and chronic effects and can be fatal in severe cases of lead toxication. The standard requires that employers establish and maintain a training and compliance program, and exposure monitoring and medical surveillance records. These records are used by employees, physicians, employers and OSHA to determine the effectiveness of the employers' compliance efforts.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: Lead in General Industry 29 CFR 1910.1025.

OMB Number: 1218–0092.

Affected Public: Business or other for-profit, Federal government, State and Local governments.

Total Respondents: 50,037.

Frequency: On occasion.

Total Responses: 1,168,728.

Average Time per Response: Ranges from 5 seconds to notify employees of his or her right to seek a second medical opinion to 12 hours to develop a compliance program.

Estimated Total Burden Hours: 1,640,961.

Total Annualized capital/startup costs: 0.

Total initial annual costs (operating/maintaining systems or purchasing services): $114,674,500.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. The comments will become a matter of public record.

Dated: July 15, 1997.

Adam Finkel,

Director, Directorate of Health Standards Program.

[FR Doc. 97–19223 Filed 7–21–97; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455, STN 50–456 and STN 50–457]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing; Correction

This document corrects a notice appearing in the **Federal Register** on July 10, 1997 (62 FR 37079). This action is necessary to correct an erroneous date.

On page 37080, in the second column, in the second complete paragraph, in the first line, the date "August 7, 1997," should be changed to read "August 11, 1997."

Dated at Rockville, Maryland, this 16th day of July 1997.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 97–19202 Filed 7–21–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

IES Utilities Inc., Central Iowa Power Cooperative, Corn Belt Power Cooperative, and Duane Arnold Energy Center; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity For a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–49 issued to IES Utilities Inc. (the licensee), for operation of the Duane Arnold Energy Center (DAEC), located in Linn County, Iowa.

The proposed amendment, requested by the licensee in a letter dated October 30, 1996, would represent a full conversion from the current Technical Specifications (CTSs) to a set of improved Technical Specifications (ITSs) based on NUREG–1433, Revision 1, "Standard Technical Specifications, General Electric Plants BWR/4," dated April 1995. NUREG–1433 has been developed through working groups composed of both NRC staff members and industry representatives, and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve CTSs. As part of this submittal, the licensee has applied the criteria contained in the Commission's, "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," (Final Policy Statement) published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the current DAEC CTSs and, using NUREG–1433 as a basis, developed a proposed set of ITSs for DAEC. The criteria in the Final Policy Statement subsequently were incorporated in 10 CFR 50.36, "Technical Specifications," in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953). The rule change became effective August 18, 1995.

The licensee has categorized the proposed changes to the CTSs into four general groupings. These groupings are characterized as administrative changes, technical changes—relocations, technical changes—more restrictive, and technical changes—less restrictive.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation, and rearranging of requirements and other changes not affecting technical content or substantially revising an operational requirement. The reformatting, renumbering, and rewording processes reflect the attributes of NUREG–1433 and do not involve technical changes to the CTSs. The proposed changes include (a) providing the appropriate numbers, etc., for NUREG–1433 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1433 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not affect initiators of analyzed events or assumed mitigation of accident or transient events.

Technical changes—relocations are those changes involving relocation of requirements and surveillances from the CTS to licensee-controlled documents, for structures, systems, components, or variables that do not meet the criteria for inclusion in the ITSs. Relocated changes are those CTS requirements that do not satisfy or fall within any of the four criteria specified in the Commission's Final Policy Statement and 10 CFR 50.36, and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in Volume 1 of its October 30, 1996, application titled, "Duane Arnold Energy Center *Improved Technical Specifications* Split Report and Relocated CTS Pages." The affected structures, systems, components, or variables are not assumed to be initiators of events analyzed in the Updated Final Safety Analysis Report (UFSAR) and are not assumed to mitigate accident or transient events analyzed in the UFSAR. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the CTS to administratively controlled documents such as the UFSAR, the BASES, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms. In addition, the affected structures, systems, components, or variables are addressed in existing surveillance procedures which are also subject to 10 CFR 50.59.

Technical Changes—more restrictive are those changes that involve more stringent requirements for operation of the facility or eliminate existing flexibility. These more stringent requirements do not result in operation that will alter assumptions relative to mitigation of an accident or transient event. For each requirement in the DAEC CTSs that is more restrictive than the corresponding requirement in NUREG–1433, which the licensee proposes to retain in the ITSs, the licensee has provided an explanation of why it has concluded that the more restrictive requirement is desirable to ensure safe operation of the facility.

Technical changes—less restrictive are changes where current requirements are relaxed or eliminated, or new flexibility is provided. The more significant "less restrictive" requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the ITSs may be appropriate. In most cases, relaxations granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or © resolution of the Owners Groups" comments on the ITSs. Generic relaxations contained in NUREG–1433 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design information will be reviewed to determine if its specific design and licensing bases are consistent with the technical justifications contained in NUREG–1433. This will determine if a foundation exists for the ITSs or if relaxation of the requirements in the CTSs is warranted by the justifications provided by the licensee.

In addition to the changes solely involving the conversion, changes are proposed to the CTSs or as deviations from the improved GE Technical Specifications (NUREG–1433) as follows:

1. The DAEC ITS 3.5.1 modifies the NUREG–1433 Limiting Condition of Operation (LCO) 3.5.1 by revising Conditions C, D, G, and I to allow certain combinations of Emergency Core Cooling systems/subsystems out-of-service that are supported by the DAEC Loss-of-Coolant Accident (LOCA) analysis.

2. The DAEC ITS Surveillance Requirements (SRs) 3.5.1.4, 3.5.1.5, and 3.5.1.6 modify the NUREG–1433 SRs 3.5.1.7, 3.5.1.8, and 3.5.1.9 to relax the required flow rates per the DAEC LOCA analysis, using the NRC-approved SAFER/GESTR–LOCA model.

3. The DAEC ITS SR 3.8.4.1 modifies the frequency for the NUREG–1433 SR 3.8.4.1 for performing pilot cell inspections from weekly to monthly, in accordance with industry (IEEE–450) and vendor recommendations.

4. The DAEC ITSs relocate the requirements for Suppression Pool

Spray (NUREG–1433 LCO 3.6.2.4) to licensee-controlled documents, as they do not meet the 10 CFR 50.36(c)(2)(ii) screening criteria.

5. The DAEC ITS 3.0.3 modifies the NUREG–1433 LCO 3.0.3 to allow 8 hours versus 6 hours to reach Mode 2. In addition, all other Required Actions that require reaching Mode 2 in 6 hours have been extended to 8 hours for consistency.

6. The DAEC ITSs 3.4.8 and 3.9.7 modify the NUREG–1433 LCOs 3.4.7 and 3.9.8 to not require forced circulation when reactor coolant temperature is less than 150°F.

7. The DAEC ITS SR 3.8.1.13 combines the NUREG–1433 SRs 3.8.1.11, 3.8.1.12, and 3.8.1.19 to eliminate unnecessary multiple Emergency Diesel Generator starts.

8. The DAEC ITS 3.4.7 modifies the applicability of the NUREG–1433 LCO 3.4.8 to use the Reactor Core Isolation Cooling (RCIC) low pressure isolation alarm in lieu of the Shutdown Cooling cut-in pressure permissive.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By August 21, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's, "Rules of Practice for Domestic Licensing Proceedings," in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, IA 52401. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jack Newman, Kathleen Shea, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment, dated October 30, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, IA 52401.

Dated at Rockville, Maryland, this 16th day of July 1997.

For the Nuclear Regulatory Commission.

Glenn B. Kelly, Sr.,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–19200 Filed 7–21–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Amendment to the Material License Issued to the Curators of the University of Missouri-Columbia Increasing the Limit of Uranium-238

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment.

SUMMARY: On June 30, 1997, the Nuclear Regulatory Commission amended Material License No. 24–00513–39, issued to the Curators of the University of Missouri-Columbia (the University), increasing the limit of uranium-238 (U–238) used in the Transuranic Management by Pyropartitioning Separation (TRUMP–S) Project experiments.

License Condition No. 29, imposed by the Commission as a result of 10 CFR Part 2, Subpart L proceedings in Memorandum and ORDER CLI–95–01 dated March 1, 1995, limited the amounts of the subject actinides (U–238; neptunium-237, plutonium-239/240, and americium-241) used in the TRUMP-S experiments to no more than one gram total at any one time as a means of ensuring that the University's emergency plan is effective and sufficient to protect the public from a release of TRUMP-S materials. In 1996, the University requested a license amendment to increase the limit on U–238 from one gram for the total actinides up to 80 grams ($\approx 2.6 \times 10^{-5}$ Ci) of U–238, in addition to the one gram total for all other subject actinides. Staff analysis of the information submitted by the University concluded that an increase of U–238 from one to 80 grams ($\approx 2.6 \times 10^{-5}$ Ci) with a one gram total for all other subject actinides would not result in a potential exposure to the public significantly greater than that for the limiting case used by the Commission in CLI–95–01 for a ground release of one gram of Am-241 (≈ 3.3 Ci) and would not compromise the adequacy of the University's emergency plan.

ADDRESSES: A copy of Material License No. 24–00513–39 is available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW., Washington, DC 20555–0001.

OPPORTUNITY FOR A HEARING: Any person whose interest may be affected by the licensee-initiated amendment of this license may file a request for a hearing. Any request for a hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; must be served on the NRC staff (the Executive Director for Operations) and the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, and on the licensee (the Curators of the University of Missouri-Columbia, Research Reactor, Research Park Drive, Columbia, MO 65211); and must comply with the requirements for requesting a hearing set forth in 10 CFR 2.1205, Subpart L, "Informal Hearings Procedures for Adjudications in Materials Licensing Proceedings."

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Mail Stop TWFN 8-F–5, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–7231.

Dated at Rockville, Maryland, this 14th day of July 1997.

For the Nuclear Regulatory Commission.

Frederick C. Combs,

Acting Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–19198 Filed 7–21–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

North Atlantic Energy Service Corporation, et al. (Seabrook Station, Unit No. 1); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering modification of an exemption for Facility Operating License No. NPF–86 issued to North Atlantic Energy Service Corporation (the licensee or North Atlantic) for operation of the Seabrook Station, Unit No. 1 (Seabrook) located in Rockingham County, New Hampshire. North Atlantic is authorized to act as agent for the eleven owners of the facility.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment addresses the potential environmental issues related to the proposed extension of the temporary exemption issued on January 22, 1997, from certain requirements of 10 CFR 50.75(e)(2). Specifically, the proposed extension would allow Great Bay Power Corporation (Great Bay) until July 22, 2002, subject to certain conditions to obtain a surety bond or other allowable decommissioning funding assurance mechanism for non-electric utilities. Great Bay holds an undivided 12.1324 percent ownership interest in Seabrook.

The Need for the Proposed Action

On May 8, 1996, North Atlantic submitted to the NRC a request on behalf of Great Bay for Commission consent to the indirect transfer of control of Great Bay's interest in the Seabrook Operating License through formation of a holding company. Additional information relating to this request was submitted on October 18, 1996, and December 9, 1996. The request was approved on January 22, 1997, pursuant to 10 CFR 50.80, and Great Bay subsequently became a wholly owned subsidiary of BayCorp Holdings, Ltd.

During the review of the corporate restructuring, the staff noted that Great Bay markets most of its share of electricity from Seabrook on the spot wholesale market and concluded that Great Bay does not meet the NRC's definition of electric utility under 10 CFR 50.2. Notwithstanding the requirements of 10 CFR 50.75(e)(2), Great Bay does not have a funding or a guarantee mechanism in place to cover the unfunded balance of its projected share of Seabrook decommissioning costs.

On January 22, 1997, the staff approved Great Bay's proposed indirect transfer of control of Great Bay's interest in Seabrook, and in a related action, the staff issued a temporary exemption from compliance with the provisions 10 CFR 50.75(e)(2) pertaining to the additional surety arrangements for decommissioning funding assurance for non-electric utility licensees for 6 months. The exemption was intended to afford Great Bay a reasonable opportunity to implement a suitable decommissioning funding assurance method required of a non-electric utility.

On February 21, 1997, Great Bay requested reconsideration of the staff's finding that Great Bay does not meet the NRC definition of "electric utility," and on June 4 and 16, 1997, Great Bay submitted supplemental information related to Great Bay financial matters to support their request. Also included in the June 4, 1997, submittal, was a request that the NRC consider an extension to the temporary exemption as an alternative to completing reconsideration, at this time, the issue of whether Great Bay is an electric utility under the NRC definition.

The proposed action is needed in light of Great Bay's difficulty in obtaining a surety method to comply

with 10 CFR 50.75. Upon review of the circumstances surrounding the issue of Great Bay's electric utility status, its current and projected financial condition, the underlying purpose of the requirement for additional decommissioning funding assurance arrangements for non-electric utilities, and the availability of such arrangements, the staff is considering conditionally extending the temporary exemption issued on January 22, 1997, for an additional period of 5 years, until July 22, 2002.

Environmental Impacts of the Proposed Action

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased by the extension of the temporary exemption, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the extension would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the extension of the temporary exemption would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to not extend the expiration date of the temporary exemption and, thereby, require that Great Bay provide the required additional assurance for decommissioning funding. Not extending the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Seabrook Station, Unit No. 1, dated March 1983.

Agencies and Persons Contacted

In accordance with its stated policy, on July 14, 1997, the NRC staff consulted with the New Hampshire state official, Mr. George Iverson of the New Hampshire Emergency Management Agency regarding the environmental impact of the proposed action. On July 14, 1997, the NRC staff consulted with the Massachusetts state official, Mr. James Muckerheid of the Massachusetts Emergency Management Agency. The state officials had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the letters submitted by Great Bay through its counsel, Shaw, Pittman, Potts & Trowbridge, dated February 21, 1997, June 4, 1997, and June 16, 1997, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at Exeter Public Library, Founders Park, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 16th day of July 1997.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Senior Project Manager, Project Directorate I–3, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 97–19199 Filed 7–21–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of July 21, 28, August 4, and 11, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 21

There are no meetings scheduled for the week of July 21.

Week of July 28—Tentative

There are no meetings scheduled for the week of July 28.

Week of August 4—Tentative

Monday, August 4

2:00 p.m. Briefing by International Programs (Close—Ex. 1)

3:00 p.m. Briefings on Investigative Matters (Closed—Ex. 5 & 7)

Wednesday, August 6

9:30 a.m. Meeting with Northeast Nuclear on Millstone (Public Meeting) (Contact: Bill Travers, 301–415–1200)

2:00 p.m. Briefing on Shutdown Risk Proposed Rule for Nuclear Power Plants (Public Meeting) (Contact: Tim Collins, 301–415–2897)

3:30 p.m. Affirmation Session (Public Meeting) (if needed)

Thursday, August 7

9:30 a.m. Meeting with NRC Executive Council (Public Meeting) (Contact: James L. Glaha, 301–415–1703)

Week of August 11—Tentative

There are no meetings scheduled for the week of August 11.

Note: The Schedule for Commission Meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: July 18, 1997.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 97–19401 Filed 7–18–97; 3:02 pm]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Statement of Claimant or other Person; OMB 3220–0183 To support an application for an annuity under Section 2 of the Railroad Retirement Act (RRA) or for unemployment benefits under Section 2 of the Railroad Unemployment Insurance Act (RUIA), pertinent information and proofs must be furnish for the RRB to determine benefit entitlement. Circumstances may require an applicant or other person(s) having knowledge of facts relevant to the applicant's eligibility for an annuity or benefits to provide written statements supplementing or changing statements previously provided by the applicant. Under the railroad retirement program these statements may relate to changes in annuity beginning date(s), dates for marriage(s), birth(s), prior railroad or non-railroad employment, an applicants request for reconsideration of an unfavorable RRB eligibility determination for an annuity or various other matters. The statements may also be used by the RRB to secure a variety of information needed to determine eligibility to unemployment and sickness benefits. Procedures related to providing information needed for RRA annuity or RUIA benefit eligibility determinations are prescribed in 20 CFR 217 and 320 respectively.

The RRB utilizes Form G–93, *Statement of Claimant or Other Person* to obtain the supplemental or corrective information from applicants or other persons needed to determine applicant eligibility for an RRA annuity or RUIA benefits.

The RRB proposes to add an item that requests the applicant's railroad retirement annuity claim number, if it is different from their social security number. A minor editorial change to Form G–93 to incorporate language required by the Paperwork Reduction Act of 1995 is also being proposed. The completion time for Form G–93 is estimated at 15 minutes per response. The RRB estimates that approximately 900 Form G–93's are received annually. Completion is voluntary. One response is requested of each respondent.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–19193 Filed 7–21–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22757; 813–148]

PW Masters Fund, L.P.; Notice of Application

July 16, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the "Act").

APPLICANT: PW Masters Fund, L.P. (the "Initial Partnership").

RELEVANT ACT SECTION: Applicant seeks an order under section 6(b) and 6(e) granting an exemption from all provisions of the Act except sections 9, 17, (except for certain provisions of sections 17(a), (d), (f), (g), and (j) as described in the application), 30 (except for certain provisions of sections 30(a), (b), (e), and (h) as described in the application), and 36 through 53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order on behalf of itself and subsequent partnerships to be formed by PaineWebber Inc. ("PaineWebber") that will be identical in all material respects to the Initial Partnership (the "Subsequent Partnerships" and together, the "Partnerships") that would grant an exemption from most provisions of the Act and would permit certain affiliated and joint transactions. Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

FILING DATES: The application was filed on March 29, 1996, and amended on September 27, 1996, May 8, 1997, and July 2, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 11, 1997, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, c/o PaineWebber Incorporated, 1285 Avenue of the Americas, 14th Floor, New York, N.Y. 10019

FOR FURTHER INFORMATION CONTACT: Suzanne Krudys, Senior Counsel, at (202) 942–0641, or Mercer E. Bullard, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Initial Partnership is a limited partnership organized under Delaware law. Subsequent Partnerships will be general or limited partnerships organized under state law and established from time to time by PaineWebber. The general partner of the Initial Partnership is PaineWebber Futures Management Corp. (the "General Partner"), a Delaware corporation and a subsidiary of PaineWebber Group, Inc. ("PaineWebber Group"), which is a financial services holding company whose shares are publicly traded on the New York Stock Exchange. The general partner of Subsequent Partnerships may

be an entity directly or indirectly controlled by PaineWebber Group or any of its divisions or subsidiaries. PaineWebber, a registered investment adviser under the Investment Advisers Act of 1940, will serve as investment manager to the Initial Partnership. PaineWebber is a Delaware corporation and a subsidiary of PaineWebber Group.

2. The Initial Partnership is an investment partnership established to enable employees of PaineWebber to pool their investment resources and to receive the benefit of certain investment opportunities that, because of substantial minimum purchase requirements, limited availability or otherwise, may not be available to an individual investor. The pooling of resources would permit diversification by, among other things, overcoming high minimum investment requirements, and participation in investment private partnerships that usually would not be offered to them as individual investors. The purpose of the Partnership is to reward and retain key personnel of PaineWebber Group or its divisions or subsidiaries.

3. No Partnership will acquire any security issued by a registered investment company if immediately after such acquisition (i) the Partnership would own more than 3% of the outstanding voting stock of the registered investment company or (ii) more than 15% of the Partnership's assets would be invested in securities issued by registered investment companies, with the exception of temporary investments in money market funds. None of the Partnerships will make loans to its general partner, PaineWebber or any officer, director, employee or other affiliate of the General Partner or PaineWebber.

4. The partnership agreement will provide that the Initial Partnership may be dissolved at any time by the General Partner in its sole discretion. In addition, the retirement, bankruptcy or dissolution of the General Partner shall dissolve the Initial Partnership. The limited partners of the Initial Partnership have no right to remove the General Partner.

5. It is contemplated that, at least initially, a large proportion if not all of the Initial Partnership's assets will be invested in Masters Fund, L.P. ("Masters Fund"), a Delaware limited partnership whose general partner is PaineWebber Futures Management Corp. and whose investment manager is PaineWebber. Masters Fund is a private investment partnership that seeks capital appreciation over the long term in a wide range of market conditions principally through a program of investment in investment partnerships, managed funds, separate accounts and other investment vehicles that invest or trade in a wide range of equity securities and other instruments. Masters Fund and other private investment partnerships in which the Partnership may invest (collectively "Private Funds") generally rely on section 3(c)(1) of the Act for an exception from the definition of investment company.

6. Equity interests in the partnership will be offered without registration under a claim of exemption under Section 4(2) of the Securities Act of 1933 (the "Securities Act"). Such interests will be offered and sold only to (i) current employees of PaineWebber or any of its divisions or subsidiaries who are directors or officers at or above the level of Vice President ("Eligible Employees") or (ii) trusts or other investment vehicles for the benefit of such Eligible Employees and/or the benefit of their immediate families. At the time of making an initial contribution and making any additional contribution to the Partnership, each Eligible Employee will be required to be (i) an accredited investor within the meaning of rule 501(a)(6) under the Securities Act or (ii) a non-accredited investor who (a) manages the "day to day" affairs of the Partnership, including an employee identifying, investigating, structuring, negotiating and monitoring investments of the Partnership, communicating with limited partners, maintaining the books and records of the Partnership and/or making recommendations with respect to investment decisions and/or who is substantially involved in the sales and marketing of the Partnership and (b) whose income exceed $120,000 from all sources in the preceding calendar year and who has a reasonable expectation of reportable income of at least $150,000 during such individual's participation in the Partnership and (c) who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of an investment in the Partnership.

7. Only a small portion of PaineWebber employees will qualify as Eligible Employees. The Eligible Employees are experienced professionals in the financial services business, or in administrative, financial, accounting or operational activities related thereto. No Eligible Employee will be required to invest in any Partnership.

8. Interests in the Initial Partnership will be nontransferable except with the prior written consent of the general partner of the Partnership, which consent may be withheld in its sole discretion. In any event, no person will be admitted to a Partnership as a partner unless such person or entity is (a) another Eligible Employee; (b) trusts or other investment vehicles for the benefit of such limited partner and/or such limited partner's immediate family; or (c) an entity affiliated with PaineWebber.

9. The management of each of the Partnerships will be vested in its general partner and, in certain cases, in an investment manager. If a Partnership will be considered a commodity pool for purposes of the Commodity Exchange Act (the "Commodity Act") and the regulations thereunder, the general partner of the Partnership will be registered as a commodity pool operator to the extent such registration is required. The Initial Partnership is a commodity pool and the General Partner is registered as a commodity pool operator and will be responsible for selecting and allocating the Initial Partnership's assets among the investment vehicles that engage in future transactions. All other investment decisions with respect to the Initial Partnership will be made by PaineWebber. PaineWebber, the General Partner and the general partner of any Subsequent Partnerships may make investments of their own in the Partnership, as a partner or otherwise, and in any case the General Partner will invest to the minimum extent required to satisfy Federal income tax requirements in the case of limited partnerships, which investment will be pro rata with all investors as to income and capital.

10. During the existence of each Partnership, books and accounts of the Partnership will be kept, in which the general partner of the Partnership will enter, or cause to be entered, all business transacted by the Partnership and all moneys and other consideration received, advanced and paid out or delivered on behalf of the Partnership, the results of the Partnership's operations, and each Partner's capital account. Such books at all times will be fully accessible to all Partners of the Partnership, subject to certain reasonable limitations to address concerns with respect to, among other things the confidentiality of certain information. In addition, the General Partner, or in the case of any Subsequent Partnership its general partner, or PaineWebber or the investment manager of any Subsequent Partnership will cause an audit of the financial statements for each fiscal year of the Partnership to be made by a nationally recognized firm of

independent certified public accountants. A copy of the accountant's report with respect to each fiscal year will be mailed or otherwise furnished to each partner of the Partnership within a specified period after the end of such fiscal year. Each Partnership will also supply all information reasonably necessary to enable the partners of the Partnership to prepare their Federal and state income tax returns. The General Partner or in the case of any Subsequent Partnership its general partner, or PaineWebber or the investment manager of any Subsequent Partnership also will generally furnish information regarding each Partnership to the Partners on a quarterly basis. It is expected that the scope and nature of the information furnished to the limited partners of any Partnership will be the same furnished to the third party investors of any investment vehicle in which the Partnership invests.

11. A limited partner may withdraw all or a portion of his or her capital account at the end of a quarter on 60 days prior written notice, provided that a limited partner may not withdraw any amounts during the first twelve months following his or her initial capital contribution to the Initial Partnership. Withdrawals may be limited to the extent that the Initial Partnership is limited or restricted from effecting a withdrawal from any investment vehicle in which it has invested. Distributions upon withdrawal may be made in cash or in the sole discretion of the General Partner, in kind, or partly in cash and partly in kind, and in kind distributions may be made on a non pro-rata basis.

12. The partnership agreement will provide that valuation of the assets of the Initial Partnership for all purposes, including valuation for purposes of determining the value of the interests of withdrawing limited partners (including, without limitation, limited partners who are required to withdraw by the General Partner, in its sole discretion, pursuant to the Partnership Agreement), will be as follows. Assets of the Initial Partnership for which market quotations are readily available will be valued at market value. Other assets of the Initial Partnership representing investments in investment partnerships or other investment vehicles, or with investment managers, will be valued based on the latest unaudited or audited financial statement or performance report unless the General Partner determines that some other valuation is more appropriate. All other assets of the Initial Partnership will be valued in the manner determined by the General Partner.

13. A limited partner retiring in accordance with the partnership agreement (including, without limitation, a limited partner who is required to retire by the General Partner, in its sole discretion, pursuant to the Partnership Agreement) will be entitled to receive an amount equal to the value of his capital account as of the date of his retirement, and the legal representative of any deceased or incapacitated limited partner may, in the discretion of the general partner, be paid the value of such limited partner's capital account, as of the end of the then current fiscal year. Redemptions of a retiring limited partner's interest may be paid in cash or, in the sole discretion of the general partner of the Partnership, in kind or partly in cash and partly in kind, and in kind distributions may be made on a non pro-rata basis.

14. Except to the extent that a Partnership is limited or restricted from effecting a withdrawal from any investment vehicle in which it has invested, retiring partners will be paid 90% of the estimate of the value of their capital account within 30 days after the date of such partner's retirement or the end of the fiscal year. Promptly after the General Partner of the Partnership has determined the capital accounts of the partners as of the retirement date or, if the retirement date is the last day of the fiscal year, the Partnership's independent public accountants have completed their audit of the Partnership's financial statements, the Partnership will pay to the retired limited partner or his representative the amount, if any, by which the amount to which such limited partner is entitled exceeds the amount previously paid, or the retired limited partner or representative will be obligated to pay to the Partnership the amount, if any, by which the amount previously paid exceeds the amount to which the retired limited partner is entitled, in each case together with interest thereon, to the extent permitted by applicable law, from the date of retirement or the last day of the fiscal year, as the case may be, to the date of payment at an annual rate equal to the 90-day Treasury Bill rate on such applicable date. A Partnership may retain as a reserve for Partnership liabilities or for other contingencies, so much of the amount to which a retiring limited partner is entitled as the General Partner, in its sole discretion, determines.

15. No remuneration will be paid by the Partnership to either the General Partner or PaineWebber. The General Partner and PaineWebber do not intend to seek reimbursement from a Partnership except in the case of funds advanced to a Partnership, or to third parties on behalf of the Partnership, to pay Partnership expenses, but each reserves the right to do so at a future date. PaineWebber, the General Partner and the general partner of any Subsequent Partnerships will not charge a fee to, or receive any compensation from the Partnerships for its management services, although PaineWebber and the General Partner do receive fees from Masters Fund which will be borne by the Partnership pro rata along with other partners of Masters Fund.

16. The Initial Partnership will be designated as a "Special Limited Partner" as an investor in the Masters Fund and will be charged by PaineWebber, the investment manager of Masters Fund, a reduced rate of 0.40% of the Initial Partnership's capital account in Masters Fund. An amount equal to 6.0% of the Initial Partnership's share of net profits of Masters Fund in excess of an annual 15% return will be reallocated to the general partner of Masters Fund. Any incentive allocation made to the general partner of Masters Fund will comply with rule 205–3 under the Advisers Act. The Initial Partnership will bear its allocable share of all other fees and expenses of Masters Fund including a quarterly administrative fee paid to the Masters Fund's administrator in an amount equal to 0.20% of the Initial Partnership's capital account in Masters Fund.

17. A minimum initial capital contribution of $50,000, subject to reduction in the sole discretion of the General Partner, will be required of an Eligible Employee to become a limited partner of the Partnership. Additional contributions must be in an amount equal to at least $50,000, subject to reduction in the sole discretion of the General Partner. On the basis of the total capital contribution, each partner of the Partnership will have an aggregate contribution recorded in his capital account.

Applicant's Legal Analysis

1. Applicant requests an exemption under section 6(b) and 6(e) of the Act from all provisions of the Act and the rules and regulations thereunder except sections 9, 17 (except for certain provisions of sections 17 (a), (d), (f), (g), and (j) as described in the application), 30 (except for certain provisions of sections 30 (a), (b), (e) and (h) as described in the application), and 36 through 53, and the rules and regulations thereunder.

2. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated

person of a registered investment company or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such company or to purchase from such company any security or other property. Applicant believes that section 17(a) would prohibit certain purchases of assets from a sales of assets to any of the Partnerships and borrowings from any of the Partnerships (collectively, "Section 17(a) Transactions") by affiliated persons of that Partnership and affiliated persons of such persons (collectively, "Section 17 Persons").

3. Applicant requests an exemption from the provisions of section 17(a) to the extent necessary to permit any of the partnerships (a) to purchase and dispose of interests in a company of other investment vehicle which is a Section 17 Person with respect to that Partnership, whether by virtue of ownership by affiliated persons of one of the Partnerships of 5% or more of the voting securities of the company or vehicle, or otherwise, (b) to acquire investments from PaineWebber or any affiliate of PaineWebber that PaineWebber or any of its affiliates has, temporarily and as accommodation to one of the Partnerships, acquired on the Partnership's behalf, provided that the foregoing would not exempt transactions between one of the Partnerships and any director, officer or employee of the General Partner or PaineWebber and (c) to accept investment in any Partnership by a Section 17 Person.

4. Applicant requests the exemption to allow the Partnerships to buy and sell as principals (a) the interests of other investment vehicles sponsored by PaineWebber and (b) the interests of private investment partnerships or other investment vehicles in which a Section 17 Person including PaineWebber and any of its employees, officers and directors are investors. Applicant requests the relief to permit the Partnerships to have the flexibility to deal with their investments in the manner their general partner and/or PaineWebber deems most advantageous to the Partnerships. Applicant states that the exception in clause (b) of the previous paragraph is requested to permit PaineWebber to acquire an investment temporarily on behalf of a Partnership prior to or during its formation or prior to receipt by a Partnership of the necessary funds from its partners to make such acquisition itself. Applicant believes it is in the interests of the limited partners for the Partnerships to be able to take advantage of investment opportunities that are identified as attractive by the general partner or investment manager but may not remain available during the months required to organize the Initial or Subsequent Partnerships and solicit Eligible Employees, or to seek additional voluntary funds for one of the existing Partnerships. In such cases, applicant states that PaineWebber's motivation would be solely to accommodate the Initial or Subsequent Partnerships.

5. Applicant contends that section 17(a) relief is appropriate because the partners of the Partnership will have been fully informed of the possible extent of the Partnerships' dealings with PaineWebber and its affiliates and, as successful professionals employed in the financial services industry, will be able to evaluate any attendant risks.

6. Section 17(d) and rule 17d–1 thereunder, among other things, prohibit a Section 17 Person, acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the Partnerships are a participant.

7. Applicant requests an exemption under rule 17d–1 to the extent necessary to permit the Partnerships to engage in transactions in which a Section 17 Person with respect to the Partnerships may participate as a co-investor with any such Partnerships and to allow Section 17 Persons to invest in the Partnerships.

8. Because of the number and sophistication of the potential partners in the Partnerships and the persons affiliated with such partners, applicant believes that strict compliance with section 17(d) of the Act may cause the Partnerships to forego many otherwise attractive investment opportunities simply because an affiliated person of PaineWebber or the Partnerships also had, or contemplated making, a similar investment. Applicant believes that the concern that permitting joint investments by PaineWebber or affiliates of PaineWebber might lead to disadvantageous treatment of the Partnerships should be mitigated by the fact that PaineWebber will be acutely concerned with its relationship with its employees who are partners in the Partnerships.

9. Section 17(f) provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with SEC rules. Applicant requests an exemption from section 17(f) and rule 17f–1 thereunder to the extent necessary to permit PaineWebber to act as custodian without a written contract. Because there is a close association between the Partnerships and PaineWebber, applicant contends that requiring a detailed contract would cause each Partnership to unnecessary burden and expense. Furthermore, applicant notes that any securities of a Partnership held by PaineWebber will have the protection of fidelity bonds. Applicant also requests an exemption from the terms of rule 17f–1(b)(4), as it does not believe that the expense of retaining an independent account to conduct periodic verifications (as required by the rule) is warranted given the community of interest of all the parties involved and the existing requirement for an independent annual audit.

10. Section 17(g) and rule 17g–1 thereunder generally require the bonding of officers and employees of a registered investment company who have access to securities or funds of the company. Applicant requests an exemption from section 17(g) and rule 17g–1 to the extent necessary to permit the Partnerships to comply with rule 17g–1 without having a majority of the directors of the general partner who are not "interested persons" (as defined in section 2(a)(19) of the Act) take such action and make such approvals as set forth in the rule and to permit the general partner to treat all Partnerships together as a single partnership for purposes of making a determination under section 17(g) and rule 17g–1. Because all of the directors will be affiliated persons, applicant believes that, without the requested relief, the Partnerships could not comply with rule 17g–1. The Partnerships will, except for the requirements of such approvals by "non-interested" directors, otherwise comply with rule 17g–1.

11. Section 17(j) and rule 17j–1 thereunder make it unlawful for certain enumerated persons to engage in fraudulent, deceitful, or manipulative practices in connections with the purchase or sale of security held or to be acquired by an investment company. Rule 17j–1 also requires every registered investment company, its adviser, and its principal underwriter to adopt a written code of ethics with provisions reasonably designed to prevent fraudulent activities, and to institute procedures to prevent violations of the code. Applicant requests an exemption from the provisions of section 17(j) and rule 17j–1 because it believes they are burdensome and unnecessary and the exception is consistent with the policy of the Act. Applicant believes that the community of interests among the

partners of the Partnerships and the conditions set forth below in connection with the exemptions requested from sections 17 (a) and (d) should provide adequate safeguards. Applicant does not seek an exemption from, and applicant will comply with, the anti-fraud provisions of paragraph (a) of rule 17j–1.

12. Applicant requests an exemption from the requirement in sections 30 (a), (b) and (e), and the rules thereunder, that registered investment companies prepare a file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicant believes that the forms prescribed by the SEC for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the limited partners. Applicant also requests an exemption from section 30(e) to the extent necessary to permit a Partnership to report annually to limited partners in the manner described in the application.

13. Section 30(h) requires that every officer, director and member of an advisory board, investment advisor or affiliated person of an investment advisor of a closed-end investment company be subject to the same duties and liabilities as those imposed upon similar classes of persons under section 16(a) of the Securities Exchange Act of 1934 (the "1934 Act"). Applicant requests an exemption from the requirements of section 30(h) to the extent necessary to exempt the General Partner, the general partner of any Subsequent Partnership, PaineWebber, any investment manager of a subsequent Partnership, any affiliated person of PaineWebber or such other investment manager, and any of their respective officers or directors and any other persons who may be deemed members of an advisory board of any of the Partnerships from filing Forms 3, 4 and 5 under section 16 of the Exchange Act with respect to their ownership interests in the Partnerships. Applicant submits that its request is appropriate and consistent with the protection of investors because of the lack of trading market in and the restriction on transferability of Partnership interests.

Applicant's Conditions

Applicant will comply with the following as conditions to any order granted by the SEC:

1. As a condition of the relief requested for the Partnerships from sections 17 (a) and (d), applicant agrees that the proposed transactions otherwise prohibited by sections 17(a) and/or 17(d) to which any Partnership is a party will be affected only in accordance with the following: (a) the Partnerships will not acquire any interest in PaineWebber or the PaineWebber Group; (b) any acquisition by any of the Partnerships of an investment covered by the section 17(a) relief will be affected at value (as defined in section 2(a)(41) of the Act), as determined in good faith by the General Partner, or in the case of any Subsequent Partnership, its general partner, or PaineWebber, except that transfers from the General Partner, or in the case of any Subsequent Partnership, its general partner, or PaineWebber will be effected at cost as described in paragraph c below; (c) transfer of an investment from the General Partner, the general partner of any Subsequent Partnership or PaineWebber to any of the Partnerships will be effected as soon as reasonably practicable after the acquisition by the General Partner, the general partner of any Subsequent Partnership or PaineWebber, but in any event within one year and will be effected at the General Partner's, general partner's or PaineWebber's cost, which includes any actual interest charges, not to exceed the prevailing prime rate, incurred to purchase and hold the property in question; and (d) the General Partner and any general partner of any Subsequent Partnership will adopt, and periodically reivew and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person of the Partnership, or any affiliated person of such a person.

2. As a condition of the relief requested for the Partnerships under sectin 17(d) and rule 17d–1, applicant agrees that proposed transactions otherwise prohibited by section 17(d) to which any Partnership is a party will be effected in accordance with the following: The General Partner and any general partner of any Subsequent Partnership will not invest funds of the Partnership in any investment in which a Section 17 Person has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and the Section 17 Person are participants, unless any such Section 17 Person agrees that, prior to disposing of all or part of its investment, it will (i) give the General Partner or, in the case of any Subsequent Partnership, its general partner, sufficient, but not less than one day's notice of its intent to dispose of its investment, and (ii) refrain from disposing of its ivestment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, and on the same term as, and *pro rata* with the Section 17 Person. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Section 17 Person: (i) to its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Section 17 Person is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (ii) to immediate family members of the Section 17 Person or a trust established for any such family members; (ii) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the 1934 Act; or (iv) when the investment is comprised or securities that are national market system securities pursuant to section 11A(a)(2) of the 1934 Act and rule 11Aa2–1 thereunder.

3. As a further condition to a Partnership's participation in Section 17(a) Transactions or Section 17(d) Transactions for which relief is requested herein, applicant agrees that such Transaction will be affected in compliance with section 57(f) of the Act as if the applicant were a business development company to the extent that the General Partner, or in the case of any subsequent Partnership its general partner, or PaineWebber (instead of the "required majority" as defined in section 57) approves that transactions on the basis hereinafter set forth. The General Partner or, with respect to a Subsequent Partnership, its general partner, must approve the Transaction on the basis that as follows: (1) The terms of such Transaction, including the consideration to be paid or received, are fair and reasonable to the partners of the Initial or Subsequent Partnership and do not involve overreaching of the Initial or Subsequent Partnership or its partners on the part of any person concerned; (2) the proposed Transaction in consistent with the interests of the partners and consistent with the partnership agreement or the partnership agreement of any Subsequent Partnership and its report to partners; and (3) the general partner or PaineWebber will preserve in its records a description of such Transaction, its findings, the information or materials upon which its findings were based, and the basis therefore. All such records will be maintained for the life of the Initial and

Subsequent Partnership and for a period of at least six years after the termination of the Initial or Subsequent Partnership, and will be subject to examination by the SEC and its staff.[1]

4. Each Partnership and its general partner will maintain and preserve, for the life of the Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the limited partners, and each annual report of the Partnership required to be sent to the limited partners, and agree that all such records will be subject to examination by the SEC and its staff.

5. The General Partner and any general partner of any Subsequent Partnership will send to each limited partner of such Partnership who had an interest in any capital account of such Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner and the general partner of each Subsequent Partnership will make a valuation or have a valuation made of all of the assets of such partnership as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 90 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the general partner of such Partnership will send a report to each person who was a partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the partner of his Federal and state income tax returns and a report of investment activities during the year.

6. If purchases or sales are made by a Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in such entity by any director, officer or employee of PaineWebber or by any director, officer of the general partner of that Partnership, such individual will not participate in that general partner's determination of whether or not to effect such purchase or sale.

[1] Consistent with rule 31a–2 under the Act, each of the Partnerships will preseve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–19197 Filed 7–21–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38840; File No. SR–CBOE–97–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Membership Application Submission Deadlines

July 16, 1997.

On May 15, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the proposed rule change to amend CBOE Rule 3.9 to give the Exchange's Membership Committee the authority to establish deadlines for the submission of each type of membership application. Notice of the proposed rule change, together with the substance of the proposal, was published in the **Federal Register**.[2] No comment letters were received. This order approves the proposed rule change.

I. Background

CBOE Rule 3.9(a) currently requires every individual or organization applying to become an Exchange member and every individual applying to become a nominee of an Exchange member organization to file an application with the Exchange's Membership Department no later than the first business day of the month during which the application will be considered by the Exchange's Membership Committee. The Membership Committee generally meets once a month on the Thursday of the third week of the month. Depending on the particular month, the current membership application submission deadline can provide the Exchange with as few as 10 business days to process a membership application prior to the Membership Committee's consideration of the application at its monthly meeting.

According to the Exchange, the current application submission deadline makes it extremely difficult for the Exchange to complete the processing of new membership applications in time for consideration by the Membership Committee at its monthly meeting. On the other hand, the Exchange is typically able to process more quickly the application of an existing member to change his or her membership status or the application of a former individual member who is reapplying for membership within 6 months after his or her membership termination date.

The proposed rule change will eliminate the current general membership application submission deadline, and instead, provide in Rule 3.9(a) that the Membership Committee shall establish separate submission deadlines for each type of membership application. Once the Membership Committee has established the submission deadline for a particular type of membership application, each type of membership application will be required to be submitted to the Membership Department in accordance with the deadline to be eligible to be considered for approval.

II. Discussion

The proposed rule change is consistent with Section 6(b) of the Act, in general, and Sections 6(b)(5) and 6(b)(7), in particular, in that it is designed to protect investors and the public interest and to provide a fair procedure for the consideration of Exchange membership applications by ensuring that the Exchange has adequate time in which to review membership applications.[3] The proposed rule change will permit the Membership Committee to tailor a particular submission deadline to the type of membership application involved and to periodically shorten or lengthen the deadline, if appropriate, to correlate the submission deadline with the amount of time that the Exchange is generally taking to process that type of application. Furthermore, the proposed rule change will not restrict the Membership Committee's ability to table its consideration of a membership application pursuant to CBOE Rule 3.9(c)(1) of Rule 3.9(e) to obtain additional information concerning an applicant or pursuant to CBOE Rule 3.4(d) when an applicant is subject to an investigation being conducted by a self-regulatory organization or government agency involving the applicant's fitness for membership.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 38725 (June 6, 1997), 62 FR 32394 (June 13, 1997).

[3] The Commission has considered the effect of the proposed rule change on the promotion of efficiency, competition and capital formation. 15 U.S.C. § 78(c).

The Commission also believes that the proposed rule change provides a fair procedure to members who apply for membership or to change their membership status because the Membership Committee must establish submission deadlines that are not in excess of 90 days prior to the date that such an application will be considered for approval. Furthermore, the Membership Committee will provide adequate notice of the particular submission deadlines to its membership. The Membership Committee will not alter any membership application submission deadline without first giving at least 60 days prior notice in the form of a regulatory circular that a new deadline will be going into effect. The Membership Committee will disseminate these submission deadlines in a regulatory circular published in the Exchange's Regulatory Bulletin and will include the regulatory circular in the membership information packets provided to prospective membership applicants.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR–CBOE–97–21, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–19195 Filed 7–21–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38842; File No. SR–CSE–97–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc., Relating to Transaction Fees

July 16, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 15, 1997, The Cincinnati Stock Exchange, Incorporated ("CSE" 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 CSE.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby proposes to amend the schedule of fees set forth in Exchange Rule 11.1010. The text of the proposed rule change is below. Additions are in italics; deletions are bracketed.

The Cincinnati Stock Exchange, Incorporated

* * * * *

Rule 11.10 National Securities Trading System Fees

A. Trading Fees

(a) Agency Transactions. As in the case for Preferenced transactions, members acting as an agent will be charged the per share incremental rates as noted below for public agency transactions:

Avg. daily share volume*	*Charge per share (dollars)*
1 to 250,000	[0.0020] *0.0015*
250,001 to 500,000	[0.0015] *0.0013*
500,001 to *750,000*	[0.0013] *0.0009*
[1,000,001] *750,001* to *1,250,000* [1,500,001]	[0.0009] *0.0007*
1,250,001 to *1,750,000*	[0.0007] *0.0005*
1,750,001 and higher	*0*

*Odd-lot Shares Excluded.

(b) No Change.

(c) Agency Order Mix Fee. Agency limit orders shall be charged based on the percentage of public agency market order shares executed on the Exchange during the trading month, according to the following schedule:

Percent market order shares executed	*Agency limit order mix fee (dollars)*
25 and higher	*No Charge*
20–24.99	*.005 per share*
15–19.99	*.01 per share*
10–14.99	*.015 per share*
Less than 10	*.02 per share*

(c)–(e) To be renumbered (d)–(f).

[(f) Maximum Trade Charge. The maximum charge per firm for any single transaction shall be $150.00 except for crosses and meets.]

(g) Proprietary (principal) Transactions

(1) All Designated Dealers, except those acting as Preferencig Dealers or Contributing Dealers, will be charged [$0.005] *$.0025* per share ([$0.50] *$0.25*/100 shares) for principal transactions [excluding] *including* ITS transactions, *with a maximum charge of $3.75 per firm per side of transaction.* [Designated Dealers will be billed $0.005 per share on outbound ITS trades and $0.0000 per share on inbound ITS trades. All Designated Dealers' charges are subject to the minimum charges set forth in paragraph 5 below. Billable shares shall not exceed 650,000 shares times the number of trading days in any given month.]

(2) Designated Dealers acting as "Dealer of the Day" will be charged [$0.005] *$0.0025* per share ([$0.50] *$0.25*/100 shares) for principal transactions.

(3) Contributing Dealers will be charged $0.02 per share ($2.00/100 shares) for principal transactions.

(4) Members executing principal transactions in securities for which they are not registered as a Designated or Contributing Dealer will be charged $0.02 per share ($2.00/100 shares).

[(5) Designated Dealers (DD) shall have the following minimum average per share charge applied to their aggregate monthly DD transactions using the DD's average volume per trading day:

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

Designated dealer's average share volume per day	Per share minimum charge (dollars)
1 to 2,000,000	0.0038
2,000,001 and higher	0.0030]

(h) Preferenced Transactions. Designated Dealers that are preferencing transactions are charged for one side of their preferenced transactions and are subject to the incremental rates as noted below:

Avg. daily share* volume	Charge per share (dollars)
1 to 250,000	[$0.0020] *$0.0015*
250,001 to 500,000	[$0.0015] *$0.0013*
500,001 to *750,000*	[$0.0013] *$0.0009*
[1,000,001] *750,001* to *1,250,001* [1,500,001]	[$0.0009] *$0.0007*
1,250,001 to *1,750,000*	[$0.0007] *$0.0005*
1,750,001 and higher	*0*

*Odd-Lot Shares Excluded.

(i)–(n) No Change.
B. Membership Fees.
No Change.

II. Self-Regulatory Organization's Statement of The Purpose of, And Statutory Basis For, The Proposed Rule Change

In its filing with the Commission, the 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 Exchange is changing its fee schedule as part of its annual budget process. The Exchange's transaction fees have been reduced in order to retain CSE's position as the low-cost provider of exchange services. In addition, the Exchange's fees have been revised in light of recent changes in the National Market System. Specifically, the Commission's new limit order display rule, in conjunction with evolving payment for order flow practices, recent changes to the minimum trading increment and heightened systems demands caused by these changes have led the Exchange to impose an order mix charge which will ensure that the Exchange receives a typical industry mix of market and limit orders.

(2) *Basis.* The Exchange believes that proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities. Specifically, the proposed rule change will reduce transaction fees on the Exchange, thereby reducing members' costs. The Exchange believes that these changes will benefit the investing public as members pass these savings along to their customers. In addition, the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade by helping to ensure that the Exchange receives a typical mix of market and limit orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date Of Effectiveness Of The Proposed Rule Change and Timing For Commission Action

The Exchange has designated this proposal as establishing or changing a due, fee or other charge under Section 19(b)(3)(A) of the Act [3] and subparagraph (e) of Rule 19b–4,[4] which renders the proposed rule change effective on July 15, 1997, the date of receipt of this filing by the Commission.

At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary to 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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–97–08 and should be submitted by August 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–19194 Filed 7–21–97; 8:45 am]

BILLING CODE 8010–01–M

[2] The proposed rule change was originally submitted on June 27, 1997.

[3] 15 U.S.C. § 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(e) (1991).

SMALL BUSINESS ADMINISTRATION

Specialized Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: The Small Business Administration (SBA) implemented its 3% Preferred Stock Repurchase Program, effective April 1, 1994, for Small Business Investment Companies licensed under the former section 301(d) of the Small Business Investment Act (Specialized SBICs or SSBICs). This notice is to extend the period of availability of the Repurchase Program.

DATES: This Notice is effective on July 22, 1997. Written comments on this notice must be received no later than August 21, 1997.

ADDRESSES: Written comments should be sent to Don A. Christensen, Associate Administrator for Investment, U.S. Small Business Administration, Suite 6300, 409 Third Street, S.W., Washington, DC 20416. Copies of the April 1, 1994, Notice implementing the Repurchase Program and SBA Policy and Procedural Release #2021 are available upon request.

FOR FURTHER INFORMATION CONTACT: Ronald C. Cibolski, Director, Office of SBIC Operations, Investment Division; telephone (202) 205–6519.

SUPPLEMENTARY INFORMATION: On June 19, 1992, SBA published a notice in the Federal Register (the pilot notice) announcing the commencement of the 3% Preferred Stock Repurchase Pilot Program for Small Business Investment Companies licensed under section 301(d) of the Small Business Investment Act of 1958, as amended. See 57 FR 27503. On April 1, 1994, SBA published a notice in the Federal Register fully implementing the 3% Repurchase Program to allow each eligible SSBIC the opportunity to apply for the repurchase of its 3% preferred stock held by SBA. See 59 FR 15491. On June 14, 1994, SBA Policy and Procedural Release #2021 was issued notifying all licensed SSBICs that the period of availability for the 3% Repurchase Program would be for three (3) years following that date. Further, SBA Policy and Procedural Release #2021 delineated the procedures for applying to repurchase the 3% preferred stock and set forth the general conditions related to such a repurchase. Since its implementation, only 58% of the SSBICs with outstanding 3% preferred stock have participated in the Repurchase Program. To allow each eligible SSBIC additional time to take advantage of this opportunity, SBA is extending the period of availability of the 3% Repurchase Program by four (4) years to June 14, 2001. All other program descriptions and conditions set forth in the April 1, 1994 Notice implementing the Repurchase Program, as well as those delineated in SBA Policy and Procedural Release #2021, remain unchanged.

Authority: Title III of the Small Business Investment Act 15 U.S.C. 681 *et seq.*; 15 U.S.C. 683, 687(c), 687b, 687d, 687g, and 687m; as amended by Pub. L. 104–208.

Dated: July 11, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–19134 Filed 7–21–97; 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.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 13, 1996 [61 FR, page 65629].

DATES: Comments must be submitted on or before August 21, 1997.

FOR FURTHER INFORMATION CONTACT: Edward Kosek, NHTSA Information Collection Clearance Officer at (202) 366–2589.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration (NHTSA)

Title: National Survey of Drinking and Driving Attitudes and Behaviors: 1997.

OMB No.: 2127–0580.

Type of Request: Revision of a Currently Approved Collection.

Affected Public: Non-institutionalized population of the U.S.—Ages 16 and older living in telephone households.

Abstract: In 1991, NHTSA conducted the first in a series of biennial surveys of the driving-age public (16 or older) to identify patterns and trends in public attitudes and behaviors towards drinking and driving. The proposed study will collect data on topics included in the first three studies (and several additional topics), including: frequency of drinking and driving and of riding with an impaired driver, ways to prevent drinking and driving, enforcement of drinking driving including the use of sobriety checkpoints, understanding of BAC levels and legal limits, and crash and injury experience.

Estimated Annual Burden Hours: 1,333 hours.

Estimated Number of Respondents: 4,000.

Need: The findings will assist NHTSA in addressing the problem of alcohol-impaired driving and in formulating programs and recommendations to Congress. NHTSA will use the findings to identify areas to target current programs and activities to achieve the greatest benefit, to develop new programs to decrease the likelihood of drinking and driving behaviors, and to provide informational support to states, localities, and law enforcement agencies that will aid them in their efforts to reduce drinking and driving crashes and fatalities.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 16, 1997.

Vanester M. Williams,

Clearance Officer, Department of Transportation.

[FR Doc. 97–19184 Filed 7–21–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 91–56A, Continuing Structural Integrity Program for Large Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed advisory circular.

SUMMARY: This notice invites public comment on the proposed revision of Advisory Circular (AC) 91–56 which provides guidance material to manufacturers and operators of transport category airplanes for use in developing a continuing structural integrity program to ensure safe operation of older airplanes throughout their operational life.

DATES: Comments must be received on or before October 20, 1997.

ADDRESSES: Send all comments on the proposed AC to: Dorenda Baker, Manager, Aging Aircraft Program, ANM–109, FAA Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave., SW., Renton, WA 98055–4056. Comments may be examined at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Pat Siegrist, Regulations Branch, ANM–114, FAA Transport Airplane Directorate, Aircraft Certificate Service, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–2126, facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**. Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify the title of the AC and submit comments in duplicate to the address specified above. All comments received on or before the closing date for comments will be considered by the Transport Airplane Directorate before issuing the final AC.

Discussion

The FAA proposes to revise AC 91–56, "Supplemental Structural Inspection Program for Large Transport Category Airplanes," to add an appendix which provides guidance as to an acceptable means of accomplishing a structural evaluation for widespread fatigue damage. It revises the original AC to incorporate editorial changes and to reserve sections for the Aging Aircraft Modification Program, Corrosion Prevention and Control Program, and Repair Evaluation Program. The proposed changes would expand the scope of AC 91–56 to cover all programs necessary for the continued structural integrity of aging aircraft; therefore, the subject of the AC would be changed to "Continuing Structural Integrity Program for Large Transport Airplanes."

The following is a summary of the contents of the appendix on widespread fatigue damage.

General

The likelihood of fatigue damage in an airplane's structure increases with the number of damaging repeated load cycles the airplane experiences. The manufacturer designs the airplane to keep the probability of cracking to a minimum up to the design service goal. It is expected that any cracking that occurs during this period will occur in isolation, originating from a single source, such as a random manufacturing flaw, but uniformly loaded structure may develop cracks in adjacent fasteners or in adjacent similar structural details. This cracking, known as Widespread Fatigue Damage (WFD) may interact to reduce the damage tolerance of the structure. Methods used to date to develop structural inspection programs have generally considered only localized interactions between fatigue cracks. Since a few cracks of a size that may not be reliably detected can cause an unacceptable reduction in the structural strength of the aircraft, the manufacturers should conduct an evaluation to determine when this damage may occur and provide instructions for the verification and removal of WFD in airplane structure.

Structural Evaluation for Widespread Fatigue Damage

The evaluation has three objectives: (1) Identify primary structure susceptible to WFD, (2) Predict when it is likely to occur, (3) Establish additional maintenance actions, as necessary, to ensure the continued safe operation of the airplane. Structure that is susceptible to WFD typically has characteristics of similar details operating at similar stresses where structural capability could be affected by interaction of similar cracking. The proposed AC provides examples of generic types of susceptible structure. The evaluation for the onset of WFD should include a complete review of service history of the susceptible areas, relevant full-scale and component fatigue test data, teardown inspections, and any fractographic analysis available. For all areas that are identified as susceptible to WFD, the current maintenance program should be evaluated to determine if adequate structural maintenance and inspection programs exist to safeguard the structure against cracking and other structural degradation. The initial evaluation validity of the complete airframe should cover a significant forward projection of the airplane usage beyond the design service goal, typically an assessment through at least an additional twenty-five percent of the design service goal would provide a realistic forecast.

Documentation

The manufacturer may revise the Supplemental Structural Inspection Program or issue other service information for the inspections and procedures and or modification of parts or components necessary to preclude WFD.

Responsibility

It is expected that the evaluation will be conducted in a cooperative effort between the operators and the manufacturers with participation by airworthiness authorities.

Issued in Renton, Washington, on July 15, 1997.

Neil D. Schalekamp,

Acting Manager, Transport Standards Staff, Transport Airplane Directorate, ANM–110.

[FR Doc. 97–19233 Filed 7–21–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity to Participate, Criteria Requirements and Change of Application Procedure for Participation in the Fiscal Year 1997 Military Airport Program (MAP)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of criteria for application and designation, redesignation, or continued participation, in the Fiscal Year 1997 Military Airport Program (MAP).

SUMMARY: This notice announces the criteria, application procedures and schedule to be applied by the Secretary of Transportation in designating, redesignating, and funding capital development for up to 12 airports in the 1997 MAP.

The 1997 MAP allows the Secretary to consider current or former military airports: (1) that were realigned or closed under Base Realignment and Closure (BRAC) procedures or 10 USC 2687 (property normally reported to the General Services Administration for disposal); or (2) at which grants would reduce delays at airports that have 20,000 hours of annual delay in passenger aircraft takeoffs and landings; or (3) which will enhance airport and air traffic control system capacity in a metropolitan area.

DATES: Airport sponsors should address written applications for designation, redesignation, or continued participation, in the fiscal year 1997 MAP to the FAA regional Airports Division or Airports District Office that serves the airport. Applications must be received by that office of the FAA within 20 days after the date this notice is published in the **Federal Register**.

ADDRESSES: Send an original and two copies of Standard Form 424, "Application for Federal Assistance," and supporting and justifying documentation, specifically requesting to be considered for designation to participate, or continue, in the fiscal year 1997 Military Airport Program, to the Regional FAA Airports Division or Airports District Office that serves the airport.

FOR FURTHER INFORMATION CONTACT: Mr. James V. Mottley or Leonard C. Sandelli, Military Airport Program (APP–4), Office of Airport Planning and Programming, Federal Aviation Administration (FAA), 800 Independence Avenue, SW.,

Washington, DC. 20591, (202) 267–8780, or (202) 267–8785, respectively.

SUPPLEMENTARY INFORMATION:

General Description of the Program: The Military Airport Program is a 4% funding set aside of the discretionary portion of the Airport Improvement Program for projects at current or former military airports to assist in converting them to civil use and to have them contribute to capacity of the national air transportation system and/or reduce congestion at congested airports.

Number of Airports: A maximum of 12 airports can participate in the 1997 MAP. There are eight airports currently designated and the Secretary can designate up to four more.

Amount of MAP funds: The Secretary of Transportation shall allocate at least 4.0% of the Discretionary Airport Improvement Program grant funds available to airports designated under the 1997 MAP. For 1997 this amount is $18,512,311.

Term of designation: Five years is the maximum period of eligibility for any airport to participate in the MAP unless an airport sponsor applies for and is selected for redesignation.

Reapplication: Section 124 of the 1996 Federal Aviation Reauthorization Act of 1996 permits previously designated airports to apply for an additional five year period if the airport has satisfactory MAP eligible projects and continues to satisfy the designation criteria for the MAP.

Eligible Projects: In addition to other eligible AIP projects, terminals, fuel farms, utility systems and parking lots and hangars are eligible to be funded from the MAP.

New Designation Considerations: In making designations of new candidate airports, the Secretary of Transportation will consider the following general requirements:

1. The airport is a Base Realignment and Closure Commission (BRAC) or 10 USC 2687 closure or realignment, classified as a commercial service or reliever airport in the National Plan of Integrated Airport Systems (NPIAS); or

2. The airport and grants issued for projects at the airport would reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings. Airports with 20,000 or more hours of delay and their associated metropolitan areas are identified in the FAA's Aviation Capacity Enhancement Plan. DOT/FAA, Office of System Capacity, 1996 Aviation Capacity Enhancement Plan, Report No. DOT/FAA/ASC–96 1.; or

3. The airport would enhance airport and air traffic control system capacity in a metropolitan area or reduce current or projected flight delays.

The application will be evaluated on how the proposed airport and associated projects would make these contributions to conversion and congestion relief and/or how the airport would enhance air traffic or airport system capacity.

Project Evaluation: The FAA will evaluate the need for the projects in the candidate airport's five year Capital Improvement Plan (CIP), whether these projects are related to conversion or capacity of that airport or the airport and/or air traffic system. It is the intent of the Secretary of Transportation to fund those airports that have the greatest conversion needs and/or where the benefits to the capacity of the air traffic control or airport system can be maximized, or the contribution to reducing congestion can be maximized. Generally, the recently approved BRAC or Title 10 Section 2678 closing or realigned bases or active bases with new joint use agreements will be the locations with the greatest conversion needs.

1. The FAA will evaluate the candidate airports and/or the airports such candidates would relieve, based on the following factors:

- Compatibility of airport roles;
- The capability of the candidate airport and its airside and landside complex to serve aircraft that otherwise must use the relieved airport;
- Landside surface access;
- Airport operational capability, including peak hour and annual throughput capacities of the candidate airport;
- Potential of other metropolitan area airports to relieve the congested airport;
- Ability to satisfy or meet air cargo demand within the metropolitan area;
- Forecasted aircraft and passenger levels, type of air carrier service anticipated, i.e., scheduled and/or charter air carrier service;
- Type of aircraft projected to serve the airport and level of operation at the relieved airport and the candidate airport;
- The potential for the candidate airport to be served by aircraft or users, including the airlines, serving the congested airport;
- Ability to replace an existing commercial service or reliever airport serving the area; and
- Any other documentation to support the FAA designation of the new airport.

2. The FAA will evaluate the conversion and capacity related needs which, if funded would make the airport a more viable civil airport.

This procedure conforms with FAA procedures for administering the Airport Improvement Program (AIP), the requirements of 49 U.S.C. 47118, as amended by Section 116 of Public Law 103–305 (August 23, 1994), the Federal Aviation Reauthorization Act of 1996, and certain recommendations made by the General Accounting Office (GAO) in its Report B–256001 (1994), entitled "The Military Airport Program Has Not Achieved Intended Impact."

Application Procedures

Airport sponsors applying for consideration for inclusion ("New Airports" or "Redesignation") or continuation in the MAP ("Current Airports Applying for Continuation") must complete a Standard Form 424, "Application for Federal Assistance," and submit documentation to the appropriate FAA office as outlined below. Each sponsor must specifically state in the Standard Form 424, or in its transmittal, that the airport is: (1) applying in response to this notice for consideration as a candidate for the MAP; (2) if designated in 1993 or thereafter, that the airport is applying as a continuing participant in the MAP; or (3) applying for resignation. The additional information and data required to support the MAP criteria must be attached to the Application.

Application Procedures and Required Documentation

New Candidate Airports

A. Qualifications for additional candidates: (1) Submit an Application for Federal Assistance, Standard Form 424, along with the documentation and justification indicated below to request designation by the Secretary of Transportation to participate in the Military Airport Program. This should identify the airport as either a current or former military airport and identify whether it was closed or realigned under Public Law 100–526, Public Law 101–510 (Installations approved for closure by the Defense Base Realignment and Closure Commissions), 10 U.S.C. 2687 (bases closed by DOD and reported to the General Services Administration) or a joint use of an active military airfield.

(2) Documentation that the airport meets the definition of a "public airport" as defined in 49 U.S.C. Section 47102 (16).

(3) Documentation that the required environmental review process for civil or joint-use of the military airfield has been completed. (This is not the

environmental review for the projects under this program, but the environmental review necessary for title transfer, a long term lease, or a joint use agreement). The environmental reviews and approvals must indicate that the airport would be able to receive grants during the five years in the program.

(4) In the case of a former military airport, documentation that the local or State airport sponsor holds or will hold satisfactory title, or a long term lease for 20 years or more, to the property on which the civil airport is being located. In the case of a current military airport, documentation that the airport sponsor has an existing joint-use agreement with the military department having jurisdiction over the airport. This is necessary so the FAA can legally issue grants to the sponsor.

(5) Documentation that the service level the airport is expected to provide is a "commercial-service airport" or a "reliever airport" as defined in 49 U.S.C. 47102 (7) and 47102 (18), respectively, and is included in the current National Plan of Integrated Airport Systems.

(6) Documentation that the airport has an eligible airport "sponsor" as defined in 49 U.S.C. 47102 (19).

(7) Documentation that the airport has an approved airport layout plan (ALP) and a five year capital improvement plan indicating all eligible grant projects either to be funded from the MAP or other portions of the Airport Improvement Program. The five year plan must also specifically identify the capacity and conversion related projects, associated costs and projected five year schedule of project construction, including those requested for consideration for 1997 MAP funding.

(8) Information identifying the existing and potential levels of visual or instrument operations and aeronautical activity at the current or former military airport and the relieved airport. Also, if applicable, information on how the airport contributes to air traffic system or airport system capacity. If served by commercial air carriers, the revenue passenger and cargo levels should be provided.

(9) A description of the projected civil role and development needs for transitioning from use as a military airfield to a civil airport, as appropriate, and how development projects would serve to convert the airport to civil use and/or reduce delays at an airport with more than 20,000 hours of annual delay in commercial passenger aircraft takeoffs and landings and/or how the projects would contribute to the airport and air traffic control system capacity in a metropolitan area or reduce current or projected flight delays.

(10) A description of the existing airspace capacity. Describe how anticipated new operations would affect the surrounding airspace and air traffic flow patterns in the metropolitan area in or near which a current or former military airport is located. Include a discussion of the level to which operations at this airport create airspace conflicts that may cause congestion or whether air traffic works into the flow of other air traffic in the area.

(11) A description of the five year capital improvement plan (CIP), including a discussion of major projects, their priorities, projected schedule for project accomplishment, and estimated costs. Capacity related, and/or conversion related projects should be specifically identified, especially those that the airport sponsor proposes to fund under the MAP. A copy of the CIP should also be submitted.

(12) A description of projects that are consistent with the role of the airport and effectively contribute to converting the airfield to a civil airport. Projects can be related to various improvement categories depending on the need to convert from military to civil airport use, to meet required civil airport standards, and/or required to provide capacity to the airport and/or airport system. The projects selected , i.e., conversion-related, and capacity-related, must be identified and fully explained based on the airport's planned use. The sponsor needs to submit the airport layout plan (ALP) and other maps or charts that clearly identify and help clarify the eligible projects and designate them as conversion-related, or capacity-related. It should be cross referenced with the project costs and project descriptions. Projects that could be eligible under MAP if needed for conversion-related or capacity-related purposes include:

Airside:

- Modification of airport or military airfield or airport pavements (including widths), marking, lighting, pavement strengthening, and imaginary surface standards to meet civil standards.
- Facilities or support facilities such as passenger terminal gates, aprons for passenger terminals, taxiways to new terminal facilities, aircraft parking, and cargo facilities to accommodate civil use.
- Modification of airport or military utilities (electrical distribution systems, communications lines, water, sewer, drainage) to meet civil standards. Also, modifications that allow civil airport utilities to operate independently if other portions of the base are severed from the airport. (This is important where portions of the base are being transferred to an entity different from the airport sponsor.)
- Purchase, rehabilitation, or modification of airport and support facilities, including aircraft rescue and fire fighting buildings and equipment, airport security requirements, lighting vaults, and reconfiguration or relocation of buildings for more efficient civil airport operations, snow removal equipment.
- Modification of airport or military airfield fuel systems and fuel farms to accommodate civil aviation activities.
- Acquisition of additional land for runway protection zones, other approach protection, or airport development.

Landside

- Construction of surface parking areas and access roads to accommodate automobiles in the airport terminal area and provide an adequate level of access to the airport.
- Construction or relocation of access roads to provide efficient and convenient movement of vehicular traffic to, on and from the airport, including access to passenger, air cargo, fixed base operations, and aircraft maintenance areas.
- Modification or construction of facilities such as passenger terminals, surface automobile parking, hangars, and access to cargo facilities to accommodate civil use.

(13) An evaluation of the ability of surface transportation facilities (road, rail, high speed rail, maritime) to provide intermodal connections.

(14) A description of the type and level of aviation and community interest in the civil use of a current or former military airport.

(15) One copy of the FAA approved ALP for each copy of the application. The ALP or supporting information should clearly show capacity and conversion related projects. Also, other information such as project costs, schedule, project justification, other maps and drawings showing the project locations, and any other supporting documentation that would make the application easier to understand should be included.

Current Airports Applying for Continuation

B. Airports with less than 5 years in the MAP need to submit the following in order to respond to this notice and remain in the program.

(1) An Application for Federal Assistance, Standard Form 424, along with the documentation and

justification indicated below to request participation in the Military Airport Program. Identify the airport as one with less than five years in the MAP applying for continuation.

(2) Identify the existing and potential levels of visual or instrument operations and aeronautical activity at the current or former military airport and the relieved airport.

(3) Provide a detailed discussion of the projected civil role and continuing development needs for converting a military airfield to a civil airport, and/or how development projects would reduce delays at an airport with more than 20,000 hours of annual delay in commercial passenger aircraft takeoffs and landings, if applicable.

(4) Describe the five year CIP, including a discussion of major projects, their priorities, projected schedule for project accomplishment, and estimated costs, annotated and identified as capacity related, and/or conversion related purposes.

(5) Submit one copy of the FAA approved ALP for each copy of the application. The ALP should clearly show the CIP projects. Also include any other information or drawings that would show and/or clarify the five year plan identifying capacity, and conversion related projects, associated costs, schedule, and project justification.

Airports that have already submitted this information for the 1996 Military Airport Program and have been continued only need to submit updated information and changes in order to continue receiving grants under this program.

Redesignation of Airports Previously Designated and Applying for Another Five Year Term in the Program

C. Airports applying for another five years in the Military Airport Program need to submit the information required by new candidate airports applying for a new designation.

This notice is issued pursuant to section 49 U.S.C. 47118.

Issued at Washington, DC, on July 12, 1997.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 97–19234 Filed 7–21–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 97–2703]

Notice of Request for Extension of Currently Approved Information Collection; Bid Price Data

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to renew the information collection that documents the requirements of the Bid Price Data as described in 23 U.S.C. 115 and 315.

DATES: Comments must be submitted on or before September 22, 1997.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. and 5:00 p.m., e.t., Monday through Friday except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) the necessity and utility of the information collection for comments must include a self-addressed, stamped postcard/envelope.

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) the necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB renewal of this information collection.

FOR FURTHER INFORMATION CONTACT: Ms. Claretta Duren, Office of Engineering, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street, Washington, D.C. 20590. (202) 418–8567 or (202) 366–4636. Office hours are from 7:30 a.m. to 4:00 p.m., e.t., Monday thru Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Bid Price Data.

OMB Number: 2125–0010.

Background: The form FHWA–45, "Bid Price Data," is needed to monitor changes in purchasing power of the Federal-Aid construction dollar. FHWA has found it necessary to follow these trends so that changes in highway construction prices can be measured and funding level recommendations to Congress can be justified. Form FHWA–45 is prepared for Federal-Aid highway construction contracts greater than $0.5 million in the 50 States plus Washington, DC, and Puerto Rico. Data reported in the form FHWA–45 are six major items of highway construction, together with the total materials and labor costs of the project, taken from the bid tabulation of construction items submitted by the lowest or winning bidder to the State highway agency. The highway agencies furnish copies of the bid tabulation to the FHWA Division offices.

Respondents: State highway agencies.

Average Burden Per Response: 0.75 hours.

Estimated Total Annual Burden: 484 hours.

Frequency: The data is collected by the respondents and submitted to FHWA within two weeks after the project has been awarded.

Authority: 23 U.S.C. 115 and 315; 23 CFR 1.26.

Issued: June 19, 1997.

George Moore,

Associate Administrator for Administration.

[FR Doc. 97–19152 Filed 7–21–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 97–2587]

Notice of Request for Clearance of a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to

approve a new information collection to document the extent of coverage of the Local Technical Assistance Program in its provision of training, technology transfer and technical assistance to local and tribal government transportation providers, and to provide a baseline from which to measure the Program's progress in expanding that coverage between now and 2002.

DATES: Comments must be submitted on or before September 22, 1997.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) the necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Dr. Anna K. Bennett, LTAP Project Manager, (415) 744–2616, Federal Highway Administration, Region 9, 201 Mission Street, Suite 2100, San Francisco, CA 94105. Office hours are from 7:45 a.m. to 4:15 p.m., p.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Local Technical Assistance Program Extent of Coverage.

OMB Number:

Background

The Local Technical Assistance Program (LTAP) has established a network of 57 technology transfer centers at universities and state highway agencies for the purpose of improving the skills and knowledge of local and tribal transportation providers through training, technical assistance and technology transfer. The LTAP Strategic Plan, adopted in 1997, calls for increasing usage of the program to 75% of local and tribal governments by 2002. Information is needed to document (with +/−3% error at 95% confidence) the extent to which local and tribal transportation agencies are aware of and utilize the services provided by their LTAP Centers. The information will establish the baseline from which progress towards the goal of increasing coverage to 75 percent of all local and tribal transportation agencies will be measured.

The information will be collected in a telephone interview. Professional telephone interviewers will be engaged to administer a brief, standardized questionnaire that will ask respondents if they or other employees of their organization are aware of the existence of their local or tribal LTAP Center, have read its newsletter, attended training sessions or utilized other technology transfer services provided by the Center within the past two years.

Information will be collected from a simple random sample of all local and tribal governments in the U.S. The sample size will be approximately 1,100. The results of the survey will be retained by the Office of Technology Applications for comparison with the results of a subsequent collection in 2002. The results of the survey will also be presented in a report for dissemination to LTAP partners, including national associations, state departments of transportation, LTAP centers, and local and tribal governments.

Respondents: Employees of local and tribal government transportation providers.

Average Burden Per Response: 12 minutes to listen and respond to survey questions by telephone.

Estimated Total Annual Burden: 220 hours.

Frequency: This is a one-time collection.

Authority: 23 U.S.C. Section 307 and 49 CFR 1.48.

Issued: June 19, 1997.

George Moore,

Associate Administrator for Administration.

[FR Doc. 97–19153 Filed 7–21–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 97–2623]

Notice of Request for Reinstatement of an Expired Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to reinstate an expired information collection that notifies the FHWA of a voluntary request by a motor carrier, freight forwarder, or property broker for revocation of its registration.

DATES: Comments must be submitted on or before September 22, 1997.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Vining, Office of Motor Carrier Information Analysis, (202) 358–7028, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Electronic Availability:* An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** electronic bulletin board service (telephone number: 202–512–1661). Internet users may reach the **Federal Register**'s WWW site at: http://www.access.gpo.gov/su_docs

Title: Request for Revocation of Authority Granted.

OMB Number: 2125–0571.

Background: The Secretary of Transportation is authorized to promulgate regulations that provide for the registration of for-hire motor carriers of regulated commodities under 49 U.S.C. 13902, for surface freight

forwarders under 49 U.S.C. 13903, and for property brokers under 49 U.S.C. 13904. The Secretary has adopted regulations to implement these registration procedures. Under Title 49 U.S.C. 13905, each registration is effective from the date specified and remains in effect for such period as the Secretary of Transportation determines appropriate by regulation. Subsection (c) of 49 U.S.C. 13905 provides that, on application of the registrant, the Secretary may amend or revoke a registration. Authority pertaining to these registrations has been delegated to the FHWA.

Form OCE–46 allows transportation entities to apply voluntarily for revocation of their registration in whole or in part. The form asks for the registrant's docket number, name and address, and the reasons for the revocation request.

Respondents: Motor Carriers, Freight Forwarders, and Brokers.

Average Burden per Response: 30 minutes.

Estimated Total Annual Burden: 400 hours.

Frequency: This is a one-time reporting requirement. Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA: (2) the accuracy of the estimated burden: (3) ways to enhance the quality, utility, and clarity of the collected information: and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB reinstatement of this information collection.

Authority: 23 U.S.C 315 and 49 CFR 1.48.

Issued: July 8, 1997.

George Moore,

Associate Administrator for Administration.

[FR Doc. 97–19154 Filed 7–21–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 97–2629]

Notice of Request for Reinstatement of an Expired Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to reinstate an expired information collection. This information collection is used by Mexican motor carriers to apply for authority to operate across the border into the United States.

DATES: Comments must be submitted on or before September 22, 1997.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Vining, Office of Motor Carrier Information Analysis, (202) 358–7028, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Electronic Availability:* An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** electronic bulletin board service (telephone number: 202–512–1661). Internet users may reach the **Federal Register**'s WWW site at: http://www.access.gpo.gov/su_docs.

Title: Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers under 49 U.S.C. 13902(c)

OMB Number: 2125–0572

Background: Basic licensing procedures for registering foreign motor carriers to operate across the border into the United States are found at 49 U.S.C. 13902(c). Related regulations appear at 49 CFR 368. The FHWA carries out this registration program under authority delegated by the Secretary of Transportation. Form OP–2 is used by foreign motor carriers to apply for registration with the FHWA. The form requests information on the motor carrier's location, the form of business, ownership and control, and proposed operations.

Respondents: Foreign Motor Carriers.

Average Burden per Response: 2 hours.

Estimated Total Annual Burden: 1,400 hours.

Frequency: This is a one-time reporting requirement.

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB reinstatement of this information collection.

Authority: 23 U.S.C. 315 and 49 CFR 1.48.

Issued: July 8, 1997.

George Moore,

Associate Administrator for Administration.

[FR Doc. 97–19155 Filed 7–21–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33424]

Portland & Western Railroad, Inc.—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Portland & Western Railroad, Inc. (PNWR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate The Burlington Northern and Santa Fe Railway Company's (BNSF) line, known as the Astoria Branch, between milepost 5.22 near Willbridge and milepost 96.88 near Tongue Point, in Clatsop, Columbia, and Washington Counties, OR, a distance of approximately 91.66 miles. BNSF is also granting incidental trackage rights to PNWR over the line between milepost 5.22 near Willbridge and milepost 3.30 near Willbridge Yard, a distance of approximately 1.92 miles.[1]

[1] On July 10, 1997, John D. Fitzgerald, on behalf of the United Transportation Union—General Committee of Adjustment (UTU–GCA), filed a petition to reject, to revoke, and to stay the notice of exemption. The notice of exemption is in compliance with our regulations at 49 CFR 1150.41 et seq. and will not be rejected. The notice of exemption was filed on July 3, 1997, and became effective on July 10, 1997, the same day UTU–GCA's petition was filed. See 49 CFR 1150.42(b). Therefore, as the stay request was filed after the exemption had taken effect, it will not be

Continued

In its verified notice, PNWR stated that it expected to begin operations pursuant to the exemption on or about July 12, 1997. PNWR has subsequently reported that the sale was consummated on July 11, 1997.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33424, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, D.C. 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Decided: July 15, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–19231 Filed 7–21–97; 8:45 am]

BILLING CODE 4915–00–P–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning an information collection titled (MA)—Real Estate Lending and Appraisals.

DATES: Written comments should be submitted by September 22, 1997.

ADDRESSES: Direct all written comments to the Communications Division, Attention: 1557–0190, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection may be obtained by contacting John Ference or Jessie Gates, (202) 874–5090, Legislative and Regulatory Activities Division (1557-0190), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: (MA) Real Estate Lending and Appraisals—12 CFR 34.

OMB Number: 1557–0190.

Form Number: None.

Abstract: The collections of information contained in 12 CFR part 34 are as follows:

Subpart C establishes real estate appraisal requirements that a national bank must follow for all federally-related real estate transactions. These requirements provide protections for the bank, further public policy interests, and were issued pursuant to title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 *et seq.*).

Subpart D requires that a national bank adopt and maintain written policies for real estate related lending transactions. These requirements ensure bank safety and soundness and were issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1828(o)).

Subpart E requires that a national bank file an application to extend the five-year holding period for Other Real Estate Owned (OREO) and file notice when it makes certain expenditures for OREO development or improvement projects. These requirements further bank safety and soundness and were issued pursuant to 12 U.S.C. 29.

Type of Review: Renewal of OMB approval.

Affected Public: Businesses or other for-profit.

Number of Respondents: 2,800.

Total Annual Responses: 6,340.

Frequency of Response: Occasional.

Total Annual Burden Hours: 212,560.

Comments

Comments submitted in response to this notice will be summarized and 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 has 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 on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 16, 1997.

Karen Solomon,

Director, Legislative & Regulatory Activities Division.

[FR Doc. 97–19148 Filed 7–21–97; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: "IBBI'

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "IBBI," used by International Business to Business, Inc., a corporation organized under the laws of the State of Colorado located at 566 #D Nucla Way, Aurora, Colorado 80011.

The application states that the trade name is used in connection with an item known as a key safe or lock and lockbox which has a compartment in which keys are locked and a shackle to attach to a door or doorknob.

The merchandise is manufactured in the Taiwan.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATES: Comments must be received on or before September 22, 1997.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, N.W. (Franklin Court), Washington, D.C. 20229.

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considered. The Board will consider the petition to revoke in a subsequent decision.

FOR FURTHER INFORMATION CONTACT: Gina D'Onofrio, Intellectual Property Rights Branch, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, D.C. 20229 (202–482–6960).

Dated: July 15, 1997.

Karl Wm. Means,

Acting Chief, Intellectual Property Rights Branch.

[FR Doc. 97–19167 Filed 7–21–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–88–86]

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 final regulation, FI–88–86 (TD 8458), Real Estate Mortgage Investment Conduits (§§ 1.860E–2(a)(5), 1.860E–2(a)(7), and 1.860E–2(b)(2)).

DATES: Written comments should be received on or before September 22, 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: Real Estate Mortgage Investment Conduits.

OMB Number: 1545–1276.

Regulation Project Number: FI–88–86.

Abstract: Internal Revenue Code section 860E(e) imposes an excise tax on the transfer of a residual interest in a real estate mortgage investment conduit (REMIC) to a disqualified party. The amount of the tax is based on the present value of the remaining anticipated excess inclusions. This regulation requires the REMIC to furnish, on request of the party responsible for the tax, information sufficient to compute the present value of the anticipated excess inclusions. The regulation also provides that the tax will not be imposed if the record holder furnishes to the pass-thru or transferor an affidavit stating that the record holder is not a disqualified party.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,600.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 525.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 11, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–19225 Filed 7–21–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–33

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 Revenue Procedure 97–33, Electronic Federal Tax Payment System (EFTPS).

DATES: Written comments should be received on or before September 22, 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: Electronic Federal Tax Payment System (EFTPS).

OMB Number: 1545–1546.

Revenue Procedure Number: Revenue Procedure 97–33.

Abstract: The Electronic Federal Tax Payment System (EFTPS) is an electronic remittance processing system for making federal tax deposits (FTDs) and federal tax payments (FTPs). Revenue Procedure 97–33 provides taxpayers with information and procedures that will help them to electronically make FTDs and tax payments through EFTPS.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, Federal government, and state, local or tribal governments.

Estimated Number of Respondents: 1,380,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 690,000.

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: July 15, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–19226 Filed 7–21–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 1042 and 1042–S

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 Form 1042, nnual Withholding Tax Return for U.S. Source Income of Foreign Persons, and Form 1042–S, Foreign Person's U.S. Source Income. Subject to Withholding.

DATES: Written comments should be received on or before September 22, 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 form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Annual Withholding Tax Return for U.S. Source Income of Foreign Persons (Form 1042) and Foreign Person's U.S. Source Income Subject to Withholding (Form 1042–S).

OMB Number: 1545–0096.

Form Number: 1042 and 1042–S.

Abstract: Form 1042 is used by withholding agents to report tax withheld at source on payment of certain income paid to nonresident alien individuals, foreign partnerships, or foreign corporations. The IRS uses this information to verify that the correct amount of tax has been withheld and paid to the United States. Form 1042–S is used to report certain income and tax withheld information to nonresident alien payees and beneficial owners.

Current Actions

Changes to Form 1042

1. A new checkbox has been added at the top of the form to allow filers to indicate that only the new Part II transmittal is being used.

2. The three-column "Record of Federal Tax Liability" has been redesignated Part I to accommodate the new Part II transmittal.

3. A new line 61b has been added to allow regulated investment companies subject to Internal Revenue Code section 852(b)(7) and real estate investment trusts making the election under Code section 858(a) to indicate an adjustment amount for 3 income deemed paid and reported to payees in 1996 for which taxes withheld were not deposited until January 1997.

4. The "Total" line, formerly line 61, has been redesignated line 61c.

5. A new Part II replaces an interim procedure previously explained in the instructions, designed to allow Form 1042 to be used as a transmittal document for paper Forms 1042–S.

There are no changes to Form 1042–S at this time.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Responses: 1,622,000.

Estimated Time Per Response: 13 hr., 36 min.

Estimated Total Annual Burden Hours: 22,063,680.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 10, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–19228 Filed 7–21–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8582–CR

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 Form 8582–CR, Passive Activity Credit Limitations.

DATES: Written comments should be received on or before September 22, 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 form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Passive Activity Credit Limitations.

OMB Number: 1545–1034.

Form Number: 8582–CR.

Abstract: Under Internal Revenue Code section 469, credits from passive activities, to the extent they do not exceed the tax attributable to net passive income, are not allowed. Form 8582–CR is used to figure the passive activity credit allowed and the amount of credit to be reported on the tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 900,000.

Estimated Time Per Respondent: 5 hr., 49 min.

Estimated Total Annual Burden Hours: 5,229,450.

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 3 returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 10, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–19229 Filed 7–21–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039F

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039F, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 6039F) with respect to whom the Secretary received information during the quarter ending June 30, 1997.

Last name	First name	Middle name
ABART	GERDA	
ABDELNOUR	DAVID	PAUL
ACETESON	MARILYN	MARGARET
ADDA	JUDITH	BELL
ADKINS	KYO	CHIN
AE MIN	STACY	SANG
AHN	CHUNGHEE	
AHN	MODRD	SANGKYO
AHN	YOUNGOK	
AHN	ELISA	KYUNG-HEE
AHN	KOOK	BEEN
ALBRIGHT	SANDRA	LYNN
ALMEIDA	NORMA	ESTHER
ALMEIDA	PATRICIA	ESTHER
ALMEIDA	SYLVIA	ESTHER
AMADERA	MASAKI	JULIAN
AMBROS	DIETER	HANS
AMEIDA	DIANA	ESTHER
AN	IN	YONG
AN	DUCK	WON
ANDERSEN-FRONTERI	ELIZABETH	ANN
ANDERSON	MARILYN	MARJORIE
ANDERSON	GARY	DUAN
ANDREWS	PETER	NEWTON
ANGELICOUS-SIS	ELIZABETH	GORDON
AQUINO	GILBERT	RALPH
ARNOLD	MYONG	HUI
ARNOLD	ETHAN	ADAMS
ATKINSON	JAMES	LINDY
ATKINSON	HEATHER	LOUISE
ATTARD	JENNIFER	ANN
AVERY	ELIN (K-A ALIYA)	KATHERIN
BAE	JUNG-MOK	MICHAEL
BAE	KENNETH	SANGKI
BAEK	SIUNNA	
BAGGER	KAREN	M.
BAILEY	CHONG	MAI PAK
BAKER	WILLIAM	STEVENS
BALCH	CHONG	PUN
BANKS	SAMUEL	ANDREW
BANKSON	DOUGLAS	HENNECK
BANKSON (NEE CARLSON)	BEVERLY	OLGA
BARNARD	THOMAS	JOSEPH
BARNES	GRAHAM	
BASKORO	IBNU	BASS
BASSAGE	ANGELIA	LING
BAYER	MELISSA	
BAYLY	STEPHEN	VINCIENT
BEAN	MI	CHA
BERNSTEIN	JOSEPH	FRANK
BERRIDGE	CHRISTEL	HERMINE, EVA
BERWICK	SAMUEL	
BESSETTE	BIANCA	AREANE
BESSETTE	BIANCA	AREANE
BESSO	MARC	JOSEPH
BHUSAWANG	SUCHITRA	
BILLESBERGE-R	LAMBERT	GEORGE
BINNER	VALERIE	CHRISTINE
BIRKNES	BENTE	RITA
BLACKWELL	BRUCE	IRVING
BLAIR	MICHELE	MADELLINE
BLAKE	DUNCAN	JOHN
BLAKE	VICTOR	HAROLD
BLANKENSHIP-LEON	JOHN	WILLIAM
BOLLINGER	WILLIAM	GUEST

Last name	First name	Middle name
BOWDEN	GORDON	TERRY
BOWDEN (NEE NILSSON)	BEATRICE	LOUISE
BOWENS	ADLOPH	BARNER
BOYCHUK	JACK	EDWARD
BOYD	MARIE	ELISABETH
BOYD	H.	HOOD
BOYER-KWONG (NEE BOYER)	JANINE	AURORE
BRADLEY	GERDA	DUKI (BERRY)
BRENNAN	PAUL	DUNSTAN-EDMUNG
BREWER	DEBORAH	JANE
BRINDLE	SAM	E.
BRINKE	KARIN	INLANDA
BROOKSHIER	CHON	SUN
BROWN	WOODSON	CHURCHILL
BROWN JR.	RALPH	LYMAN
BROWNE	SANDRA	LEE
BUZZELL	YONG	HO
BYUN	SUNG	HA
CABANERO	DANNY	CEBUA
CAGNARD	LARS	CHRISTIAN
CAMILLERI	ANGEL	SAM
CANTINI	GEORGIO	
CARL	PHILLIP	
CASTEEL	DONALD	WILHELM
CHAMBERS	RANDOLF	ARTHUR WILHELM
CHANDLER	DAVID	LEWIS
CHANG	ALBERT	CHAO HSIANG
CHANG	CHUL	HO
CHANG	JUNE	LLIN
CHANG	PAUL	
CHANG	SANG	YOUN
CHANG	JOHN	HWAN
CHANG	NAE	HYUN
CHAPMAN	WENDELL	LUDWIG
CHEN	YET SEN	ROBERT
CHEN	PI	CHAO
CHENG	SU	MING
CHENG	KUANG	FU
CHEY	ANTHONY	PARK
CHI	MINA	
CHI	ISAAC	HO
CHIA	LAWRENCE	PAU-LIN
CHIN	SUNG	AE
CHIN	PETER	HYUNJOON
CHING	BERNADETTE	KAR FUN
CHISNALL	MARIA	ALEXANDER, MAILLIS
CHO	CHANG	HYEON
CHO	KUM	SUN
CHO	PHILLIP	SUNG
CHO	JOON	SUK
CHO	MANNY	SE
CHO	YOUNG	JOON
CHO	YONGSIK	
CHO	JAE	BERNARD
CHO	MIKYUNG	
CHOE	BYUNG	JOO
CHOI	PAUL	KYUNG
CHOI	JEAN	YOUNG
CHOI	ROBERT	
CHOI	ESTHER	
CHOI	MIN	A.
CHOI	ANTHONY	EUGENE
CHOI	MIN	GEW
CHOI	YOUNG	GON
CHOI	DOSOUNG	PHILIP
CHOI	JUNG	JA
CHOI	BYUNG	YUL
CHOI	JASON	SUNG
CHOI	JUNG	SOON
CHOI	WON-SUP	
CHOI	SARAH	JUNG
CHOI	JENNY	SOONJOO
CHOI-LEE	MYUNG	JA
CHONG	KIL	TO
CHOO	JU	HYUN
CHOUGH	SUNGJUNG	
CHOUNG	MICHELLE	
CHOY	ARTHRU	JIN DONG
CHOY	YOON	KEUN
CHRIQUI	MENACHEM	
CHUN	EUN	JOO
CHUNG	HO-KYOON	
CHUNG	JOHN	JONGMUN
CHUNG	JANE	EWHA
CHUNG	MICHAEL	YOUNGBUM
CHUNG	KYUNG	AE
CHUNG	DAVID	YUNG-CHUAN
CHUNG	KYU	SUK
CHUNG	SUNG	Y.
CHUNG	JEANHYUN	CLARA
CHUNG	IL-SUN	
CHUNG	KYUN	MO
CHUNG	SEAN	SEPMG-HOON
CHUNG	WOO	GON
CHUNG	DONALD	DONGWHA
CHUNG	OKWHA	KIM
CLOPPENBURG	JORN	CHRISTOPH
COBB	ADAM	DONALSON
COBLE	TAMMY	LYNN
COLLETTE	MARY	M.
CONSUL	LEO	CHI-CHEN
CORK	EDWIN	KENDALL
COSTELLO	STEVEN	JOHN
COUNTS	VICKY	LYNN
CRAIG	JACQUELINE	LEE
CRUZ	TEODORO	CORPUZ
CUSSEN	ALBERT	JAMES
CZESCHIN	ROBERT	WAYNE
DANGOOR	DAVID	ALAN
DANI	PETER	JULIUS
DARDEN	STEPHEN	CHARLES
DARDEN	DOROTHY	LEWIS
DARLINGTON	CYNTHIA	L.
DART	KENNETH	BRYAN
DE CHEZELLES	CHARLES	GUY
DE GROAT	ERIC	GRANT
DE LA BARRE	WILLIAM	DE TALANCE
DE LISA	ENNIO	ANTHONY
DE ROQUEFEUIL	GAEL	ALAIN
DE SANTO	RENATE	
DEAN	VINCENT	CYRIL
DEBONO	DENNIS	
DEGNER-ELSNER	SUSAN	STJERNA
DELGADO-ZYGMUNT	TIA	JUANA
DENNIS	JEFFREY	HOLT
DESCHAMPS	ROGER	HENRY
DIMMA	KATHARINE	LOUISE
DIXON	BETTY	
DOKKO	YOON	
DONOVAN	JAMES	LAWRENCE
DOWNES	SHIRLEY	HELEN
DU PASQUIER	SHELBY	ROBERT
DUDEK	STEPHANIE	ZUPERKO
DUNBAR	DOUGLAS	
DUNBAR	JOYCE	
DUNCANSON	ARCHIE	VAIL
DUNLAP	DOROTHY	EDITH
DUTT	MOHAN	
EATON	RANDALL	BRYAN
EBNER	GAIL	ZELLA
EHIDER	ALETTA	JOHANNA
EIDE	GLORIA	PAULINE
EKBATANI	JOHN	
ELLIOTT	MARGARET	ISOBEL
ENOCH	LORRAINE	RUTH
ENRIGHT	JAMES	EDWARD
ENRIQUEZ	PORFIRIO	QUINTO
ERRINGTON	ANTHONY	FRANKLIN
EVANS	DIANE	CATHERINE
FABI	JOHANN	
FABI (NEE BIDNER)	MARIA	
FERGUSON	SANDRA	KAY
FESTEJO	PETER	MILES
FINAN	LUCY	HWANG
FLANDERS	MALCOLM	WARREN
FLEMING	WARD	THOMAS
FONDAS	MATTHEW	JOHN
FOSTER	CAROL	ROGERS
FOSTER	KATHARINA	
FOXLEY	ALEJANDRO	TOMAS
FRANCISCO	NANCY	KAY
FREE	DENNIS	EVERETTE
FREEMAN	PRISCILLA	HINCHCLIFFE
FREEMAN	STEFAN	SEBASTIAN
FRISBIE	EDWARD	JOHN
FRISSE	HELGA	ANNA-MARIA
FUHRER	LORENZO	GUSTAV
FUJIWARA	HARUE	
FUNG	CAROLINE	SAU TAK
GAMBILL	ROBERT	ARNOLD
GARCIA	ERICA	CHAROLA
GARDNER	KEVIN	MAURICE
GARNIER	ROBERT	CHRISTOPHER
GATLING	CHA	LEE
GEORGE JR.	DENIS	PATRICK
GEORGES	LAWRENCE	PETER
GERARD	RHODE	LOUISE
GLYNN	RENAE	CHARLOTTE
GOLDBATCH	TONIA	MICHELINE
GOLDSMITH	MAURICE	MARKS
GONSEI	PATRICIA	PFAFF
GORDON	JRND-UWE	
GORDON,	ANGELICOUS-SLS	ELIZABETH
GRANT	HUI	OH
GREEN	LIBBY	
GREENE	TERESA	CECILIA
GRIFFIN	MICHAEL	
GRIMA	JANICE	JOSEPHINE
GRIMA	TONY	PETER
GRONDIN	FRANCES	GRACE

Last name	First name	Middle name
GUERRERO	CHRIS-TOPHER	JON LEON
HAAC	NORMAN	MAGNUS
HAALAND	LORRAINE	VALBORG-MINDE
HAAS	PATRICIA	BERNARD
HACKMANN	BEATRICE	MARGARET
HAHM	SANGMOON	
HAHN	SI	HOUN
HAHN	THEODORE	
HAM	KUN	SONG
HAMBERG	JEFFREY	TORKEL
HAN	JANG	SOO
HAN	JOON	HO
HAN	CHUNG	HYAN
HAN	SUN	JA
HAN	ANTHONY	TAEHYUNG
HAN	KEE	HO
HAN	SANG	JOO
HAN	HYUNSOOK	
HANSELMANN	YVONNE	CONSTANZE
HARRIS	HARUKO	
HARRISON	WINIFRED	JOAN
HATAMOTO	GEOFFREY	KOICHIRO
HATTON	SEHWA	KIM
HAUGLAND	MAGNE	
HAUGSTAD	ARNE	ERICK
HDU	YUNH	H
HEAD	ROBYNE	LEIGH
HEASLIP	ANNE	ELIZABETH
HEDRICK	SUNAK	SHIN
HEINZ	BARBRO	ENGSTROM
HEINZT	ROBERT	JOSEPH
HEITMAN	MATHEW	HENEY
HELD	ROBERT	MICHAEL
HELLSTROM	VIOLA	INGRID
HENDERSON	YVONNE	CHARLOTTE
HENN	IVONNE	CHRISTINE
HENNESSER	YVONNE	
HENSELER	HEDWIG	PHILIPINE
HERMAN	LEROY	THOMAS
HERMANN	WALTER	LUDWIG
HERON	QUENTIN	JAMES, LEE
HERZKE	WALTER	ERNST
HETZEL	ERICH	WILLARD
HICKS	WILLIAM	BRUCE
HIGGINBOTHA-M	SIGRID	
HINESLEY	ROBERT	ALLEN
HINKLEY	KATRINA	
HO	SAMUEL	PAO-SAN
HO	GEORGE	JOSEPH
HO	SHARON	SHAI-RONG
HOFMANN	MONIKA	INGE
HOLMEN-(NEE SCHOENKE)	DENISE	MARIE
HOLMES	MARY-LOU	
HONG	JAE	SUN
HONG	DAVID	UI JONG
HORSEY	WILLIAM	GRANT
HORVATH	AASHILD	MALM
HOWARD	DANIEL	MCKEAN
HOY	EIKO	
HSIAO	CHIUDER	DER
HSU	YUNG	Y
HU	JOHN	YAW HERNG
HU	TZU	LEUNG
HUANG	JUSTIN	TIN
HUANG	MEI	YII
HUBER	DORIS	GERTRUDE
HUGHES	MALCOLM	SAMUEL
HUGHES	URSULA	MARGARET
HUH	BONNY	
HUMANN	FAITH	LOW
HUNG	YUNG-TAI	
HUNG	LINDA	SIUY-YEE
HUNTER	ROSEMARY	LEILA
HUTCHINGS	HUGH	R.
HWANG	HYO	JOON
HWANG	HARRY	HYUNG
HWANG	SAMEY	
HWANG	SANG	MONG
HYMAN	ROBERT	PAUL
HYUN	YANG	HO
IM	SUK	JOONG
INGRAM	CHRIS-TOPHER	JOHN
INGSTRUP	IB	NORMAN
IP	MOON	WAI
IP	MARIA	PAZ
JACKSON	CHARLES	WEYMOUTH
JACKSON	YON	CHU
JACKSON	MARGUERITE	LE FORGE
JACOB (K-A YEHUDA yA'AKOV)	JULIUS	LESLIE
JACOBS	CLYDE	LEROY
JACOBS	PATRICIA	NADINE
JACQUES	HOWARD	FREDRICK
JAMES	JULIA	HEPHZIBAH
JAMES(YI)	CHONG	NAM
JAMG	FRANK	
JAMISON	SUE	YE KIM
JANG	HO	
JANSCHITZ	MARTINA	ISABELLA
JANSINSKI	HARRIET	THERESA
JENSEN	PAUL	ARTHUR
JOH	HELGA	
JONES	THOMAS	PHILIP
JONES	CHRISTINA	CHLORA
JONES	ALAN	LEE
JONES-SCHMIDT	LESLIE	ANN
JOSEFOWITZ	CATHRYN	DIANNE
JOSEFOWITZ	CATHRYN	DIANE
JOSSELSON	DIANNA	
JU	CRISTINE	
JUN	SUNG PYO	
JUNCO-ABARCA	AGNES	
JUNDUL	STELLA	MARY
JUNG	ZUI	SEUNG
JUNG	JHINU	CHRIS-TOPHER
KAMMANN-KLIPPSTEIN	KARIN	KIRSTEN
KANDA	YUMI	
KANEKO	SATORU	
KANG	IN	KYU
KANG	SEOK	YOON
KANG	KONG	HWA
KANG	JEAN	
KANG	CHUNG	GU
KANG	CHANG	UN
KANG	HELEN	LEE
KANG	JUDY	
KANG	TIMOTHY	YONGKYU
KANG	YOUN	CHANG
KANG	ANDREW	MIN
KANG	DONGSOO	
KANG	JOSEPH	KOOIL
KANG (PROC-TOR)	YONG	OK
KATO	MAKIKO	
KAY	ANGELA	EUNNYONG
KEAN	CHARLES	THOMAS
KEKICH	MARY	ANN
KELLAR	STEPHEN	
KELLER	JOHN	PETER
KERSEY	SONG	MUN
KESSLER	ALEXANDER	
KESTER	VIRGINIA	CAROLYN
KHWARG	EDWARD	
KHWARG	DONG	SURN
KIEFFER	DIANA	KAREN
KIM	ANDREW	SANGWOOK
KIM	JAMES	JUNG
KIM	JAMES	SUKSU
KIM	JAMES	YOON
KIM	ANDREW	TAE
KIM	ANDY	
KIM	HIE-JOON	
KIM	RICHARD	SUKJOONG
KIM	JONH	DOO
KIM	YOUNG	GUL
KIM	ANTHONY	WONTALK
KIM	YOUNG	JOO
KIM	DAVE	JUNG
KIM	CAROL	MINJUNG
KIM	SUE	HAUNG-LEE
KIM	SHIN	KEUN
KIM	YOUNG	KYUN
KIM	YOUNG	SOOK
KIM	RYUNG	HOON
KIM	BYONG	SE
KIM	PETER	YU
KIM	PETER	
KIM	MYUNG	JA
KIM	CHUN	CHA LEE
KIM	DONG	HYUN
KIM	DOOLA	YUEN HEE
KIM	HAE-YOUNG	
KIM	HAI	RYO
KIM	KAREN	SEUNGYEON
KIM	KYONG	SUN
KIM	MILTON	TAE JUN
KIM	JANE	
KIM	KRISTINE	KOOKHEE
KIM	TRACY	YOUNGOK
KIM	KAP	YON
KIM	SUSAN	YEUNHEE
KIM	SUSAN	JACQUELINE
KIM	MATHEW	JOON
KIM	MI	HYANG
KIM	PAN	SUK
KIM	SONYA	
KIM	SOOIL	
KIM	BYUNG	WOOK
KIM	SUNHO	
KIM	YEA	SUN
KIM	KI-CHANG	
KIM	JINHO	
KIM	JENNY	
KIM	HYUNCHOI	
KIM	GERALD	JERRY
KIM	FRANK	HOWARD
KIM	ERICKA	SOYON
KIM	EDWARD	RODERICK
KIM	DONG	IL
KIM	DAHLIA	
KIM	CHRIS	WANJU
KIM	CHIN	

Last name	First name	Middle name
KIM	SUNHO	
KIM	PETER	PYUNG-WUNG
KIM	ESTHER	HEEGYUNG
KIM	SHINJA	
KIM	CHOONG	IK
KIM	YUNG	SOOK
KIM	MOSES	YOUNGGHUN
KIM	CHONG	SUK
KIM	PIL	SHIN
KIM	DUKE	TE
KIM	SAM	MYO
KIM	SANG	HOON
KIM	SEUNG	SAM
KIM	CHARLES	CHANGWON
KIM	WON	HEE LEE
KIM	BARNABAS	KONGHWAN
KIM	ANDREW	INSEOK
KIM	MYUNG	SOOK
KIM	JUNG	KOOK
KIM	SONG	SUN
KIM	MICHAEL	WOONKYUNG
KIM	ALLAN	
KIM	LINDA	
KIM	KWANG	CHAN
KIM	DOK	SUN
KIM	KAY	KWAN GHOON
KIM	EZRA	KILSUNG
KIM	JOY	JE AE
KIM	JOSEPH	KWANGJIN
KIM	JOHN	HEEJE
KIM	JOHN	
KIM	JAMES	SUNGHO
KIM	HOLIM	
KIM	HELEN	DOOAH
KIM	KEUN	CHOONG
KIM	LAWRENCE	HWAN
KIM	YONG	JA
KIM	YANG	HEI
KIM	TAE	YON
KIM	SUNG	O
KIM	SUN	HEE
KIM	STEVE	SOO
KIM	SHIN	HEE JENNY
KIM	YONG	UK
KIM	PETER	YOUNGSUP
KIM	NAM	HWA
KIM	DANIEL	HEEYEON
KIM	JUDY	EUNJUNG
KIM	JOON	KYUNG
KIM	JOHN	HUN
KIM	JIMMY	CHANGLIN
KIM	IN	SUNG
KIM	HYE	WON
KIM	HOUN	SOO
KIM	FRANK	KWANGWOOK
KIM	PHILIP	H.
KIM	SUNG	WHA
KIM	DONGSUNG	ROBERT
KIM	SOON	KEE
KIM	KUM	SU
KIM (CHOON BAI KIM)	WOOJIN	MICHAEL
KING	GARY	ROBERT
KING	JACQUELINE	ANNETTE
KING	LORRAINE	KENNETT
KIRKPATRICK	DAVID	ALLAN
KJELSEN	OLAF	ANDREAS
KJOLLEBERG	HELAN	BRIT
KO	GRACE	HYUNJOO
KO	YOUNG	CHAN
KO	SUNG	HO
KOEFOED	ELLEN	GUNHILD-MUNCH
KOEFOED	ANDREW	
KOEFOED	KAREN	ELIZABETH MUNCH
KOENEMAN	JOHN	KARL
KOFFMAN	MYRNA	
KOH	HWA-WOO	
KOH	GRACE	
KOHN	ISRAEL	JEREMY
KOMOR	CHRIS-TOPHER	JOHN
KONG	PATRICK	PAK CHUEN
KONG	MIN	CHOI
KOO	ESUN	LISA
KOO	LEAH	HYONSOOK
KORFMANN	KENNETH	CHARLES
KORN	GERLINDE	GERTRUD
KORNOFF	HARRY	
KOSLIC (NEE BLANKENS-HIP)	MELINDA	LHNN
KRAYENBUHL	CHRIS-TOPHER	JEAN
KREUZER	MECHELLE	JEANNETTE
KU	HEE	CHANG
KUO	JENG-CHUNG	
KUO	KUNG	MO
KVAM	GRETE	ANITE
KWAK	CODE	
KWAK	ROSE	SOOK
KWAK	JOHN	SOOK
KWAK (MI YOUNG CLARK)	MI	YONG
KWON	YOUNG	SUP
KWON	NAM	SU
KWON	IKHWAN	
KWON	JAEHYON	
KWON	HO	ON
KWON	STEVE	
KYONG	ROBERT	RONTAY-PARK
LACROIX	JOSEPH	ROLAND LEOPOLD
LADD	DOUGLAS	PARKER
LAESSIG	LANA	DEE
LAM	ANTHONY	CHI KUN
LAM	SHIRLEY	SAY-NGOH
LANDES	IVAN	NICHOLLS
LANDI	CHRIS-TOPHER	CHARLES ZANARDI
LANGERUD	TROND	
LAPENE	HITOSHI	
LAURIE	ARLIE	JEAN
LAW	HELEN	HONG YU
LEATHAM	SCARLET	ELIZABETH
LEE	YOON	JA
LEE	SAM	SU
LEE	SAN	MI HYUN
LEE	MYUNG	YU
LEE	DONG	WOO
LEE	CHUNG	NO
LEE	KYUNG	
LEE	CHONG	IL
LEE	LOU-CHUANG	
LEE	INCHUL	
LEE	MIKE	CHANG
LEE	HELEN	KIM
LEE	HWAJI	YUN
LEE	DONG-JU	
LEE	DO	HOON
LEE	SUNHEE	CHO
LEE	RONALD	REDVERS
LEE	HAK	SOO
LEE	SEUNG	YEON
LEE	SHYNE	YING
LEE	SOO	YUL
LEE	KUE-JAE	
LEE	SIMON	
LEE	IK	JUN
LEE	OK	SEON
LEE	TSE-TAH	
LEE	EDWARD	HO
LEE	GRANT	CHANG-HOON
LEE	HO	KYONG
LEE	DAVID	
LEE	NATALIE	MIKYUNG
LEE	YOUNG	SOOK
LEE	YONG	HUN
LEE	TERRY	
LEE	SUNG	JU
LEE	LESTER	TSUNG CHENG
LEE	SEHOON	
LEE	CHNTHIA	TZE
LEE	KYOUNG	JOO
LEE	KYONG	JU
LEE	KIL	JA
LEE	JONG	GIL
LEE	JAE	CHAN
LEE	NANCY	HEE
LEE	MICHAEL	HO
LEE	MICHAEL	
LEE	MARY	JUNGHEE
LEE	JENNIFER	
LEE	IN	SUN
LEE	HOSUN	
LEE	SUJA	
LEE	CHANG	HEE
LEE	CHAN	SOO
LEE	ALEXANDER	CHANKOO
LEE	BUN	SONG
LEE	BANG	WON
LEE	SARAH	
LEE	MARIA	
LEE	CHUNG	SOOK
LEE	KI	EOOK
LEE	BOB	Y.
LEE	ANNE	
LEE	CHONG	SOON
LEE	CHRISTINE	SUE KYUNG
LEE	ALEX	NAKYOUNG
LEE	KWANG	HYE
LEE	CHONG	HWAN
LEE (BUSTILLO)	ARNOLD	BENJAMIN
LEIBY	KRISTINA	
LEMKE	CHARLES	TORSTEN
LENKE	JOHN	SHERMAN
LEONARD	DIANE	EVANS
LEPPO	TATIANA	MARIA
LESKO	CHRISTIAN	PAUL
LESKO	BARBARA	ANNE
LEUZINGER-WERTHELM-ER		
LEVIN	ERIC	JOHN
LEVINE	CHRISTINE	

Last name	First name	Middle name
LEWAN	ULRIKE	MARGARETE
LI	WALTON	WAI-TAT
LI	WEN	LAN
LIANG	JEANNE	SHIOW-JEN
LICHINE	SACHA	ALEXIS
LIEM	JONATHAN	BRADFORD SHEN
LILEY	MELBOURNE	ROGER
LIM	BYUNG	OK
LIM	DIANA	
LIM	CHUN	SHUANG
LIN	PAUL	KUANG-HSIEN
LIN	YUN	YIN TSAI
LIN	HOWARD	HAW-KUANG
LIN	PETER	
LIN	TOMMY	YET-MIN
LINDAU	BURTON	
LINDEN	SABINE	ERIKA
LINDHOLM	JOAN	ARLA
LINOWSKI	JERROLD	JOHN
LINOWSKI	VELMA	IRENE
LITT	JOHN	MICHAEL
LITWIN	CAROL	ALEXANDRA
LIU	LO-CHUN	
LIU	CHIN-HSIN	JASON
LIU	LIEN-CHUN	LINDA
LIU	ANDREW	YIU SING
LIVINGSTON	RONALD	RAY
LLOYD-ROBERTS	GEORGE	EDWARD
LO	GLADYS	GOH
LOCKE	ZEDDIE	
LOFTON (HUH)	IHN	SOOH
LONG	ROBERT	RAINER
LOONSTRA	ANDREW	STERLLING
LU	FRANK	LEIGH
LUCYK	SOPHIA	VERA
LUI	FRANCIS	YIU-TUNG
LYNCH	ROBERT	DOWNES
LYONS	MARK	DAVID
LYU	CHUNG	HWA
MAASLAND	ALBERT	CORNELIS
MAC KERRON	CALVIN	WESLEY
MACARTHUR	CAROLYN	
MACDOUGALL	ALEXANDER	
MACHUREK	MARIA	
MACKINNON	MALCOLM	KENT
MACLEOD	RODERICK	ALEXANDER
MADDOX	GRETE	KEMILLA
MAGID	LAWRENCE	
MAGYAR	PETER	MIKLOS
MAIDA-RUBERRY	CHRISTINA	VERONICA
MAJORKI	MILLIAN	
MALOY II	GARY	L.
MANDARINO	JOSEPH	ANTHONY
MANELLO	THERESE	
MANESCHI	JOHN	RAYMOND
MANGELSEN	WILLIAM	PAUL
MANNING	EILEEN	VIDA
MARCUSON	MICHAEL	MARCUS
MARLOWE	RICHARD	LEO
MARSHALL	DOUGLAS	BERTRAND
MARTENSON	WENDY	
MARTENSON	ALF	STELLAN
MARTIN	ADAM	MELVILLE
MARTIN	JOHN	YORKE
MARTIN	WILLIAM	EUGENE
MARTIN	KEVIN	LEE
MARYCZ	ELIZABETH	ANNE
MATHYSEN-GERST	NICOLE	ANNEKA
MATLEY	NICOLASINA	JOHANNA-FRANCINA
MATRAY	MARK	SIMON
MATTHEWS	JEONG	AH
MAURA	VIRGINIA	MAY
MAURY	CARLETON	SAVAGE
MAYER	PAUL	ERNEST
McCULLOCH	BEN	ASHBY
McEWEN	GEORGETTE	THERESE
McINTOSH-PFENNINGER	ELIZABETH	ROSS
McKENZIE	GLENN	EWART
McCAULEY	JOHN	BERNARD
McINNIS	SHELLY	ELAINE
McPHEE	ANN	ELIZABETH
MEI	JAN	HOONG
MELDRUM	YOUNG	SUN
MERKOFER	MARIA	
METZNER	SYLVIA	BIRGIT
METZNER	RICHARD	APPLETON
MIDDLETON	JENNIFER	CATHERINE
MIFSUD	CARMEN	
MILK	ANDREW	PETER
MILLER	BARBARA	ELIZABETH
MILLER	AI	
MILLIRON	CHONG	SUN
MILNE	ROBERT	DAVID
MIN	BYUNGCHUL	
MIN	STACEY	SANG-AE
MIN	PYUNG	JUNE
MIN	SUEWON	
MINSCH	ROBERT	
MINTZER	ROBERT	ALFRED
MIRABAUD	IRINA	
MITCHELL	EDWARD	JOHN
MOBLEY	JASON	DAVOD
MOCATTA	SUSAN	LORCH HAMMERMAN
MOELLER	MANUELA	HEDDY
MOHUNDRO	JAMES	GLENN
MONTAGUE JR.	MONYOHOMRTY	
MOON	YOUNGSHIN	
MOON	JOHN	BYUNG KWI
MOON	JOANNA	SUNHEE
MORDHORST	CLAUS	OTTO
MOREJOHN	INGRID	ERIKA
MORRISON	LUCILLE	MADORA
MORRISON	ROBERT	GIBSON
MORSE	JERRY	
MUELHAUSEN	THOMAS	HANS
MULDERIG	ROBERT	ANDREW
MURA	ROSEMARIE	MINNA
MURBY	JAMES	STAVES
MURKAR	KATHLEEN	
MUSCAT	MARVIN	TERRY
MUSSELLS	EMILY	LYMAN
MUTH-PFIFFERLING	MELINDA	MARIE
MYMON	NELLIE	WARHAFTIG
MYRAN	NINA	JOSEFOWITZ
NAKAJIMA	HELEN	
NAKANISHI	TAMI	
NAM	CHUNG	HYUN
NAM	SON	SUK
NAM	KI	SUN
NAM	EVON	C.
NAM	HEEJUNG	MARGARET
NARROWE	ELIZABETH	ANN
NASHIF	TAISIR	NAJM
NEEDMAN	BARRY	JAY
NELSON	STEPHEN	MICHAEL
NEOGI	SHIBENDRA	PRASHAD
NEUMAIER	WALTER	JOSEPH
NEWTON	NYREE	DAWN
NGOW	VIPA	SANDY
NIASSE	MICHELLE	YVETTE
NICOL	WILLIAM	STEWART
NIELSEN	MARIA	DE LOURDES
NILSSON	NANCY	CHRISTINA
NILSSON	KLARA	BEKE
NIXON	IRA	
NO	GI	SANG
NOH	DANIEL	SANGIL
NOH	SEIJIN	
NOLL	CHRISTOPH	JONAS
NORALL	CHRISTOPHER	
NORDIN	BRITT	INGER
NOTKIN	EUGENE	L.
NOVOTNY	MICHELLE	
NOY	SAWN	MICHELLE
NYE II	PAUL	WILLIAM
O'DONNELL	CHARLES	OLIVER
O'KEEFFE	STEPHEN	JAMES
OEHRLEIN	JACQUELLINE	SUSAN
OESTREICHER	JAMES	HERBERT
OH	STEPHANIE	SOOKHE
OH	YON	HWA
OH	LEO	BYUNGHYON
OKADA	KIMI	
OLEJAK	HELGA	MARIA
ONG	FLORENCE	YEN HOON
OPPEGAARD	SUSAN	HILL
OVERMYER	DANIEL	LEE
OWEN	ASTRID	BIGBIE
OWEN	RUTH	TATE
PACKAN	HEIDI	MARIE
PACKAN	PATRICIA	DAWN
PADGETT	ANNEMARIE	MAGDALENA
PADGETT	HAROLD	EARL
PAIK	PAUL	CHANG
PAIK	JUNG	SOOK LEE
PAK	JI	YEONG
PAK	IN	SUK
PAK	CHRISTINE	CHONGSON
PAK	CHARLES	
PAK	PETER	SUNGKOO
PARDO	JOHN	FRANCIS
PARK	BYUNG	CHIN
PARK	JOON	DONG
PARK	WON-HONG	WALTER
PARK	CHUNG	KYU
PARK	YOUNG	SOOK
PARK	KI	HYUN
PARK	SOON	JA
PARK	YOUNG	CHUN
PARK	YOUNG	SONG
PARK	HYON	CHU
PARK	KYUNG	NAM

Last name	First name	Middle name
PARK	JASON	SCOTT
PARK	WON	SUL
PARK	OKSUN	MAIRENA
PARK	JI	WOONG
PARK	CHULWOON	
PARK	JONG	WOO
PARK	MI	JA
PARK	CLARA	BRIDGET
PARK	MIKE	DAE BOK
PARK	JENNY	JIHYUN
PARK	BYUNG	CHOI
PARK	EUN	YUP KANG
PARK	SANG	YOO
PARK	JANE	
PARK	JONG	SOON
PARK	JEONG	BIN
PARK	JEEHYUN	
PARK	JEANNE	JINWU
PARK	CHAN	HYUNG
PARKER	JEFFREY	JOSEPH
PARKER	BROOKS	O'CONNELL
PARKER	PATRICIA	JANE
PARKS	JAMES	KIM
PASLEY	GARY	RANDALL
PAULSEN	MARLENE	ROSE
PAVLICA	NICK	
PEA	AE	YONG
PENG	MIING-MIN	
PEREZ	CATHERINE	ANNA CLEARY
PERRUCCI	MARKUS	ANTHONY
PERSSON	KATHLEEN	JOHNSON
PETROFF	HINDA	MARCIE
PETROW	LISA	ELENI
PFEIFFER JR	JOHN	WILLIAM
PFIFFERLING	ROBERT	GERARD
PHILLIPS	DEBORAH	SARAH
PHILLIPS	WILLIAM	WALLACE
PHILP	JENNIFER	ANNE
PIEPER	FRED	BERNHARD
PIPAL	SUELLA	
PIPER	WILLIAM	CARSON
PITMAN	EULA	LINDA
PITTMAN (NEE BIXBY)	DE ETTA	MAY
PLOTTECK	OLIVIA	A JA
PLUECKHAHN	JORETTA	GRACE
POLONSKY	LEONARD	SELWYN
POMETTA	SANDRA	ATALANTA-FRANCOISE
PORTELLI, JR.	JOSEPH	BERNARD
POSTON	GAIL	PATRICIA
POTTER	PENELOPE	JEAN
POUR-REZA	JOYCE	BRYDONE
PREIER	MICHAEL	LOWMAN
PRITCHARD	BARBARA	MAE CLARKE
PROTELLI	CHRIS-TOPHER	ANTHONY
PROVENCHER	STEPHEN	WILFRED
PURCELL	KIRSTEN	ANN
PYFROM	BARBARA	ANN
QUAISER	ERIKA	CHRISTINE
QUINN	CLARA	DELLASTEEN
QVISTH	DEREK	MICHAEL STURE
RAINES	RAYMOND	SUNGJOO
RARDEN	PATRICK	OTTO
RASTALL	RICHARD	JOGE
RAYROUX	FRANCOIS	JEAN-CARLO
RECTOR	GARY	CLAY
REDL	NORMA	BERNIECE
REDMOND (LEE)	TOK	CHA
REID	MELINA	GABRIELLA
REVERDON	CATHERINE	INGRID
REYNOLDS	ROBERT	RICHARD
RHA	MYUNG	KYUN
RHEE	FAITH	NAM
RHEE	BRIANA	CHIN KYUNG
RHEE	EUN	SILL
RHO	KATHRYN	
RHO	KIBAI	
RHODE	MICHAEL	WILLIAM
RIBEIRO	ERNEST	GERALD
RICKENBERG	DONNA	MELISSA
RICKMAN	DONALD	RICHARD
RICKMAN	INGELOTTE	ELSE
RIESTER	KARL	HEINZ
RIVA	JOHN	F.
RIVERA	VIRGINIA	MANUELA
RIVERA	PATRICIA	MAUREEN
RIXNER	IRENE	MARIA
RIXNER	IRMGARD	RIXNER
ROBBINS	JOHN	ANTONE
ROBERTS	ELIZABETH	
ROBINSON	VINCENT	ARTUR
ROBSTAD	RENEE	
RODRIGUEZ	SUN	U
ROGERS	ELISABETH	
ROH	HYUNG	LAE
ROLFE	KRISTINE	SAPHNE-ANDREE
ROSEN	ANDREW	WILL
ROSSI	IDA	MARIE
ROTHE	VIRGINIA	CAROLINE R.
ROWAN	CATHLEEN	MARY
ROYSTER	LILIAN	
RUFF	JERRY	LOUIS
RUIZ	MARIE	REBECCA
RUZZIER	RENATO	
RYMAN	YONH	IM
RYNEVICZ	LILO	
SABRI	AKASYAH	BIN
SACKLER	SAMANTHA	SOPHIA
SAKURAI	GISELA	ELFRIEDE
SALIBA	ERIC	GRAZJIO
SALIBA	JOHN	FRANCES PASQUALE
SALOMON	WILLIAM	
SAMUELSON	GUDRUN	ANNETTE NADJA DIANA
SANCHEZ	NOEL	
SANCHEZ	SANDRA	VASQUES
SANIEL	YI	HWA DEUK
SARLO	KEVEN	DIRK
SAUNDERS	BETTY	GRACE
SAVEDPFF	ANTONIO	SCJAMG
SCALES	CHA	CHUN-HI
SCENNICHSEN	MICHAEL	WEI
SCHAEFER	STEVEN	H.
SCHERER	FRANZISKA	MARIA
SCHINZING	ALEXANDER	VICTOR
SCHLASSUS	INCE	MADELINE
SCHMIDT	JEFFREY	LAWRENCE
SCHMIDTHAUS	KURK	RICHARD
SCHMUECKLE	KARL	EBERHARD
SCHNEIDER	FREIDA	
SCHNEIDER	GERLINDE	GERTRUD
SCHNIEWIND	PAUL	WERNER
SCHNOBRICH	TIMOTHY	JOHN
SCHOCH	NANCY	STEWART
SCHOLL	CATHY	ALICE
SCHULZE	DAGMAR	ELLEN
SCOTT	LILLIAN	LOLA
SCOTT	JOHN	MERRITT
SCOTT	MARY	BRIM
SCOTT	PATRICIA	MARIE
SCRIVENER	JOHN	RODNEY
SEIDLER	ELEANOR	DAPHNE
SELANDER	KARIN	ALICE
SELVIDGE	MARGARET	MARY
SENDELE	HERMAN	
SENNIS	ALAN	FREDERICK
SEO	JEAN	HYO
SEONG	EUN	JOO
SEONG	CHONG	HYON
SERGO	RAYMOND	EMIR
SESNIC	IVO	
SHAFFER	SALLY	JANE
SHAPIRO	AVIDGOR	
SHEA	HELEN	MARIA
SHERLOCK	JOHN	GERRARD
SHIM	JIE	HYON
SHIN	JOHN	HWONDO
SHIN	HO	SIK
SHIN	HOGANG	SHIRLEY
SHIN	MINA	
SHIN	JAE	CHUL
SHIN	HARRIS	
SHIN	JUN	HA
SHIN	THERESA	
SHIN-DAVIS	KYUNG	RIM
SHINN	SANG	JUN
SHIPWITH	LEE	
SHON	CYNTHIA	HYEKYOUNG
SHUPTRINE	GREGORY	RICHARD
SIBBALD	KERN	EDWARD
SICRE	EMILE	LUSSIER
SIEGEL	DAVID	F.
SIHN	PAUL	KWANGSOP
SIM	MIKYONG	
SIM	JAI	BOK
SITKIN	ALAN	LANCE
SKOGMO	KRISTIN	ODVEIG
SLEGERS	ELLEN	JOHANNA
SLEPIAN	MICHAEL	
SLUMP	ROBERT	WILLIAM
SMITH	SCOTT	LEON
SMITH	PETER	RICH
SMITH	CHRIS-TOPHER	ESMOND
SMITH	NATALIE	TERESA
SNISKY	MICHELE	RENE
SOBREPENA	WILLIAM	RUSSEL LAMB
SOHN	MICHAEL	KIHO
SOHN	ALEX	YUNGIL
SOMODEVILLA	MARIA	JOSEFA
SON	SARAH	
SONG	BRIAN	COOK

Last name	First name	Middle name
SONG	JANE	KIM
SONG	WON	HO
SONG	CHARLESON	
SONG	DAVID	HO
SONG	JOON	SIK
SONG	PETER	CHOON-YOUNG
SONG	YOUNG	KUK
SONG	HANS	KEUNTAE
SONG	KUM	POK
SONG	YONG	NAM
SONG	IN	KYU
SONG	YOUNG	AH
SONG	FRANCO	YONG-KWAN
SONN	STEPHEN	SUNG JIN
SONNENBERG	DAVID	HENRY
SORENSEN	EDITH	BETTY
SORIANO	CARLOS	THEODORE
SOSNA	JANET	RUTH
SPARGO	ALAN	
SPARKS	KENTON	ELLIOT
SPEAR	CHUN	YONG
SPECHT	DIETER	BURCHARD
SPERI	CLAUDIA	
SPERI	ALLEGRA	VALENTINA
SPITERI	MARION	ROSE
STEGMANN	BERND	
STEINER	HENRY	
STEINERT	SCOTT	EMANUEL
STERN	PHILIP	WARREN
STEWART	ROSALYN	
STIEBLING	MARY-LOU	
STINE	GREGORY	WILLIAM
STOKKE	VIBEKE	FAVISH
STORMONT	DENYS	JOHN
STRICKLIN	RAYBURN	HAROLD
STRIEGLER	ANDREW	
STUBITS	BIRGITTE	MARY
SUH	JENNIFER	
SUKOHL (HWANG)	UN HEE	
SULC	MILAN	
SUN	ALBERT	ING-SHAN
SUNDBERG	ALAN	F.
SUNG	CHU	YUNG
SUNG	HAWUN	
SUTTER	JAMES	JOHN
SYNN	BYOUNG	PARK
SZYPULA	EMMA	
TALBOT	MARGUERITE	ANN HALL
TAN	JUI-HSIANG	
TAYLOR	ANDREA	MARIA
TEETS (SONG)	MIN-CHA	
TELEGDY	STEPHEN	ISTVAN-KAROLY
TERASKIEWIC-Z	EDWARD	ARNOLD
TERRELL	PONG	CHA
THARALDEN	JERVID	PAUL
THIELE	ALICE	LUCILLE
THIELE	JOHN	GEORGE
THOMAS	CARRIE	LYNN
THOMPSON	CLIFFORD	THOMAS
THOMPSON	NORMAN	LEE
THOMPSON	GERALDINE	JUDITH
THOMSON	BETTY-ANN	
TIEN	PAUL	SHU-PEI
TIMMONS	HUI	CHA
TINNERMAN III	GEORGE	AUGUST
TOENNES	MANFRED	HEINZ
TOWNSHEND	ELIZABETH	MORISON
TREVOR	ELEANOR	CARROLL
TROUT	TIMOTHY	WILLIAM
TROY	RENATE	FRIEDA
TSANG	MOSES	KWOK-TAI
TUTEM	STEVEN	ALLEN
TVEIT	HANS	E.
URBACH	KARINA	DOROTHEA
URQUIZU-GOYOGANA	YOLANDA	MARIE TE-RESA
VAN KOCKENGE-N	CHANTAL	VAN DEN BERKHOF
VAN RIET	LIEVEN	JOSEPH
VAN WYNEN	ROBERT	FRANK
VAVANELLOS	TRIANTAFILL-OS	DIMITRIOS
VELLA	FRANCES	YVONNE
VERLINDEN	JEAN	PIERRE
VOEGELE	FREDERICH	
VOEGELE	HEDY	CATHERINE
VOGLMEYER	MICHAEL	PETER
VON HIRSCH	ANDREW	
VON PFEIL	ENZIO	GROF
WACKER	NIKOLAUS	PETER-HENDRICH
WAGNER	MARGARETE	
WALKER	NICOLE	MARIE
WALLROCK	AUDREY	LOUISE
WALLSTEIN	DAGMAR	KLARA
WALTON	STEVEN	EUGENE
WALVIS	ANYA	MELVILLE
WAN	LENA	HUI-LI
WANG	KI	JU
WANG	SOO	RAY
WANG	CHIEN	NAN
WANG	PAI	MING SHENG
WARMUTH	THERESA	LYNN
WATT	WILLIAM	SHERWOOD
WATTS	RONALD	ALAN
WEAVER	INGEBORG	SUSANNA
WEDLER	JAY	MICHAEL
WEE	SHIN	SOOK
WEGERER	MARGARETE	
WEISS	LILLIAN	
WEISS	INDUK	KIM
WHITE	LUCAS	CHARLES
WIKBORG	SIRI	ANNE STOLT NIELSEN
WILDER	CHONG	SUK
WILKIE	ELEANOR	MARIA
WILLIAMS	YEA	SUK JUNG
WILLIAMS	ROBERT	LEE
WILLIAMS	FRANCIS	
WILLING	NAM	YE
WILLIS	THOMAS	MILES
WILSON	JAMES	DOUGLAS
WINEGARNER	NANCE	VICTORIA
WINKLER	DAVID	CHARLES
WINKLER-YINJUKOV	JULIANA	DORIS
WINTER	WERNER	
WINTER	INGRID	
WISE	RICHARD	STOCKTON
WISNIEWSKI	DORI	JEANNETTE
WOLFE	ELENA	J.
WON	JONATHAN	J.
WON	JOUNG	TAK
WONG	KAI	KIT
WOO	KYUNG	SIK
WOO	HEEJU	FRANCES
WOOD	JAMES	F.
WRIGHT	KYONG	SUK
WU	JINGSHOWN	
WU	JIN	
WU	YUNG	TUNG
YANG	AGNES	MEEJUEA
YEAMAN	NANUSHKA	JOY-GUY
YEH	KENT	MAN CHUN
YI	KWAN	CHUN
YI	TAE	WOOK
YI	HELEN	
YI	LEE	SANG WOOK
YI	SUNG	JUN
YING	LEVI	CHIH-HANG
YOKOYAMA	CHIEKO	
YOO	HYUN	SOOK
YOO	HANG	JAI
YOO	TAI-SUNG	
YOO	ISABELLE	EUNS
YOO	SUNG	EUN
YOO	JANE	P.
YOO	JU	YOUNG
YOO	MIINA	
YOO	IN	KOU
YOO	SAMUEL	SINYONG
YOO	DONG	SUN
YOO	SAND	SOOK
YOON	BUCK	KYUN
YOON	CHARLES	BYUNG
YOON	CHRIS-TOPHER	JIN
YOON	YOUNG	RO
YOON	PAUL	GILLMAN
YOON	DONG	SHIK
YOU	JONG	KEUN
YOUN	SAM	W.
YOUN	SONIA	
YOUNG (SNATIC)	MICHELLE	K
YU	EUN	SANG
YU	ALBERT	JEN HSING
YUN	YONG	SUN
YUN	YONG	HEE
ZAHLTEN	RAINER	NIKOLAUS
ZAND	EVA	
ZU PAPENNHEI-M	CHRISTIAN	RUDOLF
ZU PAPPENHEI-M	ISABELLA	DOROTHEA
ZWARYCZ	ROMAN	MYCHAJIO

Approved: July 11, 1997.

Doug Rogers,

Project Manager International District Operations.

[FR Doc. 97–19050 Filed 7–21–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program, Availability of Application Packages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Availability of TCE application packages.

SUMMARY: This document provides notice of the availability of Application Packages for the 1998 Tax Counseling for the Elderly (TCE) Program.

DATES: Application Packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 1998 Tax Counseling for the Elderly (TCE) Program is August 22, 1997.

ADDRESSES: Application Packages may be requested by contacting:Internal Revenue Service, 5000 Ellin Road, Lanham, MD., 20706 Attention: Program Manager, Tax Counseling for the Elderly Program, T:C:O:V, Building C–7, Room 178.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Haag, T:C:O:V, Building C–7, Room 178, Internal Revenue Service, 5000 Ellin Road, Lanham, MD., 20706. The non-toll-free telephone number is: (202) 283–0192.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Pub. L. 95–600, (92 Stat. 12810), November 6, 1978. Regulations were published in the **Federal Register** at 44FR 72113 on December 13, 1979. Section 163 gives the IRS authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide tree tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 1998 budget has been approved, cooperative agreements will be entered into subject to appropriation of funds. Once funded, sponsoring agencies and organizations will receive a grant from the IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assistance in Section 21.006.

Thomas Marusin,

Director, Office of Compliance Education.

[FR Doc. 97–19227 Filed 7–21–97; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 62, No. 140
Tuesday, July 22, 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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0260]

Agency Information Collection Activities: Proposed Collection; Comment Request

Correction

In notice document 97–18525, beginning on page 37923, in the issue of Tuesday, July 15, 1997, make the following correction:

On page 37923, in the third column, in the **DATES** section, "September 15, 1997" should be inserted.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements, Agency Information Collection Activity Under OMB Review

Correction

In notice document 97–18470, appearing on page 37949, in the issue of Tuesday, July 15, 1997, make the following correction:

On page 37949, in the first column, in the **DATES** section, "August 14, 1997" should be inserted.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 27

[CGD 96-052]

RIN 2105-AC63

Civil Money Penalties Inflation Adjustments; Correction

Correction

In rule document 97-17147 beginning on page 35385, in the issue of Tuesday, July 1, 1997, make the following correction:

§ 27.3 [Corrected]

On page 35387, in the table, in the first column titled U.S. Code citation, in the last line,"46 U.S.C. 5123" should read "49 U.S.C. 5123".

BILLING CODE 1505-01-D

federal register

Tuesday
July 22, 1997

Part II

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3405
Higher Education Challenge Grants Program; Administrative Provisions; Final Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3405

RIN 0524–AA02

Higher Education Challenge Grants Program; Administrative Provisions

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Final rule.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) adds a new part 3405 to Title 7, subtitle B, chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the Higher Education Challenge Grants Program conducted under the authority of section 1417(b)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152). This action establishes and codifies the administrative procedures to be followed annually in the solicitation of competitive proposals, the evaluation of such proposals, and the award of grants under this program.

DATES: Effective August 21, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey L. Gilmore at 202–720–1973 (voice), 202–720–2030 (fax) or via electronic mail at jgilmore@reeusda.gov.

SUPPLEMENTARY INFORMATION: CSREES published a Notice of Proposed Rulemaking (NPRM) on the administrative provisions for the Higher Education Challenge Grants Program in the **Federal Register** on December 19, 1995 (60 FR 65444–65454).

Public Comments and Statutory Changes

In the NPRM, CSREES invited comments on the proposed regulations for consideration in the formulation of a final rule. Four comments were received.

One commenter generally endorsed the proposed rule but did not comment on any particular provisions.

Another commenter questioned if college and university teaching programs at the master's and doctoral degree levels were eligible for grants. Both the NPRM and this final rule provide that the Higher Education Challenge Grants Program may support projects to strengthen undergraduate or graduate teaching programs. Projects at the master's and doctoral degree levels are eligible for grants. Based on the amount of funds appropriated in any fiscal year, CSREES determines and cites in the annual program announcement the degree level(s) to be supported.

The third commenter asked if grants could be made to foundations associated or affiliated with colleges or universities. The Higher Education Challenge Grants Program operates under the authority of section 1417(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA)(7 U.S.C. 3152 (b)). Section 805(b) of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act)(Pub. L. 104–127, April 4, 1996), amended the grant eligibility requirements of section 1417 of NARETPA to include a research foundation maintained by an eligible college or university. This final rule modifies the NPRM by incorporating the FAIR Act authorization for grants to research foundations of eligible institutions by including such foundations in the definition of "eligible institution" in § 3405.2(i) of this final rule.

A fourth commenter asked if only four-year colleges and universities are eligible to apply for grants. The Higher Education Challenge Grants Program operates under the authority of section 1417(b) of NARETPA. Community colleges and other two-year institutions are not eligible for grants awarded under this section. Section 1417(b) of NARETPA authorizes the Secretary of Agriculture to make competitive grants to certain "colleges and universities." The terms "college" and "university" are defined in section 1404(4)(C) of NARETPA (7 U.S.C. 3103(4)(C)) as educational institutions that provide "an educational program for which a bachelor's degree or any other higher degree is awarded."

This final rule modifies the NPRM by incorporating the change in eligibility for a research foundation into the definition of "eligible institution" in § 3405.2(i) and adding the word "eligible" before "institution" in § 3405.2(l). The reference in § 3405.17(a) to 7 CFR part 3015 has been changed to reflect the currently applicable USDA assistance regulations at 7 CFR part 3019. References to "CSRS" forms have been changed to "CSREES" forms.

Minor changes have been made to the provisions for grant extensions in § 3405.18(c). These changes reflect existing law and allow flexibility in defining the terms for extensions in each agreement. Thus, CSREES does not think further comment is required.

There are no other substantive differences between the NPRM and this final rule.

Background and Purpose

This document adds a new part 3405 to title 7, subtitle B, chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the Higher Education Challenge Grants Program. Under the authority of section 1417(b)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(b)(1)), the Secretary of Agriculture is authorized to conduct competitive grant programs to strengthen institutional capacities, including curriculum, faculty, scientific instrumentation, instruction delivery systems, and student recruitment and retention, to respond to identified State, regional, national, or international educational needs in the food and agricultural sciences. The issuance of this rule will establish and codify the administrative procedures to be followed annually in the solicitation of competitive grant proposals, the evaluation of such proposals, and the award of grants under this program.

The Challenge Grants Program is intended to assist colleges and universities in the United States, having a demonstrable capacity to carry out the teaching of the food and agricultural sciences, in providing high quality educational programs in the food and agricultural sciences. These programs will, in turn, attract outstanding students and produce graduates capable of strengthening the Nation's food and agricultural scientific and professional work force.

Classification

Executive Order No. 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget. It has been determined that this rule is not a "significant regulatory action" rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's

priorities, or principles set forth in Executive Order No. 12866.

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. Chapter 35), the collection of information requirements contained in this final rule have been reviewed and approved by OMB and given the OMB Document Nos. 0524–0022, 0524–0024, and 0524–0030. The public reporting burden for the information collections contained in these regulations (Forms CSREES–663, CSREES–708, CSREES–711, CSREES–712, and CSREES–713 as well as the Proposal Summary, Proposal Narrative, and the Budget Narrative) is estimated to be 39½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, Office of the Chief Information Officer, Stop 7603, 1400 Independence Avenue, SW., Washington, DC 20250–7630, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503. This rule has no additional impact on any existing data collection burden.

Regulatory Flexibility Act

The Administrator, CSREES, certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required for this final rule.

Executive Order No. 12612

This rule involves no policies that have federalism implications under Executive Order No. 12612, Federalism, dated October 26, 1987.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.217, Higher Education Challenge Grants Program. For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, subpart V, 57 FR 15278, April 27, 1992, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

List of Subjects in 7 CFR Part 3405

Grant programs—agriculture. Agriculture Higher Education Programs.

For the reasons set forth in the preamble, title 7, subtitle B, chapter XXXIV, of the Code of Federal Regulations is amended by adding part 3405 to read as follows:

PART 3405—HIGHER EDUCATION CHALLENGE GRANTS PROGRAM

Subpart A—General Information

Sec.

Subpart B—Program Description

Subpart C—Preparation of a Proposal

Subpart D—Submission of a Proposal

Subpart E—Proposal Review and Evaluation

Subpart F—Supplementary Information

Authority: Sec. 1470, National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

Subpart A—General Information

§ 3405.1 Applicability of regulations.

(a) The regulations of this part only apply to competitive Higher Education Challenge Grants awarded under the provisions of section 1417(b)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA)(7 U.S.C. 3152(b)(1)), to strengthen institutional capacities, including curriculum, faculty, scientific instrumentation, instruction delivery systems, and student recruitment and retention. Section 1405 of NARETPA (7 U.S.C. 3121) designates the U.S. Department of Agriculture (USDA) as the lead Federal agency for agricultural research, extension, and teaching in the food and agricultural sciences. Section 1417 of NARETPA (7 U.S.C. 3152) authorizes the Secretary of Agriculture, who has delegated the authority to the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES), to make competitive grants to land-grant colleges and universities, to colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences, for a period not to exceed 5 years, to administer and conduct programs to respond to identified State, regional, national, or international educational needs in the food and agricultural sciences.

(b) To the extent that funds are available, each year CSREES will publish a **Federal Register** notice announcing the program and soliciting grant applications.

(c)(1) Based on the amount of funds appropriated in any fiscal year, CSREES will determine and cite in the program announcement:

(i) The targeted need area(s) to be supported or, if the entire scope of a particular targeted need area is not to be supported, the specific special interest(s) within that targeted need area to be supported;

(ii) The degree level(s) to be supported;

(iii) The maximum project period a proposal may request;

(iv) The maximum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal; and

(v) The maximum total funds that may be awarded to an institution under the program in a given fiscal year, including how funds awarded for complementary and for joint project proposals will be counted toward the institutional maximum.

(2) The program announcement will also specify the deadline date for proposal submission, the number of copies of each proposal that must be submitted, the address to which a proposal must be submitted, and whether or not Form CSREES–711, "Intent to Submit a Proposal," is requested.

(d)(1) If it is deemed by CSREES that, for a given fiscal year, additional determinations are necessary, each, as relevant, will be stated in the program announcement. Such determinations may include:

(i) Limits on the subject matter/emphasis areas to be supported;

(ii) The maximum number of proposals that may be submitted on behalf of the same school, college, or equivalent administrative unit within an institution;

(iii) The maximum total number of proposals that may be submitted by an institution;

(iv) The minimum project period a proposal may request;

(v) The minimum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal;

(vi) The proportion of the appropriation reserved for, or available to, regular, complementary, and joint project proposals;

(vii) The proportion of the appropriation reserved for, or available to, projects in each announced targeted need area;

(viii) The proportion of the appropriation reserved for, or available to, each subject matter/emphasis area;

(ix) The maximum number of grants that may be awarded to an institution under the program in a given fiscal year; and

(x) Limits on the use of grant funds for travel or to purchase equipment, if any.

(2) The program announcement also will contain any other limitations deemed necessary by CSREES for proper conduct of the program in the applicable year.

(e) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 3405.2 Definitions.

As used in this part:

(a) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(b) *Authorized organizational representative* means the president of the institution or the official, designated by the president of the institution, who has the authority to commit the resources of the institution.

(c) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(d) *Cash contributions* means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

(e) *Citizen or national of the United States means:*

(1) A citizen or native resident of a State; or,

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(f) *College* or *University* means an educational institution in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which a baccalaureate degree or any other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

(g) *Complementary project proposal* means a proposal for a project which involves coordination with one or more other projects for which funding was awarded under this program in a previous fiscal year, or for which funding is requested under this program in the current fiscal year.

(h) *Department* or *USDA* means the United States Department of Agriculture.

(i) *Eligible institution* means a land-grant or other U.S. college or university offering a baccalaureate or first professional degree in at least one discipline or area of the food and agricultural sciences. The definition includes a research foundation maintained by an eligible college or university.

(j) *Eligible participant* means, for purposes of § 3405.6(b), Faculty Preparation and Enhancement for Teaching, and § 3405.6(f), Student Recruitment and Retention, an individual who: Is a citizen or national of the United States, as defined in § 3405.2(e); or is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau. Where eligibility is claimed under § 3405.2(e)(2), documentary evidence from the Immigration and Naturalization Service as to such eligibility must be made available to CSREES upon request.

(k) *Food and agricultural sciences* means basic, applied, and developmental research, extension, and teaching activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences, in the broadest sense of these terms, including but not limited to, activities concerned with the production, processing, marketing, distribution, conservation, consumption, research, and development of food and agriculturally related products and services, and inclusive of programs in agriculture, natural resources, aquaculture, forestry, veterinary medicine, home economics, rural development, and closely allied disciplines.

(l) *Grantee* means the eligible institution designated in the grant award document as the responsible legal entity to which a grant is awarded.

(m) *Joint project proposal* means a proposal for a project, which will involve the applicant institution and two or more other colleges, universities, community colleges, junior colleges, or other institutions, each of which will assume a major role in the conduct of the proposed project, and for which the applicant institution will transfer at least one-half of the awarded funds to the other institutions participating in the project. Only the applicant institution must meet the definition of "eligible institution" as specified in § 3405.2(i); the other institutions participating in a joint project proposal are not required to meet the definition of "eligible institution" as specified in § 3405.2(i), nor required to meet the definition of "college" or "university" as specified in § 3405.2(f).

(n) *Land-grant colleges and universities* means those institutions eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503–505, as amended; 7 U.S.C. 301–305, 307 and 308), or the Act of August 30, 1890 (26 Stat. 417–419, as amended; 7 U.S.C. 321–326 and 328), including Tuskegee University.

(o) *Matching* or *Cost-sharing* means that portion of project costs not borne by the Federal Government, including the value of in-kind contributions.

(p) *Peer review panel* means a group of experts or consultants, qualified by training and experience in particular fields of science, education, or technology to give expert advice on the merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

(q) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in § 3405.2(a) of this part.

(r) *Project* means the particular activity within the scope of one or more of the targeted areas supported by a grant awarded under this program.

(s) *Project director* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the

direction and management of the project.

(t) *Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(u) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(v) *State* means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

(w) *Teaching* means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and matters related thereto (such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies) conducted by colleges and universities offering baccalaureate or higher degrees.

(x) *Third party in-kind contributions* means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefiting and specifically identifiable to a funded project or program.

(y) *United States* means the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

§ 3405.3 Institutional eligibility.

Proposals may be submitted by land-grant and other U.S. colleges and universities offering a baccalaureate or first professional degree in at least one discipline or area of the food and agricultural sciences. Each applicant must have a demonstrable capacity for, and a significant ongoing commitment to, the teaching of food and agricultural sciences generally and to the specific need and/or subject area(s) for which a grant is requested. Awards may be made only to eligible institutions as defined in § 3405.2(i).

Subpart B—Program Description

§ 3405.4 Purpose of the program.

The Department of Agriculture is designated as the lead Federal agency for higher education in the food and agricultural sciences. In this context, CSREES has specific responsibility to initiate and support projects to strengthen college and university teaching programs in the food and agricultural sciences. One national initiative for carrying out this responsibility is the competitive Higher Education Challenge Grants Program. A primary goal of the program is to attract and ensure a continual flow of outstanding students into food and agricultural sciences higher education programs and to provide them with an education of the highest quality available anywhere in the world and which reflects the unique needs of the Nation. It is designed to stimulate and enable colleges and universities to provide the quality of education necessary to produce baccalaureate or higher degree level graduates capable of strengthening the Nation's food and agricultural scientific and professional work force. It is intended that projects supported by the program will:

(a) Address a State, regional, national, or international educational need;

(b) Involve a creative or nontraditional approach toward addressing that need which can serve as a model to others;

(c) Encourage and facilitate better working relationships in the university science and education community, as well as between universities and the private sector, to enhance program quality and supplement available resources; and

(d) Result in benefits which will likely transcend the project duration and USDA support.

§ 3405.5 Matching funds.

Each application must provide for matching support from a non-Federal source. CSREES will cite in the program announcement the required percentage of institutional cost sharing.

§ 3405.6 Scope of Program.

This program supports projects related to strengthening undergraduate or graduate teaching programs as specified in the annual program announcement. Only proposals addressing one or more of the specific targeted need areas(s) identified in the program announcement will be funded. Proposals may focus on any subject matter area(s) in the food and agricultural sciences unless limited by determinations as specified in the annual program announcement. A proposal may address a single targeted need area or multiple targeted need areas, and may be focused on a single subject matter area or multiple subject matter areas, in any combination (e.g., curriculum development in horticulture; curriculum development, faculty enhancement, and student experiential learning in animal science; faculty enhancement in food science and agribusiness management; or instruction delivery systems and student experiential learning in plant science, horticulture, and entomology). Targeted need areas will consist of one or more of the following:

(a) *Curricula design and materials development.* (1) The purpose of this initiative is to promote new and improved curricula and materials to increase the quality of, and continuously renew, the Nation's academic programs in the food and agricultural sciences. The overall objective is to stimulate the development and facilitate the use of exemplary education models and materials that incorporate the most recent advances in subject matter, research on teaching and learning theory, and instructional technology. Proposals may emphasize: the development of courses of study, degree programs, and instructional materials; the use of new approaches to the study of traditional subjects; or the introduction of new subjects, or new applications of knowledge, pertaining to the food and agricultural sciences.

(2) Examples include, but are not limited to, curricula and materials that promote:

(i) Raising the level of scholastic achievement of the Nation's graduates in the food and agricultural sciences.

(ii) Addressing the special needs of particular groups of students, such as minorities, gifted and talented, or those with educational backgrounds that warrant enrichment.

(iii) Using alternative instructional strategies or methodologies, including computer-assisted instruction or simulation modeling, media programs that reach large audiences efficiently and effectively, activities that provide hands-on learning experiences, and educational programs that extend learning beyond the classroom.

(iv) Using sound pedagogy, particularly with regard to recent research on how to motivate students to learn, retain, apply, and transfer knowledge, skills, and competencies.

(v) Building student competencies to integrate and synthesize knowledge from several disciplines.

(b) *Faculty preparation and enhancement for teaching.* (1) The purpose of this initiative is to advance faculty development in the areas of teaching competency, subject matter expertise, or student recruitment and advising skills. Teachers are central to

education. They serve as models, motivators, and mentors—the catalysts of the learning process. Moreover, teachers are agents for developing, replicating, and exchanging effective teaching materials and methods. For these reasons, education can be strengthened only when teachers are adequately prepared, highly motivated, and appropriately recognized and rewarded.

(2) Each faculty recipient of support for developmental activities under § 3405.6(b) must be an "eligible participant" as defined in § 3405.2(j) of this part.

(3) Examples of developmental activities include, but are not limited to, those which enable teaching faculty to:

(i) Gain experience with recent developments or innovative technology relevant to their teaching responsibilities.

(ii) Work under the guidance and direction of experts who have substantial expertise in an area related to the developmental goals of the project.

(iii) Work with scientists or professionals in government, industry, or other colleges or universities to learn new applications in a field.

(iv) Obtain personal experience working with new ideas and techniques.

(v) Expand competence with new methods of information delivery, such as computer-assisted or televised instruction.

(vi) Increase understanding of the special needs of non-traditional students or students from groups that are underrepresented in the food and agricultural sciences workforce.

(c) *Instruction delivery systems.* (1) The purpose of this initiative is to encourage the use of alternative methods of delivering instruction to enhance the quality, effectiveness, and cost efficiency of teaching programs. The importance of this initiative is evidenced by advances in educational research which have substantiated the theory that differences in the learning styles of students often require alternative instructional methodologies. Also, the rising costs of higher education strongly suggest that colleges and universities undertake more efforts of a collaborative nature in order to deliver instruction which maximizes program quality and reduces unnecessary duplication. At the same time, advancements in knowledge and technology continue to introduce new subject matter areas which warrant consideration and implementation of innovative instruction techniques, methodologies, and delivery systems.

(2) Examples include, but are not limited to:

(i) Use of computers.

(ii) Teleconferencing.

(iii) Networking via satellite communications.

(iv) Regionalization of academic programs.

(v) Mobile classrooms and laboratories.

(vi) Individualized learning centers.

(vii) Symposia, forums, regional or national workshops, etc.

(d) *Scientific instrumentation for teaching.* (1) The purpose of this initiative is to provide students in science-oriented courses the necessary experience with suitable, up-to-date equipment in order to involve them in work central to scientific understanding and progress. This program initiative will support the acquisition of instructional laboratory and classroom equipment to assure the achievement and maintenance of outstanding food and agricultural sciences higher education programs. A proposal may request support for acquiring new, state-of-the-art instructional scientific equipment, upgrading existing equipment, or replacing non-functional or clearly obsolete equipment.

(2) Examples include, but are not limited to:

(i) Rental or purchase of modern instruments to improve student learning experiences in courses, laboratories, and field work.

(ii) Development of new ways of using instrumentation to extend instructional capabilities.

(iii) Establishment of equipment-sharing capability via consortia or centers that develop innovative opportunities, such as mobile laboratories or satellite access to industry or government laboratories.

(e) *Student experiential learning.* (1) The purpose of this initiative is to further the development of student scientific and professional competencies through experiential learning programs which provide students with opportunities to solve complex problems in the context of real-world situations. Effective experiential learning is essential in preparing future graduates to advance knowledge and technology, enhance quality of life, conserve resources, and revitalize the Nation's economic competitiveness. Such experiential learning opportunities are most effective when they serve to advance decision-making and communication skills as well as technological expertise.

(2) Examples include, but are not limited to, projects which:

(i) Provide opportunities for students to participate in research projects, either as a part of an ongoing research project or in a project designed especially for this program.

(ii) Provide opportunities for students to complete apprenticeships, internships, or similar participatory learning experiences.

(iii) Expand and enrich courses which are of a practicum nature.

(iv) Provide career mentoring experiences that link students with outstanding professionals.

(f) *Student recruitment and retention.* (1) The purpose of this initiative is to strengthen student recruitment and retention programs in order to promote the future strength of the Nation's scientific and professional work force. The Nation's economic competitiveness and quality of life rest upon the availability of a cadre of outstanding research scientists, university faculty, and other professionals in the food and agricultural sciences. A substantial need exists to supplement efforts to attract increased numbers of academically outstanding students to prepare for careers as food and agricultural scientists and professionals. It is particularly important to augment the racial, ethnic, and gender diversity of the student body in order to promote a robust exchange of ideas and a more effective use of the full breadth of the Nation's intellectual resources.

(2) Each student recipient of monetary support for education costs or developmental purposes under § 3405.6(f) must be enrolled at an eligible institution and meet the requirement of an "eligible participant" as defined in § 3405.2(j) of this part.

(3) Examples include, but are not limited to:

(i) Special outreach programs for elementary and secondary students as well as parents, counselors, and the general public to broaden awareness of the extensive nature and diversity of career opportunities for graduates in the food and agricultural sciences.

(ii) Special activities and materials to establish more effective linkages with high school science classes.

(iii) Unique or innovative student recruitment activities, materials, and personnel.

(iv) Special retention programs to assure student progression through and completion of an educational program.

(v) Development and dissemination of stimulating career information materials.

(vi) Use of regional or national media to promote food and agricultural sciences higher education.

(vii) Providing financial incentives to enable and encourage students to pursue and complete an undergraduate or graduate degree in an area of the food and agricultural sciences.

(viii) Special recruitment programs to increase the participation of students from non-traditional or underrepresented groups in courses of study in the food and agricultural sciences.

§ 3405.7 Joint project proposals.

Applicants are encouraged to submit joint project proposals as defined in § 3405.2(m), which address regional or national problems and which will result overall in strengthening higher education in the food and agricultural sciences. The goals of such joint initiatives should include maximizing the use of limited resources by generating a critical mass of expertise and activity focused on a targeted need area(s), increasing cost-effectiveness through achieving economies of scale, strengthening the scope and quality of a project's impact, and promoting coalition building likely to transcend the project's lifetime and lead to future ventures.

§ 3405.8 Complementary project proposals.

Institutions may submit proposals that are complementary in nature as defined in § 3405.2(g). Such complementary project proposals may be submitted by the same or by different eligible institutions.

§ 3405.9 Use of funds for facilities.

Under the Higher Education Challenge Grants Program, the use of grant funds to plan, acquire, or construct a building or facility is not allowed. With prior approval, in accordance with the cost principles set forth in OMB Circular No. A–21, some grant funds may be used for minor alterations, renovations, or repairs deemed necessary to retrofit existing teaching spaces in order to carry out a funded project. However, requests to use grant funds for such purposes must demonstrate that the alterations, renovations, or repairs are incidental to the major purpose for which a grant is made.

Subpart C—Preparation of a Proposal

§ 3405.10 Program application materials.

Program application materials in an application package will be made available to eligible institutions upon request. These materials include the program announcement, the administrative provisions for the program, and the forms needed to prepare and submit grant applications under the program.

§ 3405.11 Content of a proposal.

(a) *Proposal cover page.* (1) Form CSREES–712, "Higher Education Proposal Cover Page," must be completed in its entirety. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(2) One copy of the Form CSREES–712 must contain the pen-and-ink signatures of the Project Director(s) and authorized organizational representative for the applicant institution.

(3) The title of the project shown on the "Higher Education Proposal Cover Page" must be brief (80-character maximum) yet represent the major thrust of the project. This information will be used by the Department to provide information to the Congress and other interested parties.

(4) In block 7. of Form CSREES–712, enter "Higher Education Challenge Grants Program."

(5) In block 8.a. of Form CSREES–712, enter "Teaching." In block 8.b. identify the code for the targeted need area(s) as found on the reverse of the form. If a proposal focuses on multiple targeted need areas, enter each code associated with the project and place an asterisk (*) immediately following the code for the primary targeted need area. In block 8.c. identify the major area(s) of emphasis as found on the reverse of the form. If a proposal focuses on multiple areas of emphasis, enter each code associated with the project. This information will be used by program staff for the proper assignment of proposals to peer reviewers.

(6) In block 9. of Form CSREES–712, indicate if the proposal is a complementary project proposal or a joint project proposal as defined in § 3405.2(g) and § 3405.2(m), respectively, of this part. If it is not a complementary project proposal or a joint project proposal, identify it as a regular project proposal.

(7) In block 13. of Form CSREES–712, indicate if the proposal is a new, first-time submission or if the proposal is a resubmission of a proposal that has been submitted to, but not funded under, the Higher Education Challenge Grants Program in a previous competition.

(b) *Table of Contents.* For ease in locating information, each proposal must contain a detailed table of contents just after the Proposal Cover Page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

(c) *Project summary.* (1) A Project Summary should immediately follow the Table of Contents. The information provided in the Project Summary may be used by the program staff for a variety of purposes, including the proper assignment of proposals to peer reviewers and providing information to peer reviewers prior to the peer panel meeting. The name of the institution, the targeted need area(s), and the title of the proposal must be identified exactly as shown on the "Higher Education Proposal Cover Page."

(2) If the proposal is a complementary project proposal, as defined in § 3405.2(g) of this part, indicate such and identify the other complementary project(s) by citing the name of the submitting institution, the title of the project, the project director, and the grant number (if funded in a previous year) exactly as shown on the cover page of the complementary project so that appropriate consideration can be given to the interrelatedness of the proposals in the evaluation process.

(3) If the proposal is a joint project proposal, as defined in § 3405.2(m) of this part, indicate such and identify the other participating institutions and the key faculty member or other individual responsible for coordinating the project at each institution.

(4) The Project Summary should be a concise description of the proposed activity suitable for publication by the Department to inform the general public about awards under the program. The text must not exceed one page, single-spaced. The Project Summary should be a self-contained description of the activity which would result if the proposal is funded by USDA. It should include: The objectives of the project; a synopsis of the plan of operation; a description of how the project will strengthen higher education in the food and agricultural sciences in the United States; and the plans for disseminating project results. The Project Summary should be written so that a technically literate reader can evaluate the use of Federal funds in support of the project.

(d) *Resubmission of a proposal.*—(1) *Resubmission of previously unfunded proposals.* If a proposal has been submitted previously, but was not funded, such should be indicated in block 13. on Form CSREES–712, "Higher Education Proposal Cover Page," and the following information should be included in the proposal: The fiscal year(s) in which the proposal was submitted previously; a summary of the peer reviewers' comments; and how these comments have been addressed in

the current proposal, including the page numbers in the current proposal where the peer reviewers' comments have been addressed. This information may be provided as a section of the proposal following the Project Summary and preceding the proposal narrative or it may be placed in the Appendix (see § 3405.11(i)). In either case, the location of this information should be indicated in the Table of Contents. Further, when possible, the information should be presented in tabular format. Applicants who choose to resubmit proposals that were previously submitted, but not funded, should note that resubmitted proposals must compete equally with newly submitted proposals. Submitting a proposal that has been revised based on a previous peer review panel's critique of the proposal does not guarantee the success of the resubmitted proposal.

(2) *Resubmission of previously funded proposals.* The Higher Education Challenge Grants Program is not designed to support activities that essentially are repetitive in nature over multiple grant awards. Project directors who have had their projects funded previously are discouraged from resubmitting relatively identical proposals for further funding. Proposals that are sequential continuations or new stages of previously funded Challenge Grants Program projects must compete with first-time proposals. Therefore, project directors should thoroughly demonstrate how the project proposed in the current application expands substantially upon a previously funded project (i.e., demonstrate how the new project will advance the former project to the next level of attainment or will achieve expanded goals). The proposal must also show the degree to which the new phase promotes innovativeness and creativity beyond the scope of the previously funded project.

(e) *Narrative of a proposal.* The narrative portion of the proposal is limited to 20 pages in length. The one-page Project Summary is not included in the 20-page limitation. The narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. All pages following the Table of Contents must be paginated. It should be noted that peer reviewers will not be required to read beyond 20 pages of the narrative to evaluate the proposal. The narrative should contain the following sections:

(1) *Potential for advancing the quality of education.*—(i) *Impact.* (A) Identify the targeted need area(s).

(B) Clearly state the specific instructional problem or opportunity to be addressed.

(C) Describe how and by whom the focus and scope of the project were determined. Summarize the body of knowledge which substantiates the need for the proposed project.

(D) Describe ongoing or recently completed significant activities related to the proposed project for which previous funding was received under this program.

(E) Discuss how the project will be of value at the State, regional, national, or international level(s).

(F) Discuss how the benefits to be derived from the project will transcend the applicant institution or the grant period. Also discuss the probabilities of the project being adapted by other institutions. For example, can the project serve as a model for others?

(ii) *Continuation plans.* Discuss the likelihood of, or plans for, continuation or expansion of the project beyond USDA support. For example, does the institution's long-range budget or academic plan provide for the realistic continuation or expansion of the initiative undertaken by this project after the end of the grant period, are plans for eventual self-support built into the project, are plans being made to institutionalize the program if it meets with success, and are there indications of other continuing non-Federal support?

(iii) *Innovation.* Describe the degree to which the proposal reflects an innovative or non-traditional approach to solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences.

(iv) *Products and results.* Explain the expected products and results and their potential impact on strengthening food and agricultural sciences higher education in the United States.

(2) *Overall approach and cooperative linkages.*—(i) *Proposed approach.*(A) *Objectives.* Cite and discuss the specific objectives to be accomplished under the project.

(B) *Plan of operation.* (*1*) Describe procedures for accomplishing the objectives of the project.

(*2*) Describe plans for management of the project to ensure its proper and efficient administration.

(*3*) Describe the way in which resources and personnel will be used to conduct the project.

(C) *Timetable.* Provide a timetable for conducting the project. Identify all important project milestones and dates as they relate to project start-up, execution, evaluation, dissemination, and close-out.

(ii) *Evaluation plans.* (A) Provide a plan for evaluating the accomplishment of stated objectives during the conduct of the project. Indicate the criteria, and corresponding weight of each, to be used in the evaluation process, describe any data to be collected and analyzed, and explain the methodology that will be used to determine the extent to which the needs underlying the project are met.

(B) Provide a plan for evaluating the effectiveness of the end results upon conclusion of the project. Include the same kinds of information requested in § 3405.11(e)(2)(ii)(A).

(iii) *Dissemination plans.* Discuss plans to disseminate project results and products. Identify target audiences and explain methods of communication.

(iv) *Partnerships and collaborative efforts.* (A) Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural sciences higher education.

(B) Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been discussed and realistically can be expected to come to fruition, or actually have been finalized contingent on an award under this program. Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the plan of operation, but the actual letters should be included in the Appendix section of the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail.

(3) *Institutional commitment and resources.*—(i) *Institutional commitment.* Discuss the institution's commitment to the project. For example, substantiate that the institution attributes a high priority to the project, discuss how the project will contribute to the achievement of the institution's long-term (five-to ten-year) goals, explain how the project will help satisfy the institution's high-priority objectives, or show how this project is linked to and supported by the institution's strategic plan.

(ii) *Institutional resources.* Document the commitment of institutional resources to the project, and show that the institutional resources to be made available to the project, when combined with the support requested from USDA, will be adequate to carry out the activities of the project. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(f) *Key personnel.* A Form CSREES–708, "Summary Vita—Teaching Proposal," should be included for each key person associated with the project.

(g) *Budget and cost-effectiveness.*—(1) *Budget form.* (i) Prepare Form CSREES–713, "Higher Education Budget," in accordance with instructions provided with the form. Proposals may request support for a period to be identified in each year's program announcement. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. Form CSREES–713 may be reproduced as needed by proposers. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these administrative provisions, and can be justified as necessary for the successful conduct of the proposed project.

(ii) The approved negotiated instruction rate or the rate allowed by law should be used when computing indirect costs. If a reduced rate of indirect costs is voluntarily requested from USDA, the remaining allowable indirect costs may be used as matching funds.

(2) *Matching funds.* When documenting matching contributions, use the following guidelines:

(i) When preparing the column of Form CSREES–713 entitled "Applicant Contributions To Matching Funds," only those costs to be contributed by the applicant for the purposes of matching should be shown. The total amount of this column should be indicated in item M.

(ii) In item N of Form CSREES–713, show a total dollar amount for Cash Contributions from both the applicant and any third parties; also show a total dollar amount (based on current fair market value) for Non-cash Contributions from both the applicant and any third parties.

(iii) To be counted toward the matching requirements stated in § 3405.5 of this part, proposals must include written verification of any actual commitments of matching support (including both cash and non-cash contributions) from third parties. Written verification means—

(A) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representative(s) of the donor organization and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) The dollar amount of the cash donation; and

(*5*) A statement that the donor will pay the cash contribution during the grant period; and

(B) For any third party non-cash contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representative(s) of the donor organization and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) A good faith estimate of the current fair market value of the non-cash contribution; and

(*5*) A statement that the donor will make the contribution during the grant period.

(iv) All pledge agreements referenced in § 3405.11(g)(2)(iii) (A) and (B) must be placed in the proposal immediately following Form CSREES–713. The sources and amounts of all matching support from outside the applicant institution should be summarized in the Budget Narrative section of the proposal.

(v) Applicants should refer to OMB Circulars A–110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-profit Organizations," and A–21, "Cost Principles for Educational Institutions," for further guidance and other requirements relating to matching and allowable costs.

(3) *Chart on shared budget for joint project proposal.* For a joint project proposal, a plan must be provided indicating how funds will be distributed to the participating institutions. The budget section of a joint project proposal should include a chart indicating: The names of the participating institutions; the amount of funds to be disbursed to those institutions; and the way in which such funds will be used in accordance with items A through L of Form CSREES–713, "Higher Education Budget." If a proposal is not for a joint project, such a chart is not required.

(4) *Budget narrative.* (i) Discuss how the budget specifically supports the proposed project activities. Explain how such budget items as professional or technical staff, travel, equipment, etc., are essential to achieving project objectives.

(ii) Justify that the total budget, including funds requested from USDA and any matching support provided, will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(iii) Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes educational value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a targeted need area, or to promote coalition building that could lead to future ventures.

(iv) Include the percentage of time key personnel will work on the project, both during the academic year and summer. When salaries of university personnel will be paid by a combination of USDA and institutional funds, the total compensation must not exceed the faculty member's regular annual compensation. In addition, the total commitment of time devoted to the project, when combined with time for teaching and research duties, other sponsored agreements, and other employment obligations to the institution, must not exceed 100 percent of the normal workload for which the employee is compensated, in accordance with established university policies and applicable Federal cost principles.

(v) If the proposal addresses more than one targeted need area (e.g., student experiential learning and instruction delivery systems), estimate the proportion of the funds requested from USDA that will support each respective targeted need area.

(h) *Current and pending support.* Each applicant must complete Form CSREES–663, "Current and Pending Support," identifying any other current public- or private-sponsored projects, in addition to the proposed project, to which key personnel listed in the proposal under consideration have

committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This information should also be provided for any pending proposals which are currently being considered by, or which will be submitted in the near future to other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice the review or evaluation of a project under this program.

(i) *Appendix.* Each project narrative is expected to be complete in itself and to meet the 20-page limitation. Inclusion of material in an Appendix should not be used to circumvent the 20-page limitation of the proposal narrative. However, in those instances where inclusion of supplemental information is necessary to guarantee the peer review panel's complete understanding of a proposal or to illustrate the integrity of the design or a main thesis of the proposal, such information may be included in an Appendix. Examples of supplemental material are photographs, journal reprints, brochures and other pertinent materials which are deemed to be illustrative of major points in the narrative but unsuitable for inclusion in the proposal narrative itself. Information on previously submitted proposals may also be presented in the Appendix (refer to § 3405.11(d)). When possible, information in the Appendix should be presented in tabular format. A complete set of the Appendix material must be attached to each copy of the grant application submitted. The Appendix must be identified with the title of the project as it appears on Form CSREES–712 of the proposal and the name(s) of the project director(s). The Appendix must be referenced in the proposal narrative.

Subpart D—Submission of a Proposal

§ 3405.12 Intent to submit a proposal.

To assist CSREES in preparing for the review of proposals, institutions planning to submit proposals may be requested to complete Form CSREES–711, "Intent to Submit a Proposal," provided in the application package. CSREES will determine each year if Intent to Submit a Proposal forms will be requested and provide such information in the program announcement. If Intent to Submit a Proposal forms are required, one form should be completed and returned for each proposal an institution anticipates submitting. Submitting this form does not commit an institution to any course of action, nor does failure to send this form prohibit an institution from submitting a proposal.

§ 3405.13 When and where to submit a proposal.

The program announcement will provide the deadline date for submitting a proposal, the number of copies of each proposal that must be submitted, and the address to which proposals must be submitted.

Subpart E—Proposal Review and Evaluation

§ 3405.14 Proposal review.

The proposal evaluation process includes both internal staff review and merit evaluation by peer review panels comprised of scientists, educators, business representatives, and Government officials. Peer review panels will be selected and structured to provide optimum expertise and objective judgment in the evaluation of proposals.

§ 3405.15 Evaluation criteria.

The maximum score a proposal can receive is 200 points. Unless otherwise stated in the annual solicitation published in the **Federal Register**, the peer review panel will consider the following criteria and weights to evaluate proposals submitted:

Evaluation Criterion	Weight
(a) *Potential for advancing the quality of education:*	
This criterion is used to assess the likelihood that the project will have a substantial impact upon and advance the quality of food and agricultural sciences higher education by strengthening institutional capacities through promoting education reform to meet clearly delineated needs.	
(1) Impact—Does the project address a targeted need area(s)? Is the problem or opportunity clearly documented? Does the project address a State, regional, national, or international problem or opportunity? Will the benefits to be derived from the project transcend the applicant institution and/or the grant period? Is it probable that other institutions will adapt this project for their own use? Can the project serve as a model for others?	20 points.
(2) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting?	10 points.
(3) Innovation—Are significant aspects of the project based on an innovative or a non-traditional approach toward solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences? If successful, is the project likely to lead to education reform?	20 points.
(4) Products and results—Are the expected products and results of the project clearly explained? Do they have the potential to strengthen food and agricultural sciences higher education? Are the products likely to be of high quality? Will the project contribute to a better understanding of or improvement in the quality, distribution, effectiveness, or racial, ethnic, or gender diversity of the Nation's food and agricultural scientific and professional expertise base?	20 points.
(b) *Overall approach and cooperative linkages:*	
This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project.	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the targeted need area(s) and the impact anticipated? Are the procedures managerially, educationally, and/or scientifically sound? Is the overall plan integrated with or does it expand upon other major efforts to improve the quality of food and agricultural sciences higher education? Does the timetable appear to be readily achievable?	20 points.
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous and/or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes?	10 points.
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications, presentations at professional conferences, and/or use by faculty development or research/teaching skills workshops	10 points.

Evaluation Criterion	Weight
(4) Partnerships and collaborative efforts—Will the project expand partnership ventures among disciplines at a university, between colleges and universities, or with the private sector? Will the project lead to long-term relationships or cooperative partnerships that are likely to enhance program quality or supplement resources available to food and agricultural sciences higher education?	20 points.
(c) *Institutional commitment and resources:* This criterion relates to the institution's commitment to the project and the adequacy of institutional resources available to carry out the project.	
(1) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans?	10 points.
(2) Institutional resources—Will the project have adequate support to carry out the proposed activities? Will the project have reasonable access to needed resources such as instructional instrumentation, facilities, computer services, library and other instruction support resources?	10 points.
(d) Key personnel: This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes?	20 points.
(e) *Budget and cost-effectiveness:* This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective.	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?	10 points.
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize educational value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a targeted need area, or promote coalition building for current or future ventures?	10 points.
(f) Overall quality of proposal: This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, and thoroughly explained, etc.)?	10 points.

Subpart F—Supplementary Information

§ 3405.16 Access to peer review information.

After final decisions have been announced, CSREES will, upon request, inform the project director of the reasons for its decision on a proposal. Verbatim copies of summary reviews, not including the identity of the peer reviewers, will be made available to respective project directors upon specific request.

§ 3405.17 Grant awards.

(a) *General.* Within the limit of funds available for such purpose, the authorized departmental officer shall make project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced targeted need areas under the evaluation criteria and procedures set forth in this part. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (7 CFR part 3019).

(b) *Organizational management information.* Specific management information relating to a proposing institution shall be submitted on a one-time basis prior to the award of a project grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of the forms used to fulfill this requirement will be sent to the proposing institution by the sponsoring agency as part of the pre-award process.

(c) *Notice of grant award.* The grant award document shall include at a minimum the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of project director(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort without requiring reapplication for funds.

(6) Total amount of Federal financial assistance approved during the project period.

(7) Legal authority(ies) under which the grant is awarded.

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of this particular project grant.

(d) *Obligation of the Federal Government.* Neither the approval of any application nor the award of any project grant shall legally commit or obligate CSREES or the United States to provide further support of a project or any portion thereof.

§ 3405.18 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, project director(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite

achievement of the project's approved goals. If the grantee or the project director(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Department for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes. In no event shall requests for such changes be approved that are outside the scope of the approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such transfers.

(c) *Changes in project period.* The project period may be extended by the authorized departmental officer without additional financial support for such additional period(s) as the authorized departmental officer determines may be necessary to complete or fulfill the purposes of an approved project. However, due to statutory restriction, no grant may be extended beyond five years from the original start date of the grant, or pre-award date, if applicable. Grant extensions shall be conditioned upon prior request by the grantee and approval in writing by the authorized departmental officer, unless prescribed otherwise in the terms and conditions of a grant.

(d) *Changes in approved budget.* Changes in an approved budget shall be requested by the grantee and approved in writing by the authorized departmental officer prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb an increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded; or

(3) Involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

§ 3405.19 Monitoring progress of funded projects.

(a) During the tenure of a grant, project directors must attend at least one national project directors meeting, if offered, in Washington, DC or any other announced location. The purpose of the meeting will be to discuss project and grant management opportunities for collaborative efforts, future directions for education reform, and opportunities to enhance dissemination of exemplary end products/results.

(b) An Annual Performance Report must be submitted to the USDA program contact person within 90 days after the completion of the first year of the project and annually thereafter during the life of the grant. Generally, the Annual Performance Reports should include a summary of the overall progress toward project objectives, current problems or unusual developments, the next year's activities, and any other information that is pertinent to the ongoing project or which may be specified in the terms and conditions of the award.

(c) A Final Performance Report must be submitted to the USDA program contact person within 90 days after the expiration date of the project. The expiration date is specified in the award documents and modifications thereto, if any. Generally, the Final Performance Report should be a summary of the completed project, including: A review of project objectives and accomplishments; a description of any products and outcomes resulting from the project; activities undertaken to disseminate products and outcomes; partnerships and collaborative ventures that resulted from the project; future initiatives that are planned as a result of the project; the impact of the project on the project director(s), the institution, and the food and agricultural sciences higher education system; and data on project personnel and beneficiaries. The Final Performance Report should be accompanied by samples or copies of any products or publications resulting from or developed by the project. The Final Performance Report must also contain any other information which may be specified in the terms and conditions of the award.

§ 3405.20 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this part. These include but are not limited to:

7 CFR Part 1, Subpart A—USDA implementation of Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017, as amended—Governmentwide Debarment and Suspension (Nonprocurement); Governmentwide Requirements for Drug-Free Workplace (Grants), implementing Executive Order 12549 on debarment and suspension and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).

7 CFR Part 3018—Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3051—USDA implementation of OMB Circular No. A–133 regarding audits of institutions of higher education and other nonprofit institutions.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3405.21 Confidential aspects of proposals and awards.

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent

required by law. A proposal may be withdrawn at any time prior to the final action thereon.

§ 3405.22 Evaluation of program.

Grantees should be aware that CSREES may, as a part of its own program evaluation activities, carry out in-depth evaluations of assisted activities. Thus, grantees should be prepared to cooperate with CSREES personnel, or persons retained by CSREES, evaluating the institutional context and the impact of any supported project. Grantees may be asked to provide general information on any students and faculty supported, in whole or in part, by a grant awarded under this program; information that may be requested includes, but is not limited to, standardized academic achievement test scores, grade point average, academic standing, career patterns, age, race/ethnicity, gender, citizenship, and disability.

Done at Washington, DC, this 10th day of July 1997.

B.H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

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Part III

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3406

1890 Institution Capacity Building Grants Program; Administrative Provisions; Final Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3406

RIN 0524–AA03

1890 Institution Capacity Building Grants Program; Administrative Provisions

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Final rule.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) adds a new part 3406 to Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the 1890 Institution Capacity Building Grants Program conducted under the authority of section 1417(b)(4) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(b)) and pursuant to annual appropriations made available specifically for an 1890 Institution Capacity Building Grants Program. This action establishes and codifies the administrative procedures to be followed annually in the solicitation of competitive proposals, the evaluation of such proposals, and the award of grants under this program.

EFFECTIVE DATE: August 21, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey L. Gilmore at 202–720–1973 (voice), 202–720–2030 (fax) or via electronic mail at jgilmore@reeusda.gov.

SUPPLEMENTARY INFORMATION: CSREES published a Notice of Proposed Rulemaking (NPRM) on the administrative provisions for the 1890 Institution Capacity Building Grants Program in the **Federal Register** on December 20, 1995 (60 FR 66014–66033).

Public Comments and Statutory Changes

In the NPRM, CSREES invited comments on the proposed regulations for consideration in the formulation of a final rule. One comment was received proposing that the Code of Federal Regulations be changed to include, as eligible institutions, two-year community colleges that offer agricultural education.

Institutional eligibility for grants is limited by statute and is outside the scope of this regulation to address. The 1890 Institution Capacity Building Grants Program operates under the authority of section 1417(b)(4) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA) (7 U.S.C. 3152(b)) and pursuant to annual appropriations made available specifically for an 1890 Institution Capacity Building Grants Program. *See, e.g.*, Pub. L. No. 104–180, 110 Stat. 1574. These statutes limit the institutions eligible to receive grants. Community colleges and other two-year institutions are not eligible for grants under this program. Section 1417(b) of NARETPA (7 U.S.C. 3152(b)) authorizes the Secretary of Agriculture to make competitive grants to land-grant and other "colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences." The terms "college" and "university" are defined in section 1404(4) of NARETPA (7 U.S.C. 3103(4)(C)) as educational institutions that provide "an educational program for which a bachelor's degree or any other higher degree is awarded." The annual appropriations acts provide funds specifically for 1890 capacity building grants. Institutions eligible to receive grants are the 16 historically black 1890 land-grant institutions and Tuskegee University.

Pursuant to section 805(a) of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) (Pub. L. 104–127, April 4, 1996), authority for this program was changed from section 1472(c) to section 1417(b)(4) of NARETPA. Section 3406.1 (a) of the proposed rule has been revised accordingly in this final rule. Section 805(b) of the FAIR Act amended section 1417(c) of NARETPA (7 U.S.C. 3152(c)) by adding a new paragraph (3), which authorizes the Secretary of Agriculture to make competitive grants under section 1417 to a research foundation maintained by an eligible college or university. The definition of "1890 institution" in § 3406.2 in the proposed rule has been revised to reflect this change. Section 3406.3 also was revised to include research foundations as eligible under this program.

Minor changes have been made to the provisions for grant extensions in § 3406.25(c). These changes reflect existing law and allow flexibility in defining terms for extensions in each agreement. Thus, CSREES does not think further comment is required.

The reference in § 3406.24(a) to 7 CFR part 3015 has been changed to reflect the currently applicable USDA assistance regulations at 7 CFR part 3019. References to "CSRS" forms have been changed to "CSREES" forms.

There are no other substantive differences between the NPRM and this final rule.

Background and Purpose

Historically, the Department has had a close relationship with the 1890 colleges and universities, including Tuskegee University. Through its role as administrator of the Second Morrill Act, Act of August 30, 1890, as amended (7 U.S.C. 321, *et seq.*) the Department has borne the responsibility for helping these institutions develop to their fullest potential in order to meet the needs of students and the needs of the Nation.

This document establishes part 3406 of title 7, subtitle B, chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the 1890 Institution Capacity Building Grants Program. Under the authority of section 1417(b)(4) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(b)(4)), and pursuant to annual appropriations made available specifically by Congress for an 1890 Institution Capacity Building Grants Program (*see, e.g.*, Pub. L. 104–180, 110 Stat. 1574), the Secretary conducts this institutional capacity building grants program.

This rule establishes and codifies the administrative procedures to be followed annually in the solicitation of grant proposals, the evaluation of such proposals, and the award of grants under this program. The 1890 Institution Capacity Building Grants Program is competitive in nature and is intended to stimulate the development of high quality teaching and research programs at these institutions to build their capacities as full partners in the mission of the Department to provide more, and better-trained, professionals for careers in the food and agricultural sciences.

Classification

Executive Order No. 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget. It has been determined that this rule is not a "significant regulatory action" rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere

with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866.

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. Chapter 35), the collection of information requirements contained in this final rule have been reviewed and approved by OMB and given the OMB Document Nos. 0524–0022, 0524–0024, 0524–0030, and 0524–0033. The public reporting burden for the information collections contained in these regulations (Forms CSREES–662, CSREES–663, CSREES–708, CSREES–710, CSREES–711, CSREES–712, CSREES–713, and CSREES–1234 as well as the Proposal Summary, Proposal Narrative, and Budget Narrative) is estimated to be 39½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, Office of the Chief Information Officer, Stop 7602, 1400 Independence Avenue, SW, Washington, DC 20250–7602, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503. This rule has no additional impact on any existing data collection burden.

Regulatory Flexibility Act

The Administrator, CSREES, certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required for this final rule.

Executive Order No. 12612

This rule involves no policies that have federalism implications under Executive Order No. 12612, Federalism, dated October 26, 1987.

Environmental Impact Statement

As outlined in 7 CFR part 3407 (CSREES's implementing regulations of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)), environmental data for the proposed projects are to be provided to CSREES in order for a determination to be made as to the need of any further action.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.216, 1890 Institution Capacity Building Grants Program. For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, subpart V, 57 FR 15278, April 27, 1992, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

List of Subjects in 7 CFR Part 3406

Grant programs—agriculture, Agriculture Higher Education Programs, 1890 Institution Capacity Building Grants Program.

For the reasons set forth in the preamble, title 7, subtitle B, chapter XXXIV, of the Code of Federal Regulations is amended by adding part 3406 to read as follows:

PART 3406—1890 INSTITUTION CAPACITY BUILDING GRANTS PROGRAM

Subpart A—General Information

Sec.

Subpart B—Program Description

Subpart C—Preparation of a Teaching Proposal

Subpart D—Review and Evaluation of a Teaching Proposal

Subpart E—Preparation of a Research Proposal

Subpart F—Review and Evaluation of a Research Proposal

Subpart G—Submission of a Teaching or Research Proposal

Subpart H—Supplementary Information

Authority: Sec. 1470, National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

Subpart A—General Information

§ 3406.1 Applicability of regulations.

(a) The regulations of this part apply only to capacity building grants awarded to the 1890 land-grant institutions and Tuskegee University under the provisions of section 1417(b)(4) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA) (7 U.S.C. 3152(b)(4)) and pursuant to annual appropriations made available specifically for an 1890 capacity building program. Section 1417(b)(4) authorizes the Secretary of Agriculture, who has delegated the authority to the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES), to make competitive grants to land-grant colleges and universities, to colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences, for a period not to exceed 5 years, to design and implement food and agricultural programs to build teaching and research capacity at colleges and universities having significant minority enrollments. Based on and subject to the express provisions of the annual appropriations act, only 1890 land-grant institutions and Tuskegee University are eligible for this grants program.

(b) To the extent that funds are available, each year CSREES will publish a **Federal Register** notice

announcing the program and soliciting grant applications.

(c)(1) Based on the amount of funds appropriated in any fiscal year, CSREES will determine and cite in the program announcement:

(i) The program area(s) to be supported (teaching, research, or both);

(ii) The proportion of the appropriation reserved for, or available to, teaching projects and research projects;

(iii) The targeted need area(s) in teaching and in research to be supported;

(iv) The degree level(s) to be supported;

(v) The maximum project period a proposal may request;

(vi) The maximum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal; and

(vii) The maximum total funds that may be awarded to an institution under the program in a given fiscal year, including how funds awarded for complementary and for joint projects will be counted toward the institutional maximum.

(2) The program announcement will also specify the deadline date for proposal submission, the number of copies of each proposal that must be submitted, the address to which a proposal must be submitted, and whether or not Form CSREES–711, "Intent to Submit a Proposal," is requested.

(d)(1) If it is deemed by CSREES that, for a given fiscal year, additional determinations are necessary, each, as relevant, will be stated in the program announcement. Such determinations may include:

(i) Limits on the subject matter/emphasis areas to be supported;

(ii) The maximum number of proposals that may be submitted on behalf of the same school, college, or equivalent administrative unit within an institution;

(iii) The maximum total number of proposals that may be submitted by an institution;

(iv) The maximum number of proposals that may be submitted by an individual in any one targeted need area;

(v) The minimum project period a proposal may request;

(vi) The minimum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal;

(vii) The proportion of the appropriation reserved for, or available to, regular, complementary, and joint project proposals;

(viii) The proportion of the appropriation reserved for, or available to, projects in each announced targeted need area;

(ix) The proportion of the appropriation reserved for, or available to, each subject matter/emphasis area;

(x) The maximum number of grants that may be awarded to an institution under the program in a given fiscal year, including how grants awarded for complementary and joint projects will be counted toward the institutional maximum; and

(xi) Limits on the use of grant funds for travel or to purchase equipment, if any.

(2) The program announcement also will contain any other limitations deemed necessary by CSREES for proper conduct of the program in the applicable year.

(e) The regulations of this part prescribe that this is a competitive program; it is possible that an institution may not receive any grant awards in a particular year.

(f) The regulations of this part do not apply to grants for other purposes awarded by the Department of Agriculture under section 1417 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152) or any other authority.

§ 3406.2 Definitions.

As used in this part:

Authorized departmental officer means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

Authorized organizational representative means the president of the 1890 Institution or the official, designated by the president of the institution, who has the authority to commit the resources of the institution.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Cash contributions means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

Citizen or national of the United States means:

(1) A citizen or native resident of a State; or,

(2) a person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

College or *University* means an educational institution in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which a baccalaureate degree or any other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

Complementary project proposal means a proposal for a project which involves coordination with one or more other projects for which funding was awarded under this program in a previous fiscal year, or for which funding is requested under this program in the current fiscal year.

Cost-sharing or *Matching* means that portion of project costs not borne by the Federal Government, including the value of in-kind contributions.

Department or *USDA* means the United States Department of Agriculture.

1890 Institution or *1890 land-grant institution* or *1890 colleges and universities* means one of those institutions eligible to receive funds under the Act of August 30, 1890 (26 Stat. 417–419, as amended; 7 U.S.C. 321–326 and 328), or a research foundation maintained by such institution, that are the intended recipients of funds under programs established in Subtitle G of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221 *et seq.*), including Tuskegee University.

Eligible participant means, for purposes of § 3406.11(b), Faculty Preparation and Enhancement for Teaching, and § 3406.11(f), Student Recruitment and Retention, an individual who:

(1) Is a citizen or national of the United States, as defined in this section; or

(2) Is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau. Where eligibility is claimed under paragraph (2) of the definition of "citizen or national of the United States" as specified in this section, documentary evidence from the Immigration and Naturalization Service as to such eligibility must be made available to CSREES upon request.

Food and agricultural sciences means basic, applied, and developmental research, extension, and teaching

activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences, in the broadest sense of these terms, including but not limited to, activities concerned with the production, processing, marketing, distribution, conservation, consumption, research, and development of food and agriculturally related products and services, and inclusive of programs in agriculture, natural resources, aquaculture, forestry, veterinary medicine, home economics, rural development, and closely allied disciplines.

Grantee means the 1890 Institution designated in the grant award document as the responsible legal entity to which a grant is awarded.

Joint project proposal means a proposal for a project, which will involve the applicant 1890 Institution and two or more other colleges, universities, community colleges, junior colleges, or other institutions, each of which will assume a major role in the conduct of the proposed project, and for which the applicant institution will transfer at least one-half of the awarded funds to the other institutions participating in the project. Only the applicant institution must meet the definition of "1890 Institution" as specified in this section; the other institutions participating in a joint project proposal are not required to meet the definition of "1890 Institution" as specified in this section, nor required to meet the definition of "college" or "university" as specified in this section.

Peer review panel means a group of experts or consultants, qualified by training and experience in particular fields of science, education, or technology to give expert advice on the merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

Principal investigator/project director means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

Prior approval means written approval evidencing prior consent by an "authorized departmental officer" as defined in this section.

Project means the particular teaching or research activity within the scope of one or more of the targeted areas supported by a grant awarded under this program.

Project period means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Research means any systematic inquiry directed toward new or fuller knowledge and understanding of the subject studied.

Research capacity means the quality and depth of an institution's research infrastructure as evidenced by its: faculty expertise in the natural or social sciences, scientific and technical resources, research environment, library resources, and organizational structures and reward systems for attracting and retaining first-rate research faculty or students at the graduate and post-doctorate levels.

Research project grant means a grant in support of a project that addresses one or more of the targeted need areas or specific subject matter/emphasis areas identified in the annual program announcement related to strengthening research programs including, but not limited to, such initiatives as: Studies and experimentation in food and agricultural sciences, centralized research support systems, technology delivery systems, and other creative projects designed to provide needed enhancement of the Nation's food and agricultural research system.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

State means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

Teaching means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and matters related thereto (such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies) conducted by colleges and universities offering baccalaureate or higher degrees.

Teaching capacity means the quality and depth of an institution's academic programs infrastructure as evidenced by its: Curriculum, teaching faculty, instructional delivery systems, student experiential learning opportunities, scientific instrumentation for teaching, library resources, academic standing and racial, ethnic, or gender diversity of its faculty and student body as well as faculty and student recruitment and retention programs provided by a college or university in order to achieve maximum results in the development of scientific and professional expertise for the Nation's food and agricultural system.

Teaching project grant means a grant in support of a project that addresses one or more of the targeted need areas or specific subject matter/emphasis areas identified in the annual program announcement related to strengthening teaching programs including, but not limited to, such initiatives as: Curricula design and materials development, faculty preparation and enhancement for teaching, instruction delivery systems, scientific instrumentation for teaching, student experiential learning, and student recruitment and retention.

Third party in-kind contributions means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefiting and specifically identifiable to a funded project or program.

USDA agency cooperator means any agency or office of the Department which has reviewed and endorsed an applicant's request for support, and indicates a willingness to make available non-monetary resources or technical assistance throughout the life of a project to ensure the accomplishment of the objectives of a grant awarded under this program.

§ 3406.3 Institutional eligibility.

Proposals may be submitted by any of the 16 historically black 1890 land-grant institutions and Tuskegee University. The 1890 land-grant institutions are: Alabama A&M University; University of Arkansas—Pine Bluff; Delaware State University; Florida A&M University; Fort Valley State College; Kentucky State University; Southern University and A&M College; University of Maryland—Eastern Shore; Alcorn State University; Lincoln University; North Carolina A&T State University; Langston University; South Carolina State University; Tennessee State University; Prairie View A&M University; and Virginia State University. An institution eligible to receive an award under this program includes a research foundation maintained by an 1890 land-grant institution or Tuskegee University.

Subpart B—Program Description

§ 3406.4 Purpose of the program.

(a) The Department of Agriculture and the Nation depend upon sound programs in the food and agricultural sciences at the Nation's colleges and universities to produce well trained professionals for careers in the food and agricultural sciences. The capacity of institutions to offer suitable programs in

the food and agricultural sciences to meet the Nation's need for a well trained work force in the food and agricultural sciences is a proper concern for the Department.

(b) Historically, the Department has had a close relationship with the 1890 colleges and universities, including Tuskegee University. Through its role as administrator of the Second Morrill Act, the Department has borne the responsibility for helping these institutions develop to their fullest potential in order to meet the needs of students and the needs of the Nation.

(c) The institutional capacity building grants program is intended to stimulate development of quality education and research programs at these institutions in order that they may better assist the Department, on behalf of the Nation, in its mission of providing a professional work force in the food and agricultural sciences.

(d) This program is designed specifically to build the institutional teaching and research capacities of the 1890 land-grant institutions through cooperative programs with Federal and non-Federal entities. The program is competitive among the 1890 Institutions and encourages matching funds on the part of the States, private organizations, and other non-Federal entities to encourage expanded linkages with 1890 Institutions as performers of research and education, and as developers of scientific and professional talent for the United States food and agricultural system. In addition, through this program, CSREES will strive to increase the overall pool of qualified job applicants from underrepresented groups in order to make significant progress toward achieving the objectives of work force diversity within the Federal Government, particularly the U.S. Department of Agriculture.

§ 3406.5 Matching support.

The Department strongly encourages and may require non-Federal matching support for this program. In the annual program solicitation, CSREES will announce any incentives that may be offered to applicants for committing their own institutional resources or securing third party contributions in support of capacity building projects. CSREES may also announce any required fixed dollar amount or percentage of institutional cost sharing, if applicable.

§ 3406.6 USDA agency cooperator requirement.

(a) Each application must provide documentation that at least one USDA agency or office has agreed to cooperate with the applicant institution on the proposed project. The documentation should describe the expected benefits of the partnership venture for the USDA agency and for the 1890 Institution, and describe the partnership effort between USDA and the 1890 Institution in regard to the proposed project. Such USDA agency cooperation may include, but is not limited to, assisting the applicant institution with proposal development, identifying possible sources of matching funds, securing resources, implementing funded projects, providing technical assistance and expertise throughout the life of the project, participating in project evaluation, and disseminating project results.

(b) The designated CSREES agency contact can provide suggestions to institutions seeking to secure a USDA agency cooperator on a particular proposal.

(c) USDA 1890 Liaison Officers, and other USDA employees serving on the campuses of the 1890 colleges and universities, may assist with proposal development and project execution to satisfy the cooperator requirement, in whole or in part, but may not serve as project directors or principal investigators.

(d) Any USDA office responsible for administering a competitive or formula grants program specifically targeted to 1890 Institutions may not be a cooperator for this program.

§ 3406.7 General scope of program.

This program supports both teaching project grants and research project grants. Such grants are intended to strengthen the teaching and research capabilities of applicant institutions. Each 1890 Institution may submit one or more grant applications for either category of grants (as allowed by the annual program notice). However, each application must be limited to either a teaching project grant proposal or a research project grant proposal.

§ 3406.8 Joint project proposals.

Applicants are encouraged to submit joint project proposals as defined in § 3406.2, which address regional or national problems and which will result overall in strengthening the 1890 university system. The goals of such joint initiatives should include maximizing the use of limited resources by generating a critical mass of expertise and activity focused on a targeted need area(s), increasing cost-effectiveness through achieving economies of scale, strengthening the scope and quality of a project's impact, and promoting coalition building likely to transcend the project's lifetime and lead to future ventures.

§ 3406.9 Complementary project proposals.

Institutions may submit proposals that are complementary in nature as defined in § 3406.2. Such complementary project proposals may be submitted by the same or by different eligible institutions.

§ 3406.10 Use of funds for facilities.

Under the 1890 Institution Capacity Building Grants Program, the use of grant funds to plan, acquire, or construct a building or facility is not allowed. With prior approval, in accordance with the cost principles set forth in OMB Circular No. A–21, some grant funds may be used for minor alterations, renovations, or repairs deemed necessary to retrofit existing teaching or research spaces in order to carry out a funded project. However, requests to use grant funds for such purposes must demonstrate that the alterations, renovations, or repairs are incidental to the major purpose for which a grant is made.

Subpart C—Preparation of a Teaching Proposal

§ 3406.11 Scope of a teaching proposal.

The teaching component of the program will support the targeted need area(s) related to strengthening teaching programs as specified in the annual program announcement. Proposals may focus on any subject matter area(s) in the food and agricultural sciences unless limited by determinations as specified in the annual program announcement. A proposal may address a single targeted need area or multiple targeted need areas, and may be focused on a single subject matter area or multiple subject matter areas, in any combination (e.g., curriculum development in horticulture; curriculum development, faculty enhancement, and student experiential learning in animal science; faculty enhancement in food science and agribusiness management; or instruction delivery systems and student experiential learning in plant science, horticulture, and entomology). Applicants are also encouraged to include a library enhancement component related to the teaching project in their proposals. A proposal may be directed toward the undergraduate or graduate level of study as specified in the annual program announcement. Targeted need areas for teaching programs will consist of one or more of the following:

(a) *Curricula design and materials development.* (1) The purpose of this need area is to promote new and improved curricula and materials to increase the quality of, and continuously renew, the Nation's academic programs in the food and agricultural sciences. The overall objective is to stimulate the development and facilitate the use of exemplary education models and materials that incorporate the most recent advances in subject matter, research on teaching and learning theory, and instructional technology. Proposals may emphasize: The development of courses of study, degree programs, and instructional materials; the use of new approaches to the study of traditional subjects; or the introduction of new subjects, or new applications of knowledge, pertaining to the food and agricultural sciences.

(2) Examples include, but are not limited to, curricula and materials that promote:

(i) Raising the level of scholastic achievement of the Nation's graduates in the food and agricultural sciences.

(ii) Addressing the special needs of particular groups of students, such as minorities, gifted and talented, or those with educational backgrounds that warrant enrichment.

(iii) Using alternative instructional strategies or methodologies, including computer-assisted instruction or simulation modeling, media programs that reach large audiences efficiently and effectively, activities that provide hands-on learning experiences, and educational programs that extend learning beyond the classroom.

(iv) Using sound pedagogy, particularly with regard to recent research on how to motivate students to learn, retain, apply, and transfer knowledge, skills, and competencies.

(v) Building student competencies to integrate and synthesize knowledge from several disciplines.

(b) *Faculty preparation and enhancement for teaching.* (1) The purpose of this need area is to advance faculty development in the areas of teaching competency, subject matter expertise, or student recruitment and advising skills. Teachers are central to education. They serve as models, motivators, and mentors—the catalysts of the learning process. Moreover, teachers are agents for developing, replicating, and exchanging effective teaching materials and methods. For these reasons, education can be strengthened only when teachers are adequately prepared, highly motivated, and appropriately recognized and rewarded.

(2) Each faculty recipient of support for developmental activities under § 3406.11(b) must be an "eligible participant" as defined in § 3406.2 of this part.

(3) Examples of developmental activities include, but are not limited to, those which enable teaching faculty to:

(i) Gain experience with recent developments or innovative technology relevant to their teaching responsibilities.

(ii) Work under the guidance and direction of experts who have substantial expertise in an area related to the developmental goals of the project.

(iii) Work with scientists or professionals in government, industry, or other colleges or universities to learn new applications in a field.

(iv) Obtain personal experience working with new ideas and techniques.

(v) Expand competence with new methods of information delivery, such as computer-assisted or televised instruction.

(c) *Instruction delivery systems.* (1) The purpose of this need area is to encourage the use of alternative methods of delivering instruction to enhance the quality, effectiveness, and cost efficiency of teaching programs. The importance of this initiative is evidenced by advances in educational research which have substantiated the theory that differences in the learning styles of students often require alternative instructional methodologies. Also, the rising costs of higher education strongly suggest that colleges and universities undertake more efforts of a collaborative nature in order to deliver instruction which maximizes program quality and reduces unnecessary duplication. At the same time, advancements in knowledge and technology continue to introduce new subject matter areas which warrant consideration and implementation of innovative instruction techniques, methodologies, and delivery systems.

(2) Examples include, but are not limited to:

(i) Use of computers.

(ii) Teleconferencing.

(iii) Networking via satellite communications.

(iv) Regionalization of academic programs.

(v) Mobile classrooms and laboratories.

(vi) Individualized learning centers.

(vii) Symposia, forums, regional or national workshops, etc.

(d) *Scientific Instrumentation for teaching.* (1) The purpose of this need area is to provide students in science-oriented courses the necessary experience with suitable, up-to-date equipment in order to involve them in work central to scientific understanding and progress. This program initiative will support the acquisition of instructional laboratory and classroom equipment to assure the achievement and maintenance of outstanding food and agricultural sciences higher education programs. A proposal may request support for acquiring new, state-of-the-art instructional scientific equipment, upgrading existing equipment, or replacing non-functional or clearly obsolete equipment.

(2) Examples include, but are not limited to:

(i) Rental or purchase of modern instruments to improve student learning experiences in courses, laboratories, and field work.

(ii) Development of new ways of using instrumentation to extend instructional capabilities.

(iii) Establishment of equipment-sharing capability via consortia or centers that develop innovative opportunities, such as mobile laboratories or satellite access to industry or government laboratories.

(e) *Student experiential learning.* (1) The purpose of this need area is to further the development of student scientific and professional competencies through experiential learning programs which provide students with opportunities to solve complex problems in the context of real-world situations. Effective experiential learning is essential in preparing future graduates to advance knowledge and technology, enhance quality of life, conserve resources, and revitalize the Nation's economic competitiveness. Such experiential learning opportunities are most effective when they serve to advance decision-making and communication skills as well as technological expertise.

(2) Examples include, but are not limited to, projects which:

(i) Provide opportunities for students to participate in research projects, either as a part of an ongoing research project or in a project designed especially for this program.

(ii) Provide opportunities for students to complete apprenticeships, internships, or similar participatory learning experiences.

(iii) Expand and enrich courses which are of a practicum nature.

(iv) Provide career mentoring experiences that link students with outstanding professionals.

(f) *Student recruitment and retention.* (1) The purpose of this need area is to strengthen student recruitment and retention programs in order to promote

the future strength of the Nation's scientific and professional work force. The Nation's economic competitiveness and quality of life rest upon the availability of a cadre of outstanding research scientists, university faculty, and other professionals in the food and agricultural sciences. A substantial need exists to supplement efforts to attract increased numbers of academically outstanding students to prepare for careers as food and agricultural scientists and professionals. It is particularly important to augment the racial, ethnic, and gender diversity of the student body in order to promote a robust exchange of ideas and a more effective use of the full breadth of the Nation's intellectual resources.

(2) Each student recipient of monetary support for education costs or developmental purposes under § 3406.11(f) must be enrolled at an eligible institution and meet the requirement of an "eligible participant" as defined in § 3406.2 of this part.

(3) Examples include, but are not limited to:

(i) Special outreach programs for elementary and secondary students as well as parents, counselors, and the general public to broaden awareness of the extensive nature and diversity of career opportunities for graduates in the food and agricultural sciences.

(ii) Special activities and materials to establish more effective linkages with high school science classes.

(iii) Unique or innovative student recruitment activities, materials, and personnel.

(iv) Special retention programs to assure student progression through and completion of an educational program.

(v) Development and dissemination of stimulating career information materials.

(vi) Use of regional or national media to promote food and agricultural sciences higher education.

(vii) Providing financial incentives to enable and encourage students to pursue and complete an undergraduate or graduate degree in an area of the food and agricultural sciences.

§ 3406.12 Program application materials—teaching.

Program application materials in an application package will be made available to eligible institutions upon request. These materials include the program announcement, the administrative provisions for the program, and the forms needed to prepare and submit teaching grant applications under the program.

§ 3406.13 Content of a teaching proposal.

(a) *Proposal cover page.* (1) Form CSREES–712, "Higher Education Proposal Cover Page," must be completed in its entirety. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(2) One copy of the Form CSREES–712 must contain the pen-and-ink signatures of the project director(s) and authorized organizational representative for the applicant institution.

(3) The title of the teaching project shown on the "Higher Education Proposal Cover Page" must be brief (80-character maximum) yet represent the major thrust of the project. This information will be used by the Department to provide information to the Congress and other interested parties.

(4) In block 7. of Form CSREES–712, enter "1890 Institution Capacity Building Grants Program."

(5) In block 8.a. of Form CSREES–712, enter "Teaching." In block 8.b. identify the code for the targeted need area(s) as found on the reverse of the form. If a proposal focuses on multiple targeted need areas, enter each code associated with the project. In block 8.c. identify the major area(s) of emphasis as found on the reverse of the form. If a proposal focuses on multiple areas of emphasis, enter each code associated with the project; however, limit the selection to three areas. This information will be used by program staff for the proper assignment of proposals to reviewers.

(6) In block 9. of Form CSREES–712, indicate if the proposal is a complementary project proposal or a joint project proposal as defined in § 3406.2 of this part. If it is not a complementary project proposal or a joint project proposal, identify it as a regular project proposal.

(7) In block 13. of Form CSREES–712, indicate if the proposal is a new, first-time submission or if the proposal is a resubmission of a proposal that has been submitted to, but not funded under, the 1890 Institution Capacity Building Grants Program in a previous competition.

(b) *Table of contents.* For ease in locating information, each proposal must contain a detailed table of contents just after the Proposal Cover Page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the summary documentation of USDA agency cooperation.

(c) *USDA agency cooperator.* To be considered for funding, each proposal must include documentation of cooperation with at least one USDA agency or office. If multiple agencies are involved as cooperators, documentation must be included from each agency. When documenting cooperative arrangements, the following guidelines should be used:

(1) A summary of the cooperative arrangements must immediately follow the Table of Contents. This summary should:

(i) Bear the signatures of the Agency Head (or his/her designated authorized representative) and the university project director;

(ii) Indicate the agency's willingness to commit support for the project;

(iii) Identify the person(s) at the USDA agency who will serve as the liaison or technical contact for the project;

(iv) Describe the degree and nature of the USDA agency's involvement in the proposed project, as outlined in § 3406.6(a) of this part, including its role in:

(A) Identifying the need for the project;

(B) Developing a conceptual approach;

(C) Assisting with project design;

(D) Identifying and securing needed agency or other resources (e.g., personnel, grants/contracts; in-kind support, etc.);

(E) Developing the project budget;

(F) Promoting partnerships with other institutions to carry out the project;

(G) Helping the institution launch and manage the project;

(H) Providing technical assistance and expertise;

(I) Providing consultation through site visits, E-mail, conference calls, and faxes;

(J) Participating in project evaluation and dissemination of final project results; and

(K) Seeking other innovative ways to ensure the success of the project and advance the needs of the institution or the agency; and

(v) Describe the expected benefits of the partnership venture for the USDA agency and for the 1890 Institution.

(2) A detailed discussion of these partnership arrangements should be provided in the narrative portion of the proposal, as outlined in paragraph (f)(2)(iv)(C) of this section.

(3) Additional documentation, including letters of support or cooperation, may be provided in the Appendix.

(d) *Project summary.* (1) A Project Summary should immediately follow the summary documentation of USDA agency cooperation section. The

information provided in the Project Summary will be used by the program staff for a variety of purposes, including the proper assignment of proposals to reviewers and providing information to reviewers prior to the peer panel meeting. The name of the institution, the targeted need area(s), and the title of the proposal must be identified exactly as shown on the "Higher Education Proposal Cover Page."

(2) If the proposal is a complementary project proposal, as defined in § 3406.2 of this part, indicate such and identify the other complementary project(s) by citing the name of the submitting institution, the title of the project, the project director, and the grant number (if funded in a previous year) exactly as shown on the cover page of the complementary project so that appropriate consideration can be given to the interrelatedness of the proposals in the evaluation process.

(3) If the proposal is a joint project proposal, as defined in § 3406.2 of this part, indicate such and identify the other participating institutions and the key faculty member or other individual responsible for coordinating the project at each institution.

(4) The Project Summary should be a concise description of the proposed activity suitable for publication by the Department to inform the general public about awards under the program. The text must not exceed one page, single-spaced. The Project Summary should be a self-contained description of the activity which would result if the proposal is funded by USDA. It should include: The objectives of the project; a synopsis of the plan of operation; a statement of how the project will enhance the teaching capacity of the institution; a description of how the project will strengthen higher education in the food and agricultural sciences in the United States; a description of the partnership efforts between, and the expected benefits for, the USDA agency cooperator(s) and the 1890 Institution; and the plans for disseminating project results. The Project Summary should be written so that a technically literate reader can evaluate the use of Federal funds in support of the project.

(e) *Resubmission of a proposal.*—(1) *Resubmission of previously unfunded proposals.* (i) If a proposal has been submitted previously, but was not funded, such should be indicated in block 13. on Form CSREES–712, "Higher Education Proposal Cover Page," and the following information should be included in the proposal:

(A) The fiscal year(s) in which the proposal was submitted previously;

(B) A summary of the peer reviewers' comments; and

(C) How these comments have been addressed in the current proposal, including the page numbers in the current proposal where the peer reviewers' comments have been addressed.

(ii) This information may be provided as a section of the proposal following the Project Summary and preceding the proposal narrative or it may be placed in the Appendix (see paragraph (j) of this section). In either case, the location of this information should be indicated in the Table of Contents, and the fact that the proposal is a resubmitted proposal should be stated in the proposal narrative. Further, when possible, the information should be presented in tabular format. Applicants who choose to resubmit proposals that were previously submitted, but not funded, should note that resubmitted proposals must compete equally with newly submitted proposals. Submitting a proposal that has been revised based on a previous peer review panel's critique of the proposal does not guarantee the success of the resubmitted proposal.

(2) *Resubmission of previously funded proposals.* Recognizing that capacity building is a long-term ongoing process, the 1890 Institution Capacity Building Grants Program is interested in funding subsequent phases of previously funded projects in order to build institutional capacity, and institutions are encouraged to build on a theme over several grant awards. However, proposals that are sequential continuations or new stages of previously funded Capacity Building Grants must compete with first-time proposals. Therefore, project directors should thoroughly demonstrate how the project proposed in the current application expands substantially upon a previously funded project (i.e., demonstrate how the new project will advance the former project to the next level of attainment or will achieve expanded goals). The proposal must also show the degree to which the new phase promotes innovativeness and creativity beyond the scope of the previously funded project. Please note that the 1890 Institution Capacity Building Grants Program is not designed to support activities that are essentially repetitive in nature over multiple grant awards. Project directors who have had their projects funded previously are discouraged from resubmitting relatively identical proposals for further funding.

(f) *Narrative of a teaching proposal.* The narrative portion of the proposal is limited to 20 pages in length. The one-page Project Summary is not included in the 20-page limitation. The narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. All pages following the summary documentation of USDA agency cooperation must be paginated. It should be noted that peer reviewers will not be required to read beyond 20 pages of the narrative to evaluate the proposal. The narrative should contain the following sections:

(1) *Potential for advancing the quality of education.*—(i) *Impact.*

(A) Identify the targeted need area(s).

(B) Clearly state the specific instructional problem or opportunity to be addressed.

(C) Describe how and by whom the focus and scope of the project were determined. Summarize the body of knowledge which substantiates the need for the proposed project.

(D) Describe ongoing or recently completed significant activities related to the proposed project for which previous funding was received under this program.

(E) Discuss how the project will be of value at the State, regional, national, or international level(s).

(F) Discuss how the benefits to be derived from the project will transcend the proposing institution or the grant period. Also discuss the probabilities of its adaptation by other institutions. For example, can the project serve as a model for others?

(ii) *Continuation plans.* Discuss the likelihood of, or plans for, continuation or expansion of the project beyond USDA support. For example, does the institution's long-range budget or academic plan provide for the realistic continuation or expansion of the initiative undertaken by this project after the end of the grant period, are plans for eventual self-support built into the project, are plans being made to institutionalize the program if it meets with success, and are there indications of other continuing non-Federal support?

(iii) *Innovation.* Describe the degree to which the proposal reflects an innovative or non-traditional approach to solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences.

(iv) *Products and results.* Explain the kinds of results and products expected and their impact on strengthening food and agricultural sciences higher education in the United States, including attracting academically outstanding students and increasing the

ethnic, racial, and gender diversity of the Nation's food and agricultural scientific and professional expertise base.

(2) *Overall approach and cooperative linkages*—(i) *Proposed approach*—(A) *Objectives.* Cite and discuss the specific objectives to be accomplished under the project.

(B) *Plan of operation.* (*1*) Describe procedures for accomplishing the objectives of the project.

(*2*) Describe plans for management of the project to enhance its proper and efficient administration.

(*3*) Describe the way in which resources and personnel will be used to conduct the project.

(C) *Timetable.* Provide a timetable for conducting the project. Identify all important project milestones and dates as they relate to project start-up, execution, dissemination, evaluation, and close-out.

(ii) *Evaluation plans.* (A) Provide a plan for evaluating the accomplishment of stated objectives during the conduct of the project. Indicate the criteria, and corresponding weight of each, to be used in the evaluation process, describe any data to be collected and analyzed, and explain the methodology that will be used to determine the extent to which the needs underlying the project are met.

(B) Provide a plan for evaluating the effectiveness of the end results upon conclusion of the project. Include the same kinds of information requested in paragraph (f) (2)(ii)(A) of this section.

(iii) *Dissemination plans.* Discuss plans to disseminate project results and products. Identify target audiences and explain methods of communication.

(iv) *Partnerships and collaborative efforts.* (A) Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural sciences higher education.

(B) Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been discussed and realistically can be expected to come to fruition, or actually have been finalized contingent on an award under this program. Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the plan of operation, but the actual letters should be included in the Appendix section of the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail. Proposals which indicate joint projects with other institutions must state which proposer is to receive any resulting grant award, since only one submitting institution can be the recipient of a project grant under one proposal.

(C) Explain how the project will create a new or enhance an existing partnership between the USDA agency cooperator(s) and the 1890 Institution(s). This section should expand upon the summary information provided in the documentation of USDA agency cooperation section, as outlined in paragraph (c)(1) of this section. This is particularly important because the focal point of attention in the peer review process is the proposal narrative. Therefore, a comprehensive discussion of the partnership effort between USDA and the 1890 Institution should be provided.

(3) *Institutional capacity building*—(i) *Institutional enhancement.* Explain how the proposed project will strengthen the teaching capacity, as defined in § 3406.2 of this part, of the applicant institution and, if applicable, any other institutions assuming a major role in the conduct of the project. For example, describe how the proposed project is intended to strengthen the institution's academic infrastructure by expanding the current faculty's expertise base, advancing the scholarly quality of the institution's academic programs, enriching the racial, ethnic, or gender diversity of the student body, helping the institution establish itself as a center of excellence in a particular field of education, helping the institution maintain or acquire state-of-the-art scientific instrumentation or library collections for teaching, or enabling the institution to provide more meaningful student experiential learning opportunities.

(ii) *Institutional commitment.* (A) Discuss the institution's commitment to the project and its successful completion. Provide, as relevant, appropriate documentation in the Appendix. Substantiate that the institution attributes a high priority to the project.

(B) Discuss how the project will contribute to the achievement of the institution's long-term (five- to ten-year) goals and how the project will help satisfy the institution's high-priority objectives. Show how this project is linked to and supported by the institution's strategic plan.

(C) Discuss the commitment of institutional resources to the project. Show that the institutional resources to be made available to the project will be adequate, when combined with the support requested from USDA, to carry out the activities of the project and represent a sound commitment by the institution. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(g) *Key personnel.* A Form CSREES–708, "Summary Vita—Teaching Proposal," should be included for each key person associated with the project.

(h) *Budget and cost-effectiveness.*—(1) *Budget form.* (i) Prepare Form CSREES–713, "Higher Education Budget," in accordance with instructions provided with the form. Proposals may request support for a period to be identified in each year's program announcement. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. Form CSREES–713 may be reproduced as needed by proposers. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, the administrative provisions in this part, and can be justified as necessary for the successful conduct of the proposed project.

(ii) The approved negotiated instruction rate or the maximum rate allowed by law should be used when computing indirect costs. If a reduced rate of indirect costs is voluntarily requested from USDA, the remaining allowable indirect costs may be used as matching funds.

(2) *Matching funds.* When documenting matching contributions, use the following guidelines:

(i) When preparing the column entitled "Applicant Contributions To Matching Funds" of Form CSREES–713, only those costs to be contributed by the applicant for the purposes of matching should be shown. The total amount of this column should be indicated in item M.

(ii) In item N of Form CSREES–713, show a total dollar amount for Cash Contributions from both the applicant and any third parties; also show a total dollar amount (based on current fair market value) for Non-cash Contributions from both the applicant and any third parties.

(iii) To qualify for any incentive benefits stemming from matching support or to satisfy any cost sharing requirements, proposals must include written verification of any actual commitments of matching support (including both cash and non-cash contributions) from third parties. Written verification means—

(A) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representative(s) of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) The dollar amount of the cash donation; and

(5) A statement that the donor will pay the cash contribution during the grant period; and

(B) For any third party non-cash contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representative(s) of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) A good faith estimate of the current fair market value of the non-cash contribution; and

(*5*) A statement that the donor will make the contribution during the grant period.

(iv) All pledge agreements must be placed in the proposal immediately following Form CSREES–713. The sources and amounts of all matching support from outside the applicant institution should be summarized in the Budget Narrative section of the proposal.

(v) Applicants should refer to OMB Circulars A–110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-profit Organizations," and A–21, "Cost Principles for Educational Institutions," for further guidance and other requirements relating to matching and allowable costs.

(3) *Chart on shared budget for joint project proposal.* (i) For a joint project proposal, a plan must be provided indicating how funds will be distributed to the participating institutions. The budget section of a joint project proposal should include a chart indicating:

(A) The names of the participating institutions;

(B) the amount of funds to be disbursed to those institutions; and

(C) the way in which such funds will be used in accordance with items A through L of Form CSREES–713, "Higher Education Budget."

(ii) If a proposal is not for a joint project, such a chart is not required.

(4) *Budget narrative.* (i) Discuss how the budget specifically supports the proposed project activities. Explain how each budget item (such as salaries and wages for professional and technical staff, student stipends/scholarships, travel, equipment, etc.) is essential to achieving project objectives.

(ii) Justify that the total budget, including funds requested from USDA and any matching support provided, will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(iii) Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes educational value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a targeted need area or promote coalition building that could lead to future ventures.

(iv) Include the percentage of time key personnel will work on the project, both during the academic year and summer. When salaries of university project personnel will be paid by a combination of USDA and institutional funds, the total compensation must not exceed the faculty member's regular annual compensation. In addition, the total commitment of time devoted to the project, when combined with time for teaching and research duties, other sponsored agreements, and other employment obligations to the institution, must not exceed 100 percent of the normal workload for which the employee is compensated, in accordance with established university policies and applicable Federal cost principles.

(v) If the proposal addresses more than one targeted need area (e.g., student experiential learning and instruction delivery systems), estimate the proportion of the funds requested from USDA that will support each respective targeted need area.

(i) *Current and pending support.* Each applicant must complete Form CSREES–663, "Current and Pending Support," identifying any other current public- or private-sponsored projects, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This information should also be provided for any pending proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice the review or evaluation of a project under this program.

(j) *Appendix.* Each project narrative is expected to be complete in itself and to meet the 20-page limitation. Inclusion of material in an Appendix should not be used to circumvent the 20-page limitation of the proposal narrative. However, in those instances where inclusion of supplemental information is necessary to guarantee the peer review panel's complete understanding of a proposal or to illustrate the integrity of the design or a main thesis of the proposal, such information may be included in an Appendix. Examples of supplemental material are photographs, journal reprints, brochures and other pertinent materials which are deemed to be illustrative of major points in the narrative but unsuitable for inclusion in the proposal narrative itself. Information on previously submitted proposals may also be presented in the Appendix (refer to paragraph(e) of this section). When possible, information in the Appendix should be presented in tabular format. A complete set of the Appendix material must be attached to each copy of the grant application submitted. The Appendix must be identified with the title of the project as it appears on Form CSREES–712 of the proposal and the name(s) of the project director(s). The Appendix must be referenced in the proposal narrative.

Subpart D—Review and Evaluation of a Teaching Proposal

§ 3406.14 Proposal review—teaching.

The proposal evaluation process includes both internal staff review and merit evaluation by peer review panels comprised of scientists, educators, business representatives, and Government officials who are highly qualified to render expert advice in the areas supported. Peer review panels will

be selected and structured to provide optimum expertise and objective judgment in the evaluation of proposals.

§ 3406.15 Evaluation criteria for teaching proposals.

The maximum score a teaching proposal can receive is 150 points. Unless otherwise stated in the annual solicitation published in the **Federal Register**, the peer review panel will consider the following criteria and weights to evaluate proposals submitted:

Evaluation criterion	Weight
(a) Potential for advancing the quality of education: This criterion is used to assess the likelihood that the project will have a substantial impact upon and advance the quality of food and agricultural sciences higher education by strengthening institutional capacities through promoting education reform to meet clearly delineated needs.	
(1) Impact—Does the project address a targeted need area(s)? Is the problem or opportunity clearly documented? Does the project address a State, regional, national, or international problem or opportunity? Will the benefits to be derived from the project transcend the applicant institution or the grant period? Is it probable that other institutions will adapt this project for their own use? Can the project serve as a model for others?	15 points.
(2) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support with the use of institutional funds? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting?	10 points.
(3) Innovation—Are significant aspects of the project based on an innovative or a non-traditional approach toward solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences? If successful, is the project likely to lead to education reform?	10 points.
(4) Products and results—Are the expected products and results of the project clearly defined and likely to be of high quality? Will project results be of an unusual or unique nature? Will the project contribute to a better understanding of or an improvement in the quality, distribution, or effectiveness of the Nation's food and agricultural scientific and professional expertise base, such as increasing the participation of women and minorities?	15 points.
(b) Overall approach and cooperative linkages: This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project.	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the targeted need area(s) and the impact anticipated? Are the procedures managerially, educationally, and scientifically sound? Is the overall plan integrated with or does it expand upon other major efforts to improve the quality of food and agricultural sciences higher education? Does the timetable appear to be readily achievable?	15 points.
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes?	5 points.
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications, presentations at professional conferences, or use by faculty development or research/teaching skills workshops?	5 points.
(4) Partnerships and collaborative efforts—Does the project have significant potential for advancing cooperative ventures between the applicant institution and a USDA agency? Does the project workplan include an effective role for the cooperating USDA agency(s)? Will the project expand partnership ventures among disciplines at a university, between colleges and universities, or with the private sector? Will the project lead to long-term relationships or cooperative partnerships that are likely to enhance program quality or supplement resources available to food and agricultural sciences higher education?	15 points.
(c) Institutional capacity building: This criterion relates to the degree to which the project will strengthen the teaching capacity of the applicant institution. In the case of a joint project proposal, it relates to the degree to which the project will strengthen the teaching capacity of the applicant institution and that of any other institution assuming a major role in the conduct of the project.	
(1) Institutional enhancement—Will the project help the institution to: Expand the current faculty's expertise base; attract, hire, and retain outstanding teaching faculty; advance and strengthen the scholarly quality of the institution's academic programs; enrich the racial, ethnic, or gender diversity of the faculty and student body; recruit students with higher grade point averages, higher standardized test scores, and those who are more committed to graduation; become a center of excellence in a particular field of education and bring it greater academic recognition; attract outside resources for academic programs; maintain or acquire state-of-the-art scientific instrumentation or library collections for teaching; or provide more meaningful student experiential learning opportunities?	15 points.
(2) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans? Will the project have reasonable access to needed resources such as instructional instrumentation, facilities, computer services, library and other instruction support resources?	15 points.
(d) Personnel Resources: This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes?	10 points.
(e) Budget and cost-effectiveness: This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective.	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?	10 points.
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize educational value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a targeted need area, or promote coalition building for current or future ventures?	5 points.

Evaluation criterion	Weight
(f) Overall quality of proposal: This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, and thoroughly explained, etc.)?	5 points.

Subpart E—Preparation of a Research Proposal

§ 3406.16 Scope of a research proposal.

The research component of the program will support projects that address high-priority research initiatives in areas such as those illustrated in this section where there is a present or anticipated need for increased knowledge or capabilities or in which it is feasible for applicants to develop programs recognized for their excellence. Applicants are also encouraged to include in their proposals a library enhancement component related to the initiative(s) for which they have prepared their proposals.

(a) *Studies and experimentation in food and agricultural sciences.* (1) The purpose of this initiative is to advance the body of knowledge in those basic and applied natural and social sciences that comprise the food and agricultural sciences.

(2) Examples include, but are not limited to:

(i) Conduct plant or animal breeding programs to develop better crops, forests, or livestock (e.g., more disease resistant, more productive, yielding higher quality products).

(ii) Conceive, design, and evaluate new bioprocessing techniques for eliminating undesirable constituents from or adding desirable ones to food products.

(iii) Propose and evaluate ways to enhance utilization of the capabilities and resources of food and agricultural institutions to promote rural development (e.g., exploitation of new technologies by small rural businesses).

(iv) Identify control factors influencing consumer demand for agricultural products.

(v) Analyze social, economic, and physiological aspects of nutrition, housing, and life-style choices, and of community strategies for meeting the changing needs of different population groups.

(vi) Other high-priority areas such as human nutrition, sustainable agriculture, biotechnology, agribusiness management and marketing, and aquaculture.

(b) *Centralized research support systems.* (1) The purpose of this initiative is to establish centralized support systems to meet national needs or serve regions or clientele that cannot otherwise afford or have ready access to the support in question, or to provide such support more economically thereby freeing up resources for other research uses.

(2) Examples include, but are not limited to:

(i) Storage, maintenance, characterization, evaluation and enhancement of germplasm for use by animal and plant breeders, including those using the techniques of biotechnology.

(ii) Computerized data banks of important scientific information (e.g., epidemiological, demographic, nutrition, weather, economic, crop yields, etc.).

(iii) Expert service centers for sophisticated and highly specialized methodologies (e.g., evaluation of organoleptic and nutritional quality of foods, toxicology, taxonomic identifications, consumer preferences, demographics, etc.).

(c) *Technology delivery systems.* (1) The purpose of this initiative is to promote innovations and improvements in the delivery of benefits of food and agricultural sciences to producers and consumers, particularly those who are currently disproportionately low in receipt of such benefits.

(2) Examples include, but are not limited to:

(i) Computer-based decision support systems to assist small-scale farmers to take advantage of relevant technologies, programs, policies, etc.

(ii) Efficacious delivery systems for nutrition information or for resource management assistance for low-income families and individuals.

(d) *Other creative proposals.* The purpose of this initiative is to encourage other creative proposals, outside the areas previously outlined, that are designed to provide needed enhancement of the Nation's food and agricultural research system.

§ 3406.17 Program application materials—research.

Program application materials in an application package will be made available to eligible institutions upon request. These materials include the program announcement, the administrative provisions for the program, and the forms needed to prepare and submit research grant applications under the program.

§ 3406.18 Content of a research proposal.

(a) *Proposal cover page.* (1) Form CSREES–712, "Higher Education Proposal Cover Page," must be completed in its entirety. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(2) One copy of Form CSREES–712 must contain the pen-and-ink signatures of the principal investigator(s) and Authorized Organizational Representative for the applicant institution.

(3) The title of the research project shown on the "Higher Education Proposal Cover Page" must be brief (80-character maximum) yet represent the major thrust of the project. This information will be used by the Department to provide information to the Congress and other interested parties.

(4) In block 7. of Form CSREES–712, enter "Capacity Building Grants Program."

(5) In block 8.a. of Form CSREES–712, enter "Research." In block 8.b. identify the code of the targeted need area(s) as found on the reverse of the form. If a proposal focuses on multiple targeted need areas, enter each code associated with the project. In block 8.c. identify the major area(s) of emphasis as found on the reverse of the form. If a proposal focuses on multiple areas of emphasis, enter each code associated with the project; however, please limit your selection to three areas. This information will be used by the program staff for the proper assignment of proposals to reviewers.

(6) In block 9. of Form CSREES–712, indicate if the proposal is a complementary project proposal or joint project proposal as defined in § 3406.2 of this part. If it is not a complementary project proposal or a joint project proposal, identify it as a regular proposal.

(7) In block 13. of Form CSREES–712, indicate if the proposal is a new, first-time submission or if the proposal is a resubmission of a proposal that has been

submitted to, but not funded under the 1890 Institution Capacity Building Grants Program in a previous competition.

(b) *Table of contents.* For ease of locating information, each proposal must contain a detailed table of contents just after the Proposal Cover Page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the summary documentation of USDA agency cooperation.

(c) *USDA agency cooperator.* To be considered for funding, each proposal must include documentation of cooperation with at least one USDA agency or office. If multiple agencies are involved as cooperators, documentation must be included from each agency. When documenting cooperative arrangements, the following guidelines should be used:

(1) A summary of the cooperative arrangements must immediately follow the Table of Contents. This summary should:

(i) Bear the signatures of the Agency Head (or his/her designated authorized representative) and the university project director;

(ii) Indicate the agency's willingness to commit support for the project;

(iii) Identify the person(s) at the USDA agency who will serve as the liaison or technical contact for the project;

(iv) Describe the degree and nature of the USDA agency's involvement in the proposed project, as outlined in § 3406.6(a) of this part, including its role in:

(A) Identifying the need for the project;

(B) Developing a conceptual approach;

(C) Assisting with project design;

(D) Identifying and securing needed agency or other resources (e.g., personnel, grants/contracts; in-kind support, etc.);

(E) Developing the project budget;

(F) Promoting partnerships with other institutions to carry out the project;

(G) Helping the institution launch and manage the project;

(H) Providing technical assistance and expertise;

(I) Providing consultation through site visits, E-mail, conference calls, and faxes;

(J) Participating in project evaluation and dissemination of final project results; and

(K) Seeking other innovative ways to ensure the success of the project and advance the needs of the institution or the agency; and

(v) Describe the expected benefits of the partnership venture for the USDA agency and for the 1890 Institution.

(2) A detailed discussion of these partnership arrangements should be provided in the narrative portion of the proposal, as outlined in paragraph (f)(2)(iv)(C) of this section.

(3) Additional documentation, including letters of support or cooperation, may be provided in the Appendix.

(d) *Project summary.* (1) A Project Summary should immediately follow the summary documentation of USDA agency cooperation. The information provided in the Project Summary will be used by the program staff for a variety of purposes, including the proper assignment of proposals to peer reviewers and providing information to peer reviewers prior to the peer panel meeting. The name of the institution, the targeted need area(s), and the title of the proposal must be identified exactly as shown on the "Higher Education Proposal Cover Page."

(2) If the proposal is a complementary project proposal, as defined in § 3406.2 of this part, clearly state this fact and identify the other complementary project(s) by citing the name of the submitting institution, the title of the project, the principal investigator, and the grant number (if funded in a previous year) exactly as shown on the cover page of the complementary project so that appropriate consideration can be given to the interrelatedness of the proposals in the evaluation process.

(3) If the proposal is a joint project proposal, as defined in § 3406.2 of this part, indicate such and identify the other participating institutions and the key person responsible for coordinating the project at each institution.

(4) The Project Summary should be a concise description of the proposed activity suitable for publication by the Department to inform the general public about awards under the program. The text should not exceed one page, single-spaced. The Project Summary should be a self-contained description of the activity which would result if the proposal is funded by USDA. It should include: The objective of the project, a synopsis of the plan of operation, a statement of how the project will enhance the research capacity of the institution, a description of how the project will enhance research in the food and agricultural sciences, and a description of the partnership efforts between, and the expected benefits for, the USDA agency cooperator(s) and the 1890 Institution and the plans for disseminating project results. The Project Summary should be written so that a technically literate reader can evaluate the use of Federal funds in support of the project.

(e) *Resubmission of a proposal.*—(1) *Resubmission of previously unfunded proposals.* (i) If the proposal has been submitted previously, but was not funded, such should be indicated in block 13. on Form CSREES–712, "Higher Education Proposal Cover Page," and the following information should be included in the proposal:

(A) The fiscal year(s) in which the proposal was submitted previously;

(B) A summary of the peer reviewers' comments; and

(C) How these comments have been addressed in the current proposal, including the page numbers in the current proposal where the peer reviewers' comments have been addressed.

(ii) This information may be provided as a section of the proposal following the Project Summary and preceding the proposal narrative or it may be placed in the Appendix (see paragraph (j) of this section). In either case, the location of this information should be indicated in the Table of Contents, and the fact that the proposal is a resubmitted proposal should be stated in the proposal narrative. Further, when possible, the information should be presented in a tabular format. Applicants who choose to resubmit proposals that were previously submitted, but not funded, should note that resubmitted proposals must compete equally with newly submitted proposals. Submitting a proposal that has been revised based on a previous peer review panel's critique of the proposal does not guarantee the success of the resubmitted proposal.

(2) *Resubmission of previously funded proposals.* Recognizing that capacity building is a long-term ongoing process, the 1890 Institution Capacity Building Grants Program is interested in funding subsequent phases of previously funded projects in order to build institutional capacity, and institutions are encouraged to build on a theme over several grant awards. However, proposals that are sequential continuations or new stages of previously funded Capacity Building Grants must compete with first-time proposals. Therefore, principal investigators should thoroughly demonstrate how the project proposed in the current application expands substantially upon a previously funded project (i.e., demonstrate how the new project will advance the former project to the next level of attainment or will achieve expanded goals). The proposal must also show the degree to which the

new phase promotes innovativeness and creativity beyond the scope of the previously funded project. Please note that the 1890 Institution Capacity Building Grants Program is not designed to support activities that are essentially repetitive in nature over multiple grant awards. Principal investigators who have had their projects funded previously are discouraged from resubmitting relatively identical proposals for future funding.

(f) *Narrative of a research proposal.* The narrative portion of the proposal is limited to 20 pages in length. The one-page Project Summary is not included in the 20-page limitation. The narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. All pages following the summary documentation of USDA agency cooperation must be paginated. It should be noted that peer reviewers will not be required to read beyond 20 pages of the narrative to evaluate the proposal. The narrative should contain the following sections:

(1) *Significance of the problem.*—(i) *Impact.* (A) *Identification of the problem or opportunity.* Clearly identify the specific problem or opportunity to be addressed and present any research questions or hypotheses to be examined.

(B) *Rationale.* Provide a rationale for the proposed approach to the problem or opportunity and indicate the part that the proposed project will play in advancing food and agricultural research and knowledge. Discuss how the project will be of value and importance at the State, regional, national, or international level(s). Also discuss how the benefits to be derived from the project will transcend the proposing institution or the grant period.

(C) *Literature review.* Include a comprehensive summary of the pertinent scientific literature. Citations may be footnoted to a bibliography in the Appendix. Citations should be accurate, complete, and adhere to an acceptable journal format. Explain how such knowledge (or previous findings) is related to the proposed project.

(D) *Current research and related activities.* Describe the relevancy of the proposed project to current research or significant research support activities at the proposing institution and any other institution participating in the project, including research which may be as yet unpublished.

(ii) *Continuation plans.* Discuss the likelihood or plans for continuation or expansion of the project beyond USDA support. Discuss, as applicable, how the institution's long-range budget, and administrative and academic plans, provide for the realistic continuation or expansion of the line of research or research support activity undertaken by this project after the end of the grant period. For example, are there plans for securing non-Federal support for the project? Is there any potential for income from patents, technology transfer or university-business enterprises resulting from the project? Also discuss the probabilities of the proposed activity or line of inquiry being pursued by researchers at other institutions.

(iii) *Innovation.* Describe the degree to which the proposal reflects an innovative or non-traditional approach to a food and agricultural research initiative.

(iv) *Products and results.* Explain the kinds of products and results expected and their impact on strengthening food and agricultural sciences higher education in the United States, including attracting academically outstanding students or increasing the ethnic, racial, and gender diversity of the Nation's food and agricultural scientific and professional expertise base.

(2) *Overall approach and cooperative linkages.*—(i) *Approach.*—(A) *Objectives.* Cite and discuss the specific objectives to be accomplished under the project.

(B) *Plan of operation.* The procedures or methodologies to be applied to the proposed project should be explicitly stated. This section should include, but not necessarily be limited to a description of:

(*1*) The proposed investigations, experiments, or research support enhancements in the sequence in which they will be carried out.

(*2*) Procedures and techniques to be employed, including their feasibility.

(*3*) Means by which data will be collected and analyzed.

(*4*) Pitfalls that might be encountered.

(*5*) Limitations to proposed procedures.

(C) *Timetable.* Provide a timetable for execution of the project. Identify all important research milestones and dates as they relate to project start-up, execution, dissemination, evaluation, and close-out.

(ii) *Evaluation plans.* (A) Provide a plan for evaluating the accomplishment of stated objectives during the conduct of the project. Indicate the criteria, and corresponding weight of each, to be used in the evaluation process, describe any performance data to be collected and analyzed, and explain the methodologies that will be used to determine the extent to which the needs underlying the project are being met.

(B) Provide a plan for evaluating the effectiveness of the end results upon conclusion of the project. Include the same kinds of information requested in paragraph (f)(2)(ii)(A) of this section.

(iii) Dissemination plans. Provide plans for disseminating project results and products including the possibilities for publications. Identify target audiences and explain methods of communication.

(iv) *Partnerships and collaborative efforts.* (A) Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural sciences higher education.

(B) Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been discussed and realistically can be expected to come to fruition, or actually have been finalized contingent on an award under this program. Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the plan of operation, but the actual letters should be included in the Appendix section of the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail. Proposals which indicate joint projects with other institutions must state which proposer is to receive any resulting grant award, since only one submitting institution can be the recipient of a project grant under one proposal.

(C) Explain how the project will create a new or enhance an existing partnership between the USDA agency cooperator(s) and the 1890 Institution(s). This section should expand upon the summary information provided in the documentation of USDA agency cooperation section, as outlined in paragraph (c)(1) of this section. This is particularly important because the focal point of attention in the peer review process is the proposal narrative. Therefore, a comprehensive discussion of the partnership effort between USDA and the 1890 Institution should be provided.

(3) *Institutional capacity building.*—(i) *Institutional enhancement.* Explain how the proposed project will strengthen the research capacity, as defined in § 3406.2 of this part, of the applicant institution and, if applicable, any other institutions assuming a major role in the conduct of the project. For example, describe how the proposed project is intended to strengthen the institution's research infrastructure by advancing the expertise of the current faculty in the natural or social sciences; providing a better research environment, state-of-the-art equipment, or supplies; enhancing library collections; or enabling the institution to provide efficacious organizational structures and reward systems to attract and retain first-rate research faculty and students—particularly those from underrepresented groups.

(ii) *Institutional commitment.* (A) Discuss the institution's commitment to the project and its successful completion. Provide, as relevant, appropriate documentation in the Appendix. Substantiate that the institution attributes a high priority to the project.

(B) Discuss how the project will contribute to the achievement of the institution's long-term (five- to ten-year) goals and how the project will help satisfy the institution's high-priority objectives. Show how this project is linked to and supported by the institution's strategic plan.

(C) Discuss the commitment of institutional resources to the project. Show that the institutional resources to be made available to the project will be adequate, when combined with the support requested from USDA, to carry out the activities of the project and represent a sound commitment by the institution. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(g) *Key personnel.* A Form CSREES–710, "Summary Vita—Research Proposal," should be included for each key person associated with the project.

(h) *Budget and cost-effectiveness.*—(1) *Budget form.* (i) Prepare Form CSREES–713, "Higher Education Budget," in accordance with instructions provided with the form. Proposals may request support for a period to be identified in each year's program announcement. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. Form CSREES–713 may be reproduced as needed by proposers. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, the administrative provisions in this part, and can be justified as necessary for the successful conduct of the proposed project.

(ii) The approved negotiated research rate or the maximum rate allowed by law should be used when computing indirect costs. If a reduced rate of indirect costs is voluntarily requested from USDA, the remaining allowable indirect costs may be used as matching funds. In the event that a proposal reflects an incorrect indirect cost rate and is recommended for funding, the correct rate will be applied to the approved budget in the grant award.

(2) *Matching funds.* When documenting matching contributions, use the following guidelines:

(i) When preparing the column entitled "Applicant Contributions To Matching Funds" of Form CSREES–713, only those costs to be contributed by the applicant for the purposes of matching should be shown. The total amount of this column should be indicated in item M.

(ii) In item N of Form CSREES–713, show a total dollar amount for Cash Contributions from both the applicant and any third parties; also show a total dollar amount (based on current fair market value) for Non-cash Contributions from both the applicant and any third parties.

(iii) To qualify for any incentive benefits stemming from matching support or to satisfy any cost sharing requirements, proposals must include written verification of any actual commitments of matching support (including both cash and non-cash contributions) from third parties. Written verification means—

(A) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representative(s) of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) The dollar amount of the cash donation; and

(*5*) A statement that the donor will pay the cash contribution during the grant period; and

(B) For any third party non-cash contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representative(s) of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) A good faith estimate of the current fair market value of the non-cash contribution; and

(*5*) A statement that the donor will make the contribution during the grant period.

(iv) All pledge agreements must be placed in the proposal immediately following Form CSREES–713. The sources and amounts of all matching support from outside the applicant institution should be summarized in the Budget Narrative section of the proposal.

(v) Applicants should refer to OMB Circulars A–110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-profit Organizations," and A–21, "Cost Principles for Educational Institutions," for further guidance and other requirements relating to matching and allowable costs.

(3) *Chart on shared budget for joint project proposal.* (i) For a joint project proposal, a plan must be provided indicating how funds will be distributed to the participating institutions. The budget section of a joint project proposal should include a chart indicating:

(A) The names of the participating institutions;

(B) the amount of funds to be disbursed to those institutions; and

(C) the way in which such funds will be used in accordance with items A through L of Form CSREES–713, "Higher Education Budget."

(ii) If a proposal is not for a joint project, such a chart is not required.

(4) *Budget narrative.* (i) Discuss how the budget specifically supports the proposed project activities. Explain how each budget item (such as salaries and wages for professional and technical staff, student workers, travel, equipment, etc.) is essential to achieving project objectives.

(ii) Justify that the total budget, including funds requested from USDA and any matching support provided, will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(iii) Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes research value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a high-priority research initiative(s) or promote coalition building that could lead to future ventures.

(iv) Include the percentage of time key personnel will work on the project, both during the academic year and summer. When salaries of university project personnel will be paid by a combination of USDA and institutional funds, the total compensation must not exceed the faculty member's regular annual compensation. In addition, the total commitment of time devoted to the project, when combined with time for teaching and research duties, other sponsored agreements, and other employment obligations to the institution, must not exceed 100 percent of the normal workload for which the employee is compensated, in accordance with established university policies and applicable Federal cost principles.

(v) If the proposal addresses more than one targeted need area, estimate the proportion of the funds requested from USDA that will support each respective targeted need area.

(i) *Current and pending support.* Each applicant must complete Form CSREES–663, "Current and Pending Support," identifying any other current public- or private-sponsored projects, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This information should also be provided for any pending proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice the review or evaluation of a project under this program.

(j) *Appendix.* Each project narrative is expected to be complete in itself and to meet the 20-page limitation. Inclusion of material in the Appendix should not be used to circumvent the 20-page limitation of the proposal narrative. However, in those instances where inclusion of supplemental information is necessary to guarantee the peer review panel's complete understanding of a proposal or to illustrate the integrity of the design or a main thesis of the proposal, such information may be included in the Appendix. Examples of supplemental material are photographs, journal reprints, brochures and other pertinent materials which are deemed to be illustrative of major points in the narrative but unsuitable for inclusion in the proposal narrative itself. Information on previously submitted proposals may also be presented in the Appendix (refer to paragraph (e) of this section). When possible, information in the Appendix should be presented in tabular format. A complete set of the Appendix material must be attached to each copy of the grant application submitted. The Appendix must be identified with the title of the project as it appears on Form CSREES–712 of the proposal and the name(s) of the principal investigator(s). The Appendix must be referenced in the proposal narrative.

(k) *Special considerations.* A number of situations encountered in the conduct of research require special information or supporting documentation before funding can be approved for the project. If such situations are anticipated, proposals must so indicate via completion of Form CSREES–662, "Assurance Statement(s)." It is expected that some applications submitted in response to these guidelines will involve the following:

(1) *Recombinant DNA research.* All key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled "Guidelines for Research Involving Recombinant DNA Molecules," as revised. All applicants proposing to use recombinant DNA techniques must so indicate by checking the appropriate box on Form CSREES–712, "Higher Education Proposal Cover Page," and by completing the applicable section of Form CSREES–662. In the event a project involving recombinant DNA or RNA molecules results in a grant award, the Institutional Biosafety Committee of the proposing institution must approve the research plan before CSREES will release grant funds.

(2) *Protection of human subjects.* Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this is contained in Department of Agriculture regulations under 7 CFR part 1c. All applicants who propose to use human subjects for experimental purposes must indicate their intention by checking the appropriate block on Form CSREES–712, "Higher Education Proposal Cover Page," and by completing the appropriate portion of Form CSREES–662. In the event a project involving human subjects results in a grant award, the Institutional Review Board of the proposing institution must approve the research plan before CSREES will release grant funds.

(3) *Laboratory animal care.* Responsibility for the humane care and treatment of laboratory animals used in any grant project supported with funds provided by CSREES rests with the performing organization. All key project personnel and all endorsing officials of the proposing organization are required to comply with the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*), and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of laboratory animals. All applicants proposing a project which involves the use of laboratory animals must indicate their intention by checking the appropriate block on Form CSREES–712, "Higher Education Proposal Cover Page," and by completing the appropriate portion of Form CSREES–662. In the event a project involving the use of living vertebrate animals results in a grant award, the Institutional Animal Care and Use Committee of the proposing institution must approve the research plan before CSREES will release grant funds.

(l) *Compliance with the National Environmental Policy Act (NEPA).* As outlined in 7 CFR Part 3407 (the Cooperative State Research, Education, and Extension Service regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

(1) *NEPA determination.* In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, "NEPA Exclusions Form," must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the proposed project falls within the

categorical exclusions, the specific exclusion must be identified. Form CSREES–1234 and any supporting documentation should be placed at the end of the proposal and identified in the Table of Contents.

(2) *Exceptions to categorical exclusions.* Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

Subpart F—Review and Evaluation of a Research Proposal

§ 3406.19 Proposal review—research.

The proposal evaluation process includes both internal staff review and merit evaluation by peer review panels comprised of scientists, educators, business representatives, and Government officials who are highly qualified to render expert advice in the areas supported. Peer review panels will be selected and structured to provide optimum expertise and objective judgment in the evaluation of proposals.

§ 3406.20 Evaluation criteria for research proposals.

The maximum score a research proposal can receive is 150 points. Unless otherwise stated in the annual solicitation published in the **Federal Register**, the peer review panel will consider the following criteria and weights to evaluate proposals submitted:

Evaluation criterion	Weight
(a) Significance of the problem:	
This criterion is used to assess the likelihood that the project will advance or have a substantial impact upon the body of knowledge constituting the natural and social sciences undergirding the agricultural, natural resources, and food systems.	
(1) Impact—Is the problem or opportunity to be addressed by the proposed project clearly identified, outlined, and delineated? Are research questions or hypotheses precisely stated? Is the project likely to further advance food and agricultural research and knowledge? Does the project have potential for augmenting the food and agricultural scientific knowledge base? Does the project address a State, regional, national, or international problem(s)? Will the benefits to be derived from the project transcend the applicant institution or the grant period?	15 points.
(2) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support? Are there plans for continuing this line of research or research support activity with the use of institutional funds after the end of the grant? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting? What is the potential for royalty or patent income, technology transfer or university-business enterprises? What are the probabilities of the proposed activity or line of inquiry being pursued by researchers at other institutions?	10 points.
(3) Innovation—Are significant aspects of the project based on an innovative or a non-traditional approach? Does the project reflect creative thinking? To what degree does the venture reflect a unique approach that is new to the applicant institution or new to the entire field of study?	10 points.
(4) Products and results—Are the expected products and results of the project clearly outlined and likely to be of high quality? Will project results be of an unusual or unique nature? Will the project contribute to a better understanding of or an improvement in the quality, distribution, or effectiveness of the Nation's food and agricultural scientific and professional expertise base, such as increasing the participation of women and minorities?	15 points.
(b) Overall approach and cooperative linkages:	
This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project.	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the proposed initiative(s) and the impact anticipated? Is the proposed sequence of work appropriate? Does the proposed approach reflect sound knowledge of current theory and practice and awareness of previous or ongoing related research? If the proposed project is a continuation of a current line of study or currently funded project, does the proposal include sufficient preliminary data from the previous research or research support activity? Does the proposed project flow logically from the findings of the previous stage of study? Are the procedures scientifically and managerially sound? Are potential pitfalls and limitations clearly identified? Are contingency plans delineated? Does the timetable appear to be readily achievable?	5 points.
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes?	5 points
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications and presentations at professional society meetings?	5 points.
(4) Partnerships and collaborative efforts—Does the project have significant potential for advancing cooperative ventures between the applicant institution and a USDA agency? Does the project workplan include an effective role for the cooperating USDA agency(s)? Will the project encourage and facilitate better working relationships in the university science community, as well as between universities and the public or private sector? Does the project encourage appropriate multi-disciplinary collaboration? Will the project lead to long-term relationships or cooperative partnerships that are likely to enhance research quality or supplement available resources?	15 points.
(c) Institutional capacity building:	
This criterion relates to the degree to which the project will strengthen the research capacity of the applicant institution. In the case of a joint project proposal, it relates to the degree to which the project will strengthen the research capacity of the applicant institution and that of any other institution assuming a major role in the conduct of the project.	
(1) Institutional enhancement—Will the project help the institution to advance the expertise of current faculty in the natural or social sciences; provide a better research environment, state-of-the-art equipment, or supplies; enhance library collections related to the area of research; or enable the institution to provide efficacious organizational structures and reward systems to attract, hire and retain first-rate research faculty and students—particularly those from underrepresented groups?	15 points.

Evaluation criterion	Weight
(2) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans? Will the project have reasonable access to needed resources such as scientific instrumentation, facilities, computer services, library and other research support resources?	15 points.
(d) Personnel Resources ..... This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes? Will the project help develop the expertise of young scientists at the doctoral or post-doctorate level?	10 Points
(e) Budget and cost-effectiveness: This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective.	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?	10 points.
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize research value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a high-priority research initiative(s), or promote coalition building for current or future ventures?	5 points.
(f) Overall quality of proposal ..... This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, thoroughly explained, etc.)?	5 points

Subpart G—Submission of a Teaching or Research Proposal

§ 3406.21 Intent to submit a proposal.

To assist CSREES in preparing for the review of proposals, institutions planning to submit proposals may be requested to complete Form CSREES–711, "Intent to Submit a Proposal," provided in the application package. CSREES will determine each year if Intent to Submit a Proposal forms will be requested and provide such information in the program announcement. If Intent to Submit a Proposal forms are required, one form should be completed and returned for each proposal an institution anticipates submitting. Submitting this form does not commit an institution to any course of action, nor does failure to send this form prohibit an institution from submitting a proposal.

§ 3406.22 When and where to submit a proposal.

The program announcement will provide the deadline date for submitting a proposal, the number of copies of each proposal that must be submitted, and the address to which proposals must be submitted.

Subpart H—Supplementary Information

§ 3406.23 Access to peer review information.

After final decisions have been announced, CSREES will, upon request, inform the principal investigator/project director of the reasons for its decision on a proposal. Verbatim copies of summary reviews, not including the identity of the peer reviewers, will be made available to the respective principal investigator/project directors upon specific request.

§ 3406.24 Grant awards.

(a) *General.* Within the limit of funds available for such purpose, the authorized departmental officer shall make project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced targeted need areas under the evaluation criteria and procedures set forth in this part. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (7 CFR part 3019).

(b) *Organizational management information.* Specific management information relating to a proposing institution shall be submitted on a one-time basis prior to the award of a project grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms used to fulfill this requirement will be sent to the proposing institution by the sponsoring agency as part of the pre-award process.

(c) *Notice of grant award.* The grant award document shall include at a minimum the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of principal investigator(s)/project director(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort without requiring reapplication for funds.

(6) Total amount of Federal financial assistance approved during the project period.

(7) Legal authority(ies) under which the grant is awarded.

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of this particular project grant.

(d) *Obligation of the Federal Government.* Neither the approval of any application nor the award of any project grant shall legally commit or obligate CSREES or the United States to provide further support of a project or any portion thereof.

§ 3406.25 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, principal investigator(s)/project director(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee or the principal investigator(s)/project director(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Department for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such transfers.

(c) *Changes in project period.* The project period may be extended by the authorized departmental officer without additional financial support for such additional period(s) as the authorized departmental officer determines may be necessary to complete or fulfill the purposes of an approved project. However, due to statutory restriction, no grant may be extended beyond five years from the original start date of the grant. Grant extensions shall be conditioned upon prior request by the grantee and approval in writing by the authorized departmental officer, unless prescribed otherwise in the terms and conditions of a grant.

(d) *Changes in approved budget.* Changes in an approved budget must be requested by the grantee and approved in writing by the authorized departmental officer prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb an increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded; or

(3) Involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

§ 3406.26 Monitoring progress of funded projects.

(a) During the tenure of a grant, principal investigators/project directors must attend at least one national principal investigators/project directors meeting, if offered, in Washington, DC or any other announced location. The purpose of the meeting will be to discuss project and grant management, opportunities for collaborative efforts, future directions for education reform, research project management, advancing a field of science, and opportunities to enhance dissemination of exemplary end products/results.

(b) An Annual Performance Report must be submitted to the USDA program contact person within 90 days after the completion of the first year of the project and annually thereafter during the life of the grant. Generally, the Annual Performance Reports should include a summary of the overall progress toward project objectives, current problems or unusual developments, the next year's planned activities, and any other information that is pertinent to the ongoing project or which may be specified in the terms and conditions of the award. These reports are in addition to the annual Current Research Information System (CRIS) reports required for all research grants under the award's "Special Terms and Conditions."

(c) A Final Performance Report must be submitted to the USDA program contact person within 90 days after the expiration date of the project. The expiration date is specified in the award documents and modifications thereto, if any. Generally, the Final Performance Report should be a summary of the completed project, including: A review of project objectives and accomplishments; a description of any products and outcomes resulting from the project; activities undertaken to disseminate products and outcomes; partnerships and collaborative ventures that resulted from the project; future initiatives that are planned as a result of the project; the impact of the project on the principal investigator(s)/project director(s), the institution, and the food and agricultural sciences higher education system; and data on project personnel and beneficiaries. The Final Performance Report should be accompanied by samples or copies of any products or publications resulting from or developed by the project. The Final Performance Report must also contain any other information which may be specified in the terms and conditions of the award.

§ 3406.27 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this part. These include but are not limited to:

7 CFR Part 1, Subpart A—USDA implementation of Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017—Governmentwide Debarment and Suspension (Nonprocurement); Governmentwide Requirements for Drug-Free Workplace (Grants), implementing Executive Order 12549 on debarment and suspension and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).

7 CFR Part 3018—Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3051—Audits of Institutions of Higher Education and other Nonprofit Institutions.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR Part 15b (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted

programs (implementing regulations are contained in 37 CFR part 401).

§ 3406.28 Confidential aspects of proposals and awards.

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

§ 3406.29 Evaluation of program.

Grantees should be aware that CSREES may, as a part of its own program evaluation activities, carry out in-depth evaluations of assisted activities. Thus, grantees should be prepared to cooperate with CSREES personnel, or persons retained by CSREES, evaluating the institutional context and the impact of any supported project. Grantees may be asked to provide general information on any students and faculty supported, in whole or in part, by a grant awarded under this program; information that may be requested includes, but is not limited to, standardized academic achievement test scores, grade point average, academic standing, career patterns, age, race/ethnicity, gender, citizenship, and disability.

Done at Washington, D.C., this 10th day of July 1997.

B.H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

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Part IV

Office of Management and Budget

Draft Report to Congress on the Costs and Benefits of Federal Regulations; Notice

OFFICE OF MANAGEMENT AND BUDGET

Draft Report to Congress on the Costs and Benefits of Federal Regulations

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: OMB requests comments on the attached Draft Report to Congress on the Costs and Benefits of Federal Regulations. The draft report is divided into four chapters. Chapter I sets the context and provides the background for the next three chapters. Chapter II presents OMB's best estimate of the total costs and benefits of Federal regulation. Chapter III provides data on the costs and benefits of each of the economically significant regulations reviewed by OMB under Executive Order 12866 in the last year. Chapter IV provides recommendations aimed at further developing the information, methodologies, and analyses necessary for improving the efficiency, effectiveness and soundness of regulatory programs and program elements.

DATES: To ensure consideration of comments as OMB prepares this Draft Report for submission to Congress on or before September 30, 1997, comments must be in writing and received by OMB no later than September 1, 1997.

ADDRESSES: Comments on this Draft Report should be addressed to John F. Morrall III, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, N.W., Washington, D.C. 20503.

Comments may also be submitted by facsimile to (202) 395–6974, or by electronic mail to MORRALL_J@A1.EOP.GOV (please note that "1" in "A1" is the number one and not the letter "l"). Be sure to include your name and complete postal mailing address in the comments sent by electronic mail. If you submit comments by facsimile or electronic mail, please do not also submit them by regular mail.

Electronic availability and addresses: This **Federal Register** Notice is available electronically from the OMB Homepage on the World Wide Web: "http://www.whitehouse.gov/WH/EOP/OMB/html/fedreg.html."

FOR FURTHER INFORMATION CONTACT: John F. Morrall III, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, N.W., Washington, D.C. 20503. Telephone: (202) 395–7316.

SUPPLEMENTARY INFORMATION: Congress directed the Office of Management and Budget (OMB) to prepare a Report to Congress on the Costs and Benefits of Federal Regulations. Specifically, under Section 645 of the Treasury, Postal Services and General Government Appropriations Act, 1997 (Pub. L. 104–208), the Director of OMB is to submit to Congress, no later than September 30, 1997, a report that, in summary, provides (1) estimates of the total annual costs and benefits of Federal regulatory programs, (2) estimates of the costs and benefits of each rule that is likely to have a gross annual effect on the economy of $100,000,000 or more in increased costs, (3) an assessment of the direct and indirect impacts of Federal rules, and (4) recommendations from OMB and a description of significant public comments to reform or eliminate any Federal regulatory program that is inefficient, ineffective, or is not a sound use of the Nation's resources.

The attached document is a draft of this report to Congress. OMB is to provide public notice and an opportunity to comment on the report before it is submitted to Congress no later than September 30, 1997.

Issues for Comment

Accordingly, OMB seeks comments on all aspects of the attached draft report, but in particular is interested in comments and suggestions pertaining to the following:

1. The validity and reliability of the quantitative and qualitative measures of the costs and benefits of regulations in the aggregate, as well as of the individual regulations issued between April 1, 1996, and March 31, 1997, discussed in the attached draft report;

2. The discussion of the direct and indirect effects of regulation;

3. Any additional studies that might provide reliable estimates or assessments of the annual costs and benefits, or direct and indirect effects, of regulation in the aggregate or of the individual regulations that are discussed in the draft report; and

4. Programs or program elements on which there is objective and verifiable information that would lead to a conclusion that such programs are inefficient or ineffective and should be eliminated or reformed.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

Draft Report to Congress on the Costs and Benefits of Federal Regulations

Introduction

The Federal Government affects the lives of its citizens in a variety of ways—through taxation, spending, grants, and loans, and through regulation. Over time, regulation has become increasingly prevalent in our society, and the importance of our regulatory activities cannot now be overstated.

Both proponents and opponents of regulation have resorted to grand characterizations of either the benefits or the costs of regulation, without much substantiation and very little agreement on the underlying facts. In order to help further the debate on the nation's regulatory system, Congress adopted Section 645 of the Treasury, Postal Services and General Government Appropriations Act, 1997 (Pub. L. 104–208) on September 30, 1996. Section 645(a) directs the Director of the Office of Management and Budget to submit to Congress, no later than September 30, 1997, a report that provides—

"(1) estimates of the total annual costs and benefits of Federal Regulatory programs, including quantitative and nonquantitative measures of regulatory costs and benefits;

"(2) estimates of the costs and benefits (including quantitative and nonquantitative measures) of each rule that is likely to have a gross annual effect on the economy of $100,000,000 or more in increased costs;

"(3) an assessment of the direct and indirect impacts of Federal rules on the private sector, State and local government, and the Federal Government; and

"(4) recommendations from the Director and a description of significant public comments to reform or eliminate any Federal regulatory program or program element that is inefficient, ineffective, or is not a sound use of the Nation's resources."

The request for this report reflected a consensus that it could be productive to assemble the information available, and acknowledge the data gaps and the limits of the information at hand, all for the purpose of improving the quality of the debate. The goals of this statutory charge are worthwhile and important, but also very ambitious. Having spent a considerable amount of time, we must acknowledge at the outset that what we

present is neither a complete response to the mandate, nor in many respects as much as we would have liked to have done had we had more time and resources. But it is, we believe, a useful step in the process and will enable, we hope, a more constructive dialogue on this issue.

To be more specific, we found enormous data gaps in the information available on regulatory benefits and costs. Accurate data is particularly sparse on benefits, a fact that has been noted often by commentators in the literature and analysts in the field. We were not surprised by this finding. First, the limited quantified or monetized data is partly a result of the obvious technical difficulties, many of which we will discuss below (e.g., the problem of establishing baselines or valuing qualities not generally traded in the marketplace). Just as important, however, are the significant "cultural" or "philosophical" barriers to reducing values, equities, and a myriad of physical or emotional effects to dollars and cents. There are few agreed upon conventions for doing this, and agencies are understandably reluctant to spend scarce time and resources on what may be perceived as a not very informative exercise. This is compounded by the belief of some that it is morally or politically difficult or wrong to engage in such seemingly uncaring calculations. Some also fear a tyranny of numbers—that is, "if it is quantified, the decision will necessarily be determined solely by the numbers." Their understandable response is not to quantify or monetize.

Nevertheless, the fact remains that explicitly quantifying and monetizing benefits and costs significantly enhances the consideration of alternative approaches to achieving regulatory goals, ultimately producing more benefits with fewer costs. As explained more fully below, President Clinton's Executive Order 12866, "Regulatory Planning and Review," recognizes and incorporates this principle, requiring agencies to quantify both costs and benefits to the best of their ability and to the extent permitted by law. This report takes up the challenge of the Executive Order and Section 645 and candidly presents the available information on both the total costs and benefits of regulation and the costs and benefits of the recent major individual regulations. We hope that this is just the beginning of an important dialogue to improve our knowledge about the effects of regulation on the public, the economy, and American society.

This document is only a draft of our report. Section 645(b) requires the Director of OMB to provide public notice and an opportunity to comment on the report before it is submitted to Congress at the end of September 1997. Accordingly we seek comments on all aspects of this document, but in particular are interested in comments and suggestions pertaining to the following:

- The validity and reliability of the quantitative and qualitative measures of the costs and benefits of regulations in the aggregate, as well as of the individual regulations discussed;
- Our discussion of the direct and indirect effects of regulation;
- Any additional studies that might provide reliable estimates or assessments of the annual costs and benefits, or direct and indirect effects, of regulation in the aggregate or of the individual regulations issued between April 1, 1996, and March 31, 1997, that we discuss; and;
- Programs or program elements on which there is objective and verifiable information that would lead to a conclusion that such programs are inefficient or ineffective and should be eliminated or reformed.

All comments received will be carefully considered in preparing the final report that will be submitted to Congress.

The draft report is divided into four chapters: chapter I sets the context and provides the background for the next three chapters. It discusses the development of our regulatory system and demonstrates the breadth of activity that is called regulation, which ranges from economic regulation such as price supports of agricultural products to social regulation such as the protection of workers and the environment. It tracks the use of benefit-cost analysis to evaluate specific regulations, with the recognition of the limits of quantification and its permitted use under the law. Chapter I concludes by presenting the outline of the "best practices" guidance that the current regulatory review program under Executive Order 12866 uses in conducting economic analyses and estimating costs and benefits of economically significant regulations.

In accordance with Section 645(a)(1), chapter II presents our best estimate of the total costs and benefits of Federal regulation. We use a well recognized, peer reviewed study (Hahn and Hird 1991) for the costs and benefits of regulations as of 1988, supplemented by an Environmental Protection Agency (EPA) report to Congress (Cost of Clean 1990); we then add information about costs and benefits from agency regulatory impact analyses (RIAs) for regulations that have been issued since 1988. In almost all cases, the RIAs have gone through notice and comment and been reviewed by OMB for accuracy and reliability. The figures derived are approximately $200 billion in annual costs and $300 billion in annual benefits for environmental and social regulation and about $90 billion in annual costs and nominal benefits for economic regulation. While this information is useful, we cannot over emphasize the limitations of these estimates for use in making recommendations about reforming or eliminating regulatory programs. As discussed in this chapter, aggregate estimates of the costs and benefits of regulation offer little guidance on how to improve the efficiency, effectiveness or soundness of the existing body of regulation. This chapter also discusses the possible indirect effects of regulation on the economy as directed by Section 645(a)(3) and concludes that the effects are ambiguous theoretically, not well understood empirically, and offer little content for making recommendations about regulatory policy.

In fulfillment of Section 645(a)(2), chapter III provides data on the costs and benefits of each of the economically significant regulations reviewed by OMB under Executive Order 12866 over the period from April 1, 1996, to March 31, 1997. These data were developed by the agencies as required by the Executive Order. For the most part, these data were subject to notice and public comment and reviewed by OMB. We conclude that although the agency analyses described in Chapter III provide much useful information on Federal regulatory programs and provisions of regulations, there should be further improvement in providing high quality data and analyses before decisions about modifying regulatory programs can be made.

Chapter IV provides recommendations aimed at further developing the information, methodologies, and analyses necessary for improving the efficiency, effectiveness and soundness of regulatory programs and program elements as required by Section 645(a)(4). We also propose several ways for the agencies and OMB to work together to improve the quality of the data and analysis found in the economic impact studies submitted to OMB under Executive Order 12866, including "best practices" training sessions and interagency peer reviews of selected regulatory programs.

Chapter I. The Role of Economic Analysis in Regulatory Reform

1. Federal Regulatory Programs

The regulatory programs that exist today are the product of many different forces, often operating independently of one another, but with the support—over many decades—of both major political parties in both the Legislative and Executive branches.

The History of Major Regulatory Programs

Federal regulation as we know it began in the late 19th century with the creation of the Interstate Commerce Commission, which was charged with protecting the public against excessive and discriminatory railroad rates. The regulation was economic in nature, setting rates and regulating the provision of railroad services. Having achieved some success, this administrative model of an independent, bipartisan commission, reaching decisions through an adjudicatory approach, was used for the Federal Trade Commission (FTC) (1914), the Water Power Commission (1920) (later the Federal Power Commission), and the Federal Radio Commission (1927) (later the Federal Communications Commission). In addition, during the early 20th century, Congress created several other agencies to regulate commercial and financial systems—including the Federal Reserve Board (1913), the Tariff Commission (1916), the Packers and Stockyards Administration (1916), and the Commodities Exchange Authority (1922)—and to ensure the purity of certain foods and drugs, the Food and Drug Administration (1931).

Federal regulation began in earnest in the 1930s with the implementation of wide-ranging New Deal programs. Some of the New Deal economic regulatory programs were implemented by the Federal Home Loan Bank Board (1932), the Federal Deposit Insurance Corporation (FDIC) (1933), the Commodity Credit Corporation (1933), the Farm Credit Administration (1933), the Securities and Exchange Commission (SEC) (1934), and the National Labor Relations Board (1935). In addition, the jurisdiction of both the Federal Communications Commission (FCC) and the Interstate Commerce Commission were expanded to regulate other forms of communications (e.g., telephone and telegraph) and other forms of transport (e.g., trucking). In 1938, the role of the Food and Drug Administration (FDA) was expanded to include prevention of harm to consumers in addition to corrective action. The New Deal also called for the establishment of an agency to enforce the Fair Labor Standards Act of 1938 in the Department of Labor, which is now called the Employment Standards Administration.

A second burst of regulation began in the late 1960s with the enactment of comprehensive, detailed legislation intended to protect the consumer, improve environmental quality, enhance work place safety, and assure adequate energy supplies. In contrast to the pattern of economic regulation adopted before and during the New Deal, the new social regulatory programs tended to cross many sectors of the economy (rather than individual industries) and affect industrial processes, product designs, and by-products (rather than entry, investment, and pricing decisions).

The consumer protection movement of that era led to creation in the then newly formed Department of Transportation (DOT) of several agencies designed to improve transportation safety. They included the Federal Highway Administration (1966), which sets highway and heavy truck safety standards; the Federal Railroad Administration (1966), which sets rail safety standards; and the National Highway Traffic Safety Administration (1970), which sets safety standards for automobiles and light trucks. Regulations were also authorized pursuant to the Truth in Lending Act, the Equal Credit Opportunity Act, the Consumer Leasing Act, and the Fair Debt Collection Practices Act. The National Credit Union Administration (1970) and the Consumer Product Safety Commission (1972) were also created to protect consumer interests.

In 1970, the Environmental Protection Agency (EPA) was created to consolidate and expand environmental programs. Its regulatory authority was expanded through the Clean Air Act (1970), the Clean Water Act (1972), the Safe Drinking Water Act (1974), the Toxic Substances Control Act (1976), and the Resource Conservation and Recovery Act (1976). This effort to improve environmental protection also led to the creation of the Materials Transportation Board (1975) (now part of the Research and Special Programs Administration in the DOT) and the Office of Surface Mining Reclamation and Enforcement (1977) in the Department of the Interior (DOI).

The Occupational Safety and Health Administration (1970) was established in the Department of Labor (DOL) to enhance work place safety. Major mine safety and health legislation had been passed in 1969, following prior statutes reaching back to 1910. Enforcement responsibility now lies with the Mine Safety and Health Administration, also in the DOL. The Pension Benefit Guaranty Corporation and the Pension and Welfare Administration were established in 1974 to administer and regulate pension plan insurance systems.

Also in the 1970s, the Federal Government attempted to address the problems of the dwindling supply and the rising costs of energy. In 1973, the Federal Energy Administration (FEA) was directed to manage short-term fuel shortage. Less than a year later, the Atomic Energy Commission was divided into the Energy Research and Development Administration (ERDA) and an independent Nuclear Regulatory Commission (NRC). In 1977, the FEA, ERDA, the Federal Power Commission, and a number of other energy program responsibilities were merged into the Department of Energy (DOE) and the independent Federal Energy Regulatory Commission.

Another significant regulatory agency, the Department of Agriculture (USDA) (1862), has grown over time so that it now regulates the price, production, import, and export of agricultural crops; the safety of meat, poultry, and certain other food products; a wide variety of other agricultural and farm-related activities; and broad-reaching welfare programs. Agriculture regulatory authorities have changed over time, but now include the U.S. Forest Service (1905), the Natural Resources Conservation Service (1935), the Farm Service Agency (1961), the Food and Consumer Service (1969), the Agricultural Marketing Service (1972), the Federal Grain Inspection Service (1976), the Animal and Plant Health Inspection Service (1977), the Foreign Agricultural Service (1974), the Food Safety and Inspection Service (1981), and the Rural Development Administration (1990).

In addition to the regulatory agencies listed above, most Departments and agencies also issue regulations that affect the public in a variety of ways such as:

- Eligibility standards and documentation requirements for government benefit programs, i.e., USDA's Food and Nutrition Service, Health and Human Services' (HHS) Health Care Financing Administration, Housing and Urban Development's (HUD) Federal Housing Administration, DOL's Employment and Training Administration, and DOI's Bureau of Indian Affairs as well as Veterans Affairs, Education, the Department of

Defense, and the Social Security Administration;

• Use and leasing requirements for Federal lands and resources, i.e., USDA's Forest Service and DOI's Bureau of Land Management and National Park Service; and

• Revenue collection requirements, i.e., Treasury's Internal Revenue Service, Customs Service, and Bureau of Alcohol, Tobacco and Firearms.

The consequence of the long history of regulatory activities is that Federal regulations now affect virtually all individuals, businesses, State, local, and tribal governments, and other organizations in virtually every aspect of their lives or operations. Some rules are based on old statutes; others on relatively new ones. Some regulations are critically important (such as the safety criteria for airlines or nuclear power plants); some are relatively trivial (such as setting the times that a draw bridge may be raised or lowered). But each has the force and effect of law and each must be taken seriously.

The Nature of Regulation

It is conventional wisdom that competition in the marketplace is the most effective regulator of economic activity. Why then is there so much regulation? The answer is that markets are not always perfect and when they are not, society's resources may be imperfectly or inefficiently used. The advantage of regulation is that it can improve resource allocation or help obtain other societal benefits. For example, consider the following situations:

—Certain markets may not be sufficiently competitive, thus potentially subjecting consumers to the harmful exercise of market power (such as higher prices or artificially limited supplies). Regulation can be used to protect consumers by regulating prices charged by natural monopolies or preventing firms from restricting competition through mergers, collusion or creating entry barriers.

—In an unregulated market, firms and individuals may impose costs on others—including future generations—that are not reflected in the prices of the products they buy and sell. They may pollute streams, cause health hazards, or endanger the safety of their workers or customers. Regulation can be used to reduce these harmful effects by prohibiting certain activities or imposing the societal costs of the activity in question on those causing the harm. One goal of regulation is to induce private parties to act as they would if they had to bear the full costs that they impose on others.

—Similarly, in an unregulated market, firms and individuals may not have incentives to provide individuals with accurate or sufficient information needed to make intelligent choices. Firms may mislead consumers or take advantage of consumer ignorance to market unsafe or risky products. Regulation may be needed to require disclosure of information, such as the possible side effects of a drug, the contents of a food or packaged good, the energy efficiency of an appliance, or the full cost of a home mortgage.

—Even when consumers have full information, the Government may wish to protect individuals, especially children, from their own actions. Regulation may thus be used to restrict certain unacceptable or harmful practices such as substance abuse.

—Regulation can also be beneficial in achieving goals that reflect our national values, such as equal opportunity and universal education, or a respect for individual privacy.

There are also many potential disadvantages of regulating—to the Government, to those regulated, and to society at large—that can give rise to significant costs.

—The direct costs of administering, enforcing, and complying with regulations may be substantial. Some of these costs may be borne by the Government, while others are paid for by firms and individuals, eventually being reflected in the form of higher prices, lower wages, and foregone investment, research, and output.

—There are also disadvantages of regulation that are difficult to measure, such as adverse effects on flexibility and innovation, which may impair productivity and competitiveness in the global marketplace, and counterproductive private incentives, which may distort investment or reduce needed supporting activities.

In short, regulations (like other instruments of government policy) have enormous potential for both good and harm. Well-chosen and carefully crafted regulations can protect consumers from dangerous products and ensure they have information to make informed choices. Such regulations can limit pollution, increase worker safety, discourage unfair business practices, and contribute in many other ways to a safer, healthier, more productive, and more equitable society. Excessive or poorly designed regulations, by contrast, can cause confusion and delay, give rise to unreasonable compliance costs in the form of capital investments, labor and ongoing paperwork, retard innovation, reduce productivity, and accidentally distort private incentives.

The only way we know to distinguish between the regulations that do good and those that cause harm is through careful assessment and evaluation of their benefits and costs. Such analysis can also often be used to redesign harmful regulations so they produce more good than harm and redesign good regulations so they produce even more net benefits. The next section describes how regulatory analysis has evolved to do just that.

2. Development of the U.S. Regulatory Analysis Program

As discussed above, the late 1960's and early 1970's marked a period in U.S. history of major expansion of health, safety and environmental regulation. Numerous new government agencies were set up to protect the American workplace, the environment, highway travelers, and consumers. As with almost every political development, the significant growth in the amount and kinds of regulation created a counter political development that ultimately produced a companion program to evaluate the regulatory system.

The Nixon and Ford Review Programs

The Nixon Administration established in 1971 a little known review group in the White House called the "Quality of Life Review" program. The program focused solely on environmental regulations to minimize burdens on business. These reviews did not utilize analysis of the benefits and costs to society. The controversy that resulted from the program began a debate about both Presidential review of regulations and the use of benefit-cost analysis that would continue for two decades and to some extent continues today.

Soon after Gerald Ford became President in 1974, he held an economic summit that included top industry leaders and economists to seek solutions to the stagflation and slow growth that the nation was then facing. Out of that summit came proposals to establish a new government agency in the Executive Office of the President, called the Council on Wage and Price Stability (CWPS), to monitor the inflationary actions of both the government and private sectors of the economy. It also led President Ford to issue Executive Order 11821, requiring government agencies to prepare inflation impact statements before they issued costly new regulations. The innovative aspect

of the Ford program was the creation of a specific White House agency to review the inflationary actions, mainly regulations, of other government agencies. CWPS was staffed primarily by economists drawn from academia and had little authority beyond the influence of public criticism.

The economists at CWPS quickly concluded that a regulation would not be truly inflationary unless its costs to society exceeded the benefits it produced. Thus the economists turned the inflation impact statement into a benefit-cost analysis. This requirement, that agencies do an analysis of the benefits and costs of their "major" proposed regulations—generally defined as having an annual impact on the economy of over $100 million—was adopted in modified form by each of the four next Presidents.

The Administrative Procedure Act requires agencies to give the public and interested parties a chance to comment on proposed regulations before they are adopted in final form. The agency issuing the regulation must respond to the comments and demonstrate that what it is intending to do is within its scope of authority and is not "arbitrary or capricious." CWPS used this formal comment process to file its critiques of the agencies' economic analyses of the benefits and costs of proposed regulations. CWPS would also issue a press release summarizing its filing in non-technical terms. The CWPS analyses attracted considerable publicity. But while this system was effective in preventing some unsupportable regulations from becoming law, it had little success in preventing the issuance of poorly thought out regulations that had strong interest group support.

Nevertheless, one of the legacies of this approach was that it slowly built an economic case against poorly conceived regulations, raising interest particularly among academics and students who began to use the publicly available analyses in their textbooks and courses. When benefit-cost analysis was first introduced, it was not welcomed by the political establishment, especially the lawyers and other non-economists who comprised many agencies and congressional staffs. But over time, as these analyses became standard fare in textbooks, the value and legitimacy of benefit-cost analysis became evident, and it slowly gained acceptance among the public.

The Carter Review Program

After President Carter came to office in 1977, the regulating agencies argued that the Executive Office of the President should not have a role in reviewing their regulations. On the other hand, the President's chief economic advisers argued that a centralized review program based on careful economic analysis was necessary to assure that regulatory burdens on the economy were properly considered and that the regulations that were issued were cost effective. Rapidly escalating inflation in 1978 convinced President Carter of the need to act. In March of 1978, he issued Executive Order 12044, "Improving Government Regulations." It established general principles for agencies to follow when regulating and required regulatory analysis to be done for rules that "may have major economic consequences for the general economy, for individual industries, geographical regions or levels of government."

President Carter also set up a new group, called the Regulatory Analysis Review Group (RARG), with instructions to review up to ten of the most important regulations each year. The RARG was chaired by the Council of Economic Advisors (CEA) and was composed of representatives of OMB and the economic and regulatory agencies. It relied on the staff of CWPS and the CEA to develop evaluations of agency regulations and the associated economic analyses and to place these analyses in the public record of the agency proposing to issue the regulation. The analyses were reviewed by the RARG members and reflected the views of the member agencies, including the agency that proposed the regulation.

In this way, the Carter Administration helped to institutionalize both regulatory review by the Executive Office of the President and the utility of benefit-cost analysis for regulatory decision makers. Also, in an important legal ruling, the U.S. Court of Appeals for the District of Columbia in *Sierra Club* v. *Costle* (657 F. 2d 298 (1981)) found that a part of the President's administrative oversight responsibilities was to review regulations issued by his subordinates.

The Reagan/Bush Reform Effort

During the Presidential campaign of 1980, the issue was not whether to continue a regulatory review oversight program, but whether to strengthen it. President Reagan had made regulatory relief one of his four pillars for economic growth—in addition to reducing government spending, tax cuts, and steady monetary growth. He specifically used the term "regulatory relief" rather than "regulatory reform" to emphasize his desire to cut back regulations, not just make them more cost effective. One of his first acts as President was to issue Executive Order 12291, "Federal Regulation" (February 17, 1981).

The Reagan regulatory oversight program differed from the Carter Program in a number of important respects. First, it required that agencies not only prepare cost-benefit analyses for major rules, but also that they issue only regulations that maximize net benefits (social benefits minus social costs). Second, OMB, and within OMB the Office of Information and Regulatory Affairs (OIRA), replaced CWPS as the agency responsible for centralized review. Third, agencies were required to send their proposed regulations and cost-benefit analyses in draft form to OMB for review before they were issued. Fourth, it required agencies to review their existing regulations to see which ones could be withdrawn or scaled back. Finally, President Reagan created The Task Force on Regulatory Relief, chaired by then-Vice President Bush, to oversee the process and serve as an appeal mechanism if the agencies disagreed with OMB's recommendations. Together these steps established a more formal and comprehensive centralized regulatory oversight program.

In 1985, President Reagan issued Executive Order 12498, "Regulatory Planning Process," that further strengthened OMB's oversight role by extending it earlier into the regulatory development process. The Order required that agencies annually send OMB a detailed plan on all the significant rules that they had under development. OMB coordinated the plans with other interested agencies and could recommend modifications. It also compiled these detailed descriptions of the agencies' most important rules—usually about 500—in one large volume called the Regulatory Program of the U.S. Government.

The Bush Administration continued the regulatory review program of the Reagan Presidency. Nonetheless, the pace of new health, safety, and environmental regulations that had begun to increase at the end of the Reagan Administration continued during the first two years of the Bush Administration. In 1990, President Bush responded to expressions of concern about increasing regulatory burdens by returning to the approach used by the Reagan Task Force on Regulatory Relief. Vice President Quayle was placed in charge of a task force—now called the Competitiveness Council—whose mission was to provide regulatory relief.

The Clinton Review Program

On September 30, 1993, President Clinton issued Executive Order 12866, "Regulatory Planning and Review." The Order reaffirmed the legitimacy of centralized review but reestablished the primacy of the agencies in regulatory decision making. It retained the requirement for analysis of benefits and costs, quantified to the maximum extent possible, and the general principle that the benefits of intended regulations should justify the costs. In addition, while continuing the basic framework of regulatory review established in 1981, it made several changes in response to criticisms that had been voiced against the Reagan/Bush programs.

One of the changes was to focus OMB's resources on the most significant rules, allowing agencies to issue less important regulations without OMB review. OMB had been reviewing about 2,200 regulations per year with a staff of less than 40 professionals. This change enabled OMB to add greater value to its review by focusing on the most important rules.

A second change was the establishment of a 90-day period for OMB review of proposed rules. Executive Order 12291 contained no strict limit on the length of review, and some reviews had dragged on for several years before resolution. The Clinton Executive Order also set up a mechanism for a timely resolution of any disputes between OMB and agency heads.

A third change was to increase the openness and accountability of the review process. All documents exchanged between OIRA and the agency during the review are made available to the public at the conclusion of the rulemaking. The Executive Order also requires that records be kept of any meetings with people outside of the Executive branch on regulations under review by OMB, that agency representatives be invited to attend the meetings, and that all written communications be placed in the public docket and given to the agency.

OMB has produced three reports on its implementation of this Executive Order. On May 1, 1994, OMB published a six month assessment of the Executive Order that the President had requested when he issued the Order (Report to the President On Executive Order No. 12866, 1994). The report concluded that many initial improvements in the regulatory review system had been made, but that in some areas it was taking longer to show results than expected. Among other things, the report documented that the new Executive Order was resulting in increased selectivity. The 578 rules reviewed by OMB over the six-month period was about one half the rate of review under the previous Executive Order. Freeing up limited staff resources to concentrate on the more significant rules resulted in a higher percentage of changes to the rules reviewed. Second, the new time limits for OMB review were for the most part being met. Of the 578 reviews completed in the first six months of the Executive Order, only three had gone beyond 90 days and those delays were requested by the agencies. Third, the report concluded that the new requirements for openness and accountability were being met. During the six-month period, 36 meetings were held with outsiders about specific rules under review. These meetings were disclosed to the public and agency representatives were always invited.

In October 1994, OIRA produced a second report entitled, The First Year of Executive Order No. 12866, that basically confirmed the findings of the first report. The number of significant rules that OIRA was reviewing fell to a rate of about 900 per year, 60 percent lower than the 2200 per year average reviewed under the previous Executive Order, and the number of rules that were changed continued to increase. About 15 percent of the rules were "economically significant"—meaning in general that the regulation was expected to have an effect on the economy of more that $100 million per year. The 90-day review period was generally observed, and there were about 70 meetings during the first year, to which agency representatives were invited. The report concluded that the new openness and transparency policy had served to defuse, if not eliminate, the criticism of OIRA's regulatory impact analysis and review program.

The third report, More Benefits Fewer Burdens: Creating a Regulatory System that Works for the American People, was issued in December 1996. The report provided a series of examples of how the agencies and OMB had worked together to produce regulations that adhered to the principles of Executive Order 12866. The examples were organized around six broad themes, several of which emphasize economic analysis and efficiency:

- Properly identifying problems and risks to be addressed, and tailoring the regulatory approach narrowly to address them;
- Developing alternative approaches to traditional command-and-control regulation, such as using performance standards (telling people what goals to meet, not how to meet them), relying on market incentives, or issuing nonbinding guidance in lieu of rules;
- Developing rules that, according to sound analysis, are cost-effective and have benefits that justify their costs.
- Consulting with those affected by the regulation, especially State, local, and tribal governments;
- Ensuring that agency rules are well coordinated with rules or policies of other agencies; and
- Streamlining, simplifying, and reducing burden of Federal regulation.

The report included examples of incremental improvements in the regulatory systems across the government. Although few major eliminations or reforms of regulatory programs were listed, the sum of the improvements indicated that significant benefits were attained with lower costs. A key recommendation of this report was the continued use by the agencies, and vigorous promotion by OMB, of the principles of the Executive Order.

An appendix to More Benefits Fewer Burdens contained information on the costs of regulations issued between 1987 and 1996, which we use below to estimate the aggregate costs of regulation. Another appendix included a discussion of regulatory reform legislation that President Clinton had supported and was passed by Congress during the three-year period, including three statutes that require agencies to follow certain procedures and/or consider various economic impacts before taking regulatory action: the Unfunded Mandates Reform Act of 1995, the Paperwork Reduction Act of 1995, and the Small Business Regulatory Enforcement Fairness Act of 1996.

3. Basic Principles for Assessing Benefits and Costs

In order to help agencies prepare the economic analyses required by Executive Order 12866 or the various statutes enacted by the Congress in the last few years, OMB developed, through an interagency process, a "Best Practices" manual that was issued on January 11, 1996. Best Practices sets the standard for high quality economic analysis of regulation—whether in the form of a prospective regulatory impact analysis of a proposed regulation, or in the form of a retrospective evaluation of a regulatory program. The principles that are described in detail in Best Practices are summarized here because they can serve as an introduction to how we have evaluated the studies on the costs and benefits of regulation discussed in the following chapters. We discuss those principles in Best

Practices that are general in nature, then those that pertain to benefits, and then those that pertain to costs.

General Principles

Costs and benefits must be measured relative to a baseline. Typically, this baseline is constructed to reflect policy in the absence of the regulation being evaluated, consistent with pending government actions, and applied equally to benefits and costs. In some instances where the likelihood of government actions is uncertain, analysis with multiple baselines is appropriate.

Costs and benefits should be presented in a way to maximize their consistency or comparability. Costs and benefits can be monetized, quantified but not monetized, or presented in qualitative terms. A monetized estimate is one that either occurs naturally in dollars (e.g., increased costs by a business to purchase equipment needed to comply with a regulation) or has been converted into dollars using some specified methodology (e.g., the number of avoided health effects multiplied by individuals' estimated willingness-to-pay to avoid them). A quantitative estimate is one which is expressed in metric units other than dollars (e.g., tons of pollution controlled, number of endangered species protected from extinction). Finally, a qualitative estimate is one which is expressed in ordinal or nominal units or is purely descriptive. Presentation of monetized benefits and costs is preferred where acceptable estimates are possible. However, monetization of some of the effects of regulations is often difficult, if not impossible, and even the quantification of some effects may not be easy. As discussed below, aggregating costs and benefits is particularly difficult, if not impossible, where they are not presented in consistent or comparable units.

An economic analysis cannot reach a conclusion about whether net benefits are maximized—the key economic goal for good regulation—without consideration of a broad range of alternative regulatory options. To help decision-makers understand the full effects of alternative actions, the analysis should present available physical or other quantitative measures of the effects of the alternative actions where it is not possible to present monetized benefits and costs, and also present qualitative information to characterize effects that cannot be quantified. Information should include the magnitude, timing, and likelihood of impacts, plus other relevant dimensions (e.g., irreversibility and uniqueness). Where benefit or cost estimates are heavily dependent on certain assumptions, it is essential to make those assumptions explicit, and where alternative assumptions are plausible, to carry out sensitivity analyses based on the alternative assumptions.

The large uncertainties implicit in many estimates of risks to public health, safety or the environment make treatment of risk and uncertainty especially important. In general, the analysis should fully describe the range of risk reductions, including an identification of the central tendency in the distribution; risk estimates should not present either the upper-bound or the lower-bound estimate alone.

Those who bear the costs of a regulation and those who enjoy its benefits often are not the same people. The term "distributional effects" refers to the distribution of the net effects of a regulatory alternative across the population and economy, divided in various ways (e.g., income groups, race, sex, industrial sector). Where distributive effects are thought to be important, the effects of various regulatory alternatives should be described quantitatively to the extent possible, including their magnitude, likelihood, and incidence of effects on particular groups. There are no generally accepted principles for determining when one distribution of net benefits is more equitable than another. Thus, the analysis should be careful to describe distributional effects without judging their fairness.

Benefits

The analysis should state the beneficial effects of the proposed regulatory change and its principal alternatives. In each case, there should be an explanation of the mechanism by which the proposed action is expected to yield the anticipated benefits. As noted above, an attempt should be made to quantify all potential real benefits to society in monetary terms to the maximum extent possible, by type and time period. Any benefits that cannot be monetized, such as an increase in the rate of introducing more productive new technology or a decrease in the risk of extinction of endangered species, should also be presented and explained.

The concept of "opportunity cost" is the appropriate construct for valuing both benefits and costs. The principle of "willingness-to-pay" captures the notion of opportunity cost by providing an aggregate measure of what individuals are willing to forgo to enjoy a particular benefit. Market transactions provide the richest data base for estimating benefits based on willingness-to-pay, as long as the goods and services affected by a potential regulation are traded in markets.

Where market transactions are difficult to monitor or markets do not exist, analysts should use appropriate proxies that simulate willingness-to-pay based on market exchange. A variety of methods have been developed for estimating indirectly traded benefits. Generally, these methods apply statistical techniques to distill from observable market transactions the portion of willingness-to-pay that can be attributed to the benefit in question. Contingent-valuation methods have become increasingly common for estimating indirectly traded benefits, but the reliance of these methods on hypothetical scenarios and the complexities of the goods being valued by this technique raise issues about its accuracy in estimating willingness to pay compared to methods based on (indirect) revealed preferences.

Health and safety benefits are a major category of benefits that are indirectly traded in the market. The willingness-to-pay approach is conceptually superior, but measurement difficulties may cause agencies to prefer valuations of reductions in risks of nonfatal illness or injury based on the expected direct costs avoided by such risk reductions. The primary components of the direct-cost approach are medical and other costs of offsetting illness or injury; costs for averting illness or injury (e.g., expenses for goods such as bottled water or job safety equipment that would not be incurred in the absence of the health or safety risk); and the value of lost production.

Values of fatality risk reduction often figure prominently in assessments of government action. Reductions in fatality risks as a result of government action are best monetized according to the willingness-to-pay approach for small reductions in mortality risk, usually presented in terms of the value of a "statistical life" or of "statistical life-years" extended.

It is important to keep in mind the larger objective of consistency—subject to statutory limitations—in the estimates of benefits applied across regulations and agencies for comparable risks. Failure to maintain such consistency prevents achievement of the most risk reduction from a given level of resources spent on risk reduction.

Costs

The preferred measure of cost is the "opportunity cost" of the resources used or the benefits forgone as a result of the regulatory action. Opportunity costs include, but are not limited to, private-

sector compliance costs and government administrative costs. Opportunity costs also include losses in consumers' or producers' surpluses, discomfort or inconvenience, and loss of time. The opportunity cost of an alternative also incorporates the value of the benefits forgone as a consequence of that alternative. For example, the opportunity cost of banning a product (e.g., a drug, food additive, or hazardous chemical) is the forgone net benefit of that product, taking into account the mitigating effects of potential substitutes. All costs calculated should be incremental—that is, they should represent changes in costs that would occur if the regulatory option is chosen compared to costs in the base case (ordinarily no regulation or the existing regulation) or under a less stringent alternative. As with benefit estimates, the calculation of costs should reflect the full probability distribution of potential consequences.

An important, but sometimes difficult, problem in cost estimation is to distinguish between real costs and transfer payments. As discussed below, transfer payments are not social costs but rather are payments that reflect a redistribution of wealth. While transfers should not be included in the estimates of the benefits and costs of a regulation, they may be important for describing the distributional effects of a regulation.

Chapter II. Estimates of the Total Annual Costs and Benefits of Federal Regulatory Programs

1. Overview

This chapter discusses the total annual costs and benefits of existing Federal regulatory programs called for by Section 645(a)(1). Before doing so, however, it is important to place the subject in perspective. First, we need to keep in mind the discussion in chapter I on best practices for estimating costs and benefits. Second, it is important to ask: What public policy purposes do aggregate estimates serve? And, in particular: In what ways can these estimates help support the recommendations to reform the regulatory system required of the Director by Section 645(a)(4)? Clearly, knowing the costs and benefits of proposed regulatory actions and their alternatives, including the alternative of no action, enables policy officials to make decisions that improve society's well being. But for reasons discussed below, knowing the total costs and total benefits of all of the many and diverse regulations that the Federal government has issued provides little specific guidance for regulatory decisions.

For example, four possible outcomes can result from totaling up the costs and benefits of all existing Federal regulations:

(1) High costs and high benefits.
(2) High costs and low benefits.
(3) Low costs and high benefits.
(4) Low costs and low benefits.

Given the intensity of the debate over regulatory reform, categories (3) and (4) are not likely outcomes of careful and fair accounting. *A priori*, it is not clear which of the remaining two categories is most likely. But does it matter? In each case, the policy guidance would be the same. Real economic improvement comes from expanding those significant regulatory programs that provide benefits that are greater than costs and contracting those programs that provide benefits that are less than costs. The substance is in the details, not in the total.

The implication of this discussion is that an excessive amount of resources should not be devoted to estimating the total costs and benefits of all Federal regulations. To the extent that the costs and benefits of specific regulatory programs can easily be combined, some indication of the importance of regulatory reform can be inferred by the magnitude of these estimates, but knowing the exact amounts of total costs and benefits, even if that were possible, adds little of value.

This proposition is important because it is extremely difficult, if not impossible, to estimate the actual total costs and benefits of all existing Federal regulations with any degree of precision. There are at least two types of intractable problems that make this so.

The Baseline Problem

In order to estimate the impact of regulations on society and the economy, one has to determine the counterfactual—that is, how things would have been if the regulation had not been issued. In other words, what is the baseline against which costs and benefits should be measured? With respect to estimating total costs and benefits of all Federal regulations, the baseline problem has several dimensions.

First, it is impossible to determine the true counterfactual, since it never happened. What would have happened in the absence of regulation can only be an educated guess. Furthermore, the greater the hypothesized difference between reality and the counterfactual, the more problematic the exercise. For example, some estimates of the total cost of regulation include the cost of compliance with our tax system. But to twist a phrase, one can no more easily imagine a world without taxes than one can imagine a world without death. It is also difficult to imagine a world without health, safety, and environmental regulation. Could a civil society even exist without regulation? In other words, what do we use as the baseline for a world without any regulation?

Second, even disregarding the problem of modeling large changes, there are significant difficulties in determining the counterfactual for individual regulations that one could begin to aggregate. One can survey firms and other regulated entities on their expected compliance costs either *ex ante*, before the regulation is implemented, or *ex post*, after the regulation has gone into effect. For both types of studies, the problem of potential bias must be kept in mind. It is often alleged that strategic behavior may color both regulators' and the regulated's estimates of the cost of regulation (Hahn and Hird 1991, Hopkins 1991, and Hahn 1996). Agencies are generally advocates of their programs and businesses generally are not in favor of regulation. In the ordinary course, therefore, the best studies are *ex post* studies done by individuals who do not have vested interests, but do have reputations as objective analysts to uphold.

Often only *ex ante* cost estimates are available, but even if firms' or agencies' estimates are unbiased at the time, technological change or "learning-by-doing" may result in those estimates overstating compliance costs (Hahn and Hird 1991 and Hahn 1996). In fact, there is much evidence that competition among regulated firms often reduces expected compliance costs once real time and effort is directed at the problem (Office of Technology Assessment 1995).

While *ex post* studies are likely to be more accurate than *ex ante* studies because firms should by then have had experience with actual regulatory compliance costs, *ex post* cost estimates have their own problems. Properly done they are likely to be resource and time intensive. Firms do not usually keep their cost accounting estimates according to what regulations are driving them. Thus, when surveyed, firms have to reconstruct causality. A recent General Accounting Office (GAO) report details the difficulties the GAO had in trying to determine the total cost of Federal regulation by surveying a sample of firms. The firms reported great difficulty in estimating their own costs of compliance because they could not easily separate Federal from State and local regulation and because they

did not keep records on incremental costs of regulation (See GAO 1996, pp. 49–51). Some studies have attempted to address this problem reasonably successfully by comparing the results of different degrees of regulation in different localities or time periods.

Moreover, virtually all of the studies of the costs of regulation produced to date are measuring the expenditures of firms required (*ex ante* or *ex post*) by regulation, whereas the cost to society of regulation should be measured by the change in consumer and producer surplus associated with the regulation and with any price and/or income changes that may result (Cropper and Oates 1992). At one extreme, ignoring the consumer surplus loss produced by a ban understates costs to society because although no compliance expenditures are required, consumers can no longer buy the product. At the other extreme, calculating compliance expenditures based on pre-regulation output overstates costs because if the firm raises prices to cover compliance costs, consumers will shift to other products, which reduces their welfare losses (Cropper and Oats 1992, p. 722).

A third problem relates to the economy and the appropriateness of the baseline for the purpose for which it is expected to be used. If the objective is to reduce the burden of existing regulation, even *ex post* evaluation surveys may be inadequate for they would reflect the cost of gearing up to comply, not the cost saving of no longer having to comply with a given regulatory program. While the former is relevant for deciding whether to regulate, the latter would be the relevant concept if one is considering reducing regulation. There is also the dynamic nature of the economy, whereby technological advances over time are likely to reduce the start-up cost of compliance the firm originally faced. In addition, sunk costs, such as specialized capital costs and the cost of changing procedures already in place, make the cost savings from eliminating regulation less than the cost of complying with those regulations. Very few studies exist, especially for health, safety and environmental regulation, that attempt to determine the cost savings that would result from reducing or eliminating existing regulation.

It is important to note that this dynamic nature of the economy may affect the estimation of benefits as well as costs. Technological improvements could reduce predicted benefits. For example, medical progress can reduce the future benefits estimated for health, safety and environmental regulations, just as productivity improvements in manufacturing reduces the costs of compliance of some regulations. New drugs or medical procedures can reduce the benefits of regulations aimed at reducing exposure to certain harmful agents such as an infectious disease or even sunlight. Regulations aimed at increasing the energy efficiency of consumer products or buildings may see their expected benefits reduced by new technology that reduces the cost of producing energy. Furthermore, productivity improvements lead directly to higher incomes, which lead people to demand better health and more safety. Business responds to these demands by providing safer products and workplaces, even in the absence of regulation. Individuals with rising incomes may also purchase or donate land to nature conservancies to provide ecological benefits. Yet as on the cost side, the baseline that is used is almost always the status quo, not what is likely to be true in the future.

Fourth, the construction of a baseline may be complicated where, as frequently occurs, there are several causes of the change in behavior attributed to a Federal regulation. State and local regulations may also require some level of compliance. The tort system, voluntary standards organizations, and public pressure also cause firms to provide a certain degree of public protection in the absence of Federal regulation. As GAO points out, determining how much of the costs and benefits of these activities to attribute solely to Federal regulation is a difficult undertaking (GAO 1996). Adding to the complexity, the degree to which these other factors cause firms and other regulated entities to provide safe and healthful products and workplaces and engage in environmentally sound practices changes over time, generally increasing with increasing *per capita* incomes and knowledge about cause and effect.

Thus, although the National Highway Traffic Safety Administration has significantly increased the safety of automobiles, it is not likely that if the agency's regulations were eliminated the automobile companies would discontinue the safety features that had been mandated. Consumers demand safer cars than they used to and automobile companies are concerned about product liability. This same phenomenon exists with the environment, although probably to a lesser extent. Environmentally responsible behavior has become good for the bottom line. One paper company interviewed by GAO said that it would have incurred a substantial amount of its compliance costs even if there were no regulations, simply as good business practices (GAO 1996, p. 51). Over time, this "rising baseline" phenomenon reduces the true costs of health, safety, and environmental regulations. Estimates of the aggregate costs of regulations that include the unadjusted cost estimates from aging studies are thus likely to be overestimates of the real costs of those regulations.

The Apples and Oranges Problem

The studies that have attempted to tote up the total costs and benefits of Federal regulations have basically added together a diverse set of individual studies. Unfortunately, these individual studies vary in quality, methodology, and type of regulatory costs included. Thus we have an apples and oranges problem, or, more aptly, an apples, oranges, kiwis, grapefruit, etc., problem.

Part of the problem arises because of the nature of regulation itself. There are over 130,000 pages of regulations in the Code of Federal Regulations, with about 60 Federal agencies issuing regulations at the rate of over 1,800 per year. For our purposes, a "regulation" or "rule" means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice of an agency. Clearly, "regulation" encompasses a lot of territory. The Hopkins series of studies (1991, 1992, 1995, 1996), which are the latest attempts to aggregate the costs of all regulations for which estimates are available and which we discuss in detail later, include five major categories of regulation:

Environmental. As the EPA points out, the true social cost of regulations aimed at improving the quality of the environment are represented by the total value that society places on the goods and services foregone as a result of resources being diverted to environmental protection. (Cost of a Clean Environment, pp. 1–2 to 1–3.) These costs include the direct compliance costs of the capital equipment and labor needed to meet the standard, as well as the more indirect consumer and producer surplus losses that result from lost or delayed consumption and production opportunities resulting from the higher prices and reduced output needed to pay for the direct compliance costs. In the case of a product ban or prohibitive compliance costs, almost all of the costs represent consumer and producer surplus losses. Most of the cost estimates used in this report do not

include consumer and producer surplus losses because it is difficult to estimate the demand and supply curves needed to do this type of analysis.

Further indirect effects on productivity and efficiency result from these price and output changes as they filter through other sectors of the economy. According to EPA in the Cost of Clean report, recent research indicates that compliance cost estimates may understate substantially the true long-term costs of pollution control (p. 1–3). The estimates used in this report do not include these indirect and general equilibrium effects.

The benefits of environmental protection are represented by the value that society places on improved health, recreational opportunities, quality of life, visibility, preservation of ecosystems, biodiversity, and other attributes of protecting or enhancing our environment. As discussed in chapter 1, the value is best measured by society's willingness to pay for these attributes. Because most types of improvements in environmental quality are not traded in markets, benefits must be estimated by indirect means using sophisticated statistical techniques that generally make benefit estimation more problematic than cost estimation.

Although the EPA issues the great majority of environmental regulations, DOI, DOT, and the DOE, among others, also issue rules aimed at improving the environment.

Other Social. This category of regulation includes rules designed to advance the health and safety of consumers and workers, as well as regulations aimed at promoting social goals such as equal opportunity and equal access to facilities. They are often lumped together with environmental regulation in the category of "Social Regulation." Social regulation is mainly concerned with controlling the harmful or unintended consequences of market transactions, such as air pollution, occupationally induced illness, or automobile accidents. These consequences are commonly called "negative externalities" and regulation designed to deal with them attempts to "internalize" the externalities. This can be done by regulating the amount of the externality, e.g., banning a pollutant or limiting it to a "safe" level, or by regulating how a product is produced or used. The techniques and methodological concerns involved in the estimation of the social costs and benefits generated by these rules are similar to those involved in the estimation of costs and benefits of environmental regulation discussed above.

Economic. Economic regulation is so-called because it directly restricts firms' primary economic activities, e.g., its pricing and output decisions. It may also limit the entry or exit of firms into or out of certain specific types of businesses. The regulations are usually applied on an industry basis such as banking, trucking, or securities. In the United States, much of this type of regulation at the Federal level is administered by what are referred to as "independent" commissions, e.g., the FCC or the SEC, whose members are appointed but not removable without good cause by the President. The economic loss caused by this type of regulation results from the higher prices and inefficient operations that often result when competition is prevented from developing.

The costs of such regulation are usually measured by modeling or comparing specific regulated sectors with less regulated sectors, estimating the consumer and producer surplus losses that result from higher prices and lack of service, and estimating the excess costs that may result from the lack of competition. In contrast to social regulatory cost estimates, these estimates are mainly indirect costs.

Economic regulation, including antitrust, may produce social benefits when natural monopolies are regulated to simulate competition or when firms are prevented from anticompetitive collusion and mergers. In a dynamic economy, however, the dollar amount of such economic efficiency benefits are thought to be small (Hahn and Hird 1991). Much of the motivation for economic regulation is based on equity and fairness considerations, but often it is based on enhancing one group at the expense of another. These considerations are not social costs or benefits, but do need to be factored into regulatory decisions.

Transfer. As discussed in chapter 1, transfers are payments from one group in society to another and therefore are not real costs to society as a whole. One person's loss is another person's gain. Examples of transfers include payments to Social Security recipients from taxpayers and the higher profits that farmers receive as a result of the higher prices consumers must pay for farm products limited by production quotas. Nevertheless, Hopkins (1991) includes transfer costs in the total cost of regulations. He does place them in a separate category and points out that they are different from the real social costs that result from economic efficiency losses. As discussed in Chapter 1, OMB's guidance states that transfers should not be added to the cost and benefit totals included in regulatory assessments but should be discussed and noted for policymakers.

Process. Process costs, according to Hopkins, are the administrative or paperwork costs of filling out government forms such as income tax, immigration, social security, etc. Although there are benefits to the services that these government programs provide and some minimum amount of process cost is necessary to deliver these services, it makes little sense to try to place a separate value on administration. Rather, process costs should be viewed as a "cost of doing business" that should be minimized for a given level or quality of service.

Adding these various categories together, as Hopkins and others have done, does two things. It produces large numbers and it creates confusion. It produces large numbers by including "costs" that are not normally considered as part of the regulatory reform debate. For example, costs such as the burden of filling out income tax forms or doing the paperwork needed to get visas, passports, small business loans, and veterans benefits are not what one usually thinks about when worrying about the cost of regulation. Nor do we usually think that the income gained by farmers from price support programs or the increased sales by domestic businesses as a result of trade protection are costs of regulation. Congress did not seek oversight of these types of costs when, in the last Congress, it debated legislative proposals for comprehensive regulatory reform, such as S. 343 and H.R. 9, or when it passed the Unfunded Mandate Reform Act of 1995 or the Small Business Regulatory Enforcement Fairness Act of 1996.

Adding these categories of regulation together with health, safety and environmental regulation also creates confusion because the appropriate policies to reduce any adverse effects from these programs are very different. To reduce price supports, modify international trade protectionism, and minimize non-cost-effective health, safety, and environmental regulation would take very different paths. Lumping them together does not enlighten the search for appropriate reforms.

In sum, adding up the costs and benefits of the various regulatory programs may give us a rough estimate of the magnitude of the impact of regulatory activities on the economy and make it clear that regulation plays an important role in our economy. Indeed, we can use the total cost figures to begin to track the extent of this activity relative to other aggregate data.

For example, our calculations indicate that regulatory costs are about 4% (3.8%) of GDP in 1997. We have also looked at 1988, and found that regulatory costs were then roughly the same percentage. From this comparison, we can say that there has been no material growth in the cost of regulation relative to the size of the economy in the last decade.

However, these data provide little useful information about what to do next. If what is intended is to make regulation more efficient, one needs to estimate the incremental costs and benefits of individual regulations, or specific provisions of individual regulations, on a case-by-case basis. If what is intended is to reduce the burden of existing, health, safety and environmental regulation, one needs to estimate how firms would react to the removal of requirements, not how they acted when the requirements were originally imposed. If what is intended is to improve the cost-effectiveness of new regulations, one needs to know what factors are preventing future regulations from being more cost-effective. But none of this information is found in the aggregate estimates of the costs and benefits of regulation done to date.

2. Our Estimates of the Costs and Benefits of Existing Regulations

To meet the requirements of Section 645(a)(1), we surveyed the existing literature on the total costs and benefits of regulation, supplementing it with information we have obtained from reviewing regulatory impact analyses over the last ten years under Executive Orders 12291 and 12866. Our review of the literature revealed only one comprehensive study that attempted to estimate the total costs and benefits of all Federal regulations (Hahn and Hird 1991). Hahn and Hird's estimates were peer reviewed and published in one of the top economics/legal journals specializing in regulatory issues, the Yale Journal on Regulation. In addition, EPA issued a report to Congress at about the same time known as the Cost of Clean report (EPA 1990). The Cost of Clean report is recognized as the most thorough and careful attempt to estimate the compliance cost of environmental regulation published to date.

The Hahn and Hird study compiled cost and benefit estimates from over 25 studies published mostly by academics in peer reviewed journals, e.g., Hufbauer (1986) for international trade, Wenders (1987) for telecommunications, Gardner (1987) for agricultural price supports, Morrison and Winston (1986 and 1989) for airlines, Crandall (1986) for highway safety, and Crandall (1988), Denison, (1979), and Viscusi (1983) for Occupational Safety and Health. It should be noted that although all of these studies are generally recognized as the best available, they are not without shortcomings. For example, the Crandall (1988) and Denison (1979) studies relied upon for the cost of OSHA regulations used survey data that included expenditures that firms would have made on safety in the absence of OSHA regulation.

The Cost of Clean report's estimates of costs are based on annual survey data from the Department of Commerce's "Pollution Abatement and Control Expenditures" (PACE) reports, regulatory impact analyses of major EPA regulations, and special analyses by EPA program offices or contractors. The PACE report surveys, which were conducted through 1994, but discontinued thereafter, cannot be used without careful adjustments because they contain pollution control expenditures that are not Federally mandated. EPA is continuing efforts to review the costs and benefits of certain of its regulatory programs. It has completed reports on drinking water (EPA 1993) and surface water (EPA 1995) and is presently working on a report required by the Clean Air Act Amendments of 1990 on the costs and benefits of the Clean Air Act, which it plans to submit to Congress in October of 1997. A draft of this report indicates that some of the numbers we report below may be understated (EPA 1997).

In addition, we used information about the costs of major regulations reviewed by OMB under Executive Order 12291 and 12866, which were recently published by OMB in More Benefits Fewer Burdens (1996). (We include the cost of rules published in 1987 and 1988 to allow for a lag between publication of the rule and the expenditure of funds for compliance.) The rules included are generally all final rules with annual costs of $100 million or more issued by Executive Branch agencies, which we believe capture at least 90 percent of the costs added by all rules. The cost estimates themselves are agency estimates that have gone through OMB review and the Administrative Procedure Act requirements for notice and comment by the public.

Total Costs

Using the estimates for Federally mandated regulatory costs from the Cost of Clean report (1990, Table 8–9D) for environmental regulation and Hahn and Hird's estimates for other social regulation for a 1988 base, we added the cost of all major regulations reviewed by OMB under Executive Orders 12291 and 12866 and issued by the agencies between 1987 and 1996. The following table shows our calculations for the costs of social regulations:

TABLE 1.—ESTIMATES OF THE ANNUAL COST OF SOCIAL REGULATION FOR 1997

[Billions of 1996 dollars]

	Environmental	Other social	Total social
1988 Baseline:			
(EPA, Hahn and Hird)	101	35	136
Cost of rules 1987–96 (OMB)	43	19	62
Total for 1997	144	54	198

While our estimates do not include the costs of regulations with costs below $100 million and there is a possibility that agencies understate the costs of proposed rules (Hopkins, 1992, p. 13), we believe that, if anything, the estimates overstate actual direct costs because of the rising baseline phenomenon discussed above. For example, as a sensitivity analysis, it does not seem implausible that, for environmental and other social regulations over ten years old, no more than half of compliance costs would likely be saved if these Federal regulations magically disappeared over night. The automobile companies are not likely to make their cars less safe or less fuel efficient. Similarly, the great majority of firms are not likely to stop controlling asbestos and cotton dust

fibers or lead dust and benzene emissions in the workplace if these regulations were abolished. Nor would the judicial tort system likely tolerate increased levels of harmful pollution or harmful products. If this scenario is correct, then the cost of social regulation in 1997 would fall to $130 billion (136/2+62=130), or $93 billion for environmental regulations and $37 billion for other social regulation.

To the cost estimates for environmental and other social regulation, we must add the costs of the other types of regulation, i.e., economic and process regulation. We use the Hahn and Hird estimate for the efficiency cost of economic regulation for 1988. Because the great majority of these regulations are issued by independent regulatory agencies (e.g., the FCC, the FTC, the SEC, the FDIC and the NRC that were not required under Executive Orders 12291 or 12866 to submit information on benefits and costs of regulations to OMB, we did not have our own data to update the 1988 baseline. Instead, we relied on a study by Hopkins (1992) who derived an estimate of $81 billion for the efficiency costs of economic regulation for 1997.

Hopkins made several additions to Hahn and Hird to update economic regulation costs to 1997: $10 billion for surface transportation costs, $5 billion for the Jones Act, and $5 billion for banking regulations (p. 27). We have no basis to question these estimates and therefore have included them. On the other hand, we do not include Hopkins' estimate of the transfer costs of economic regulation, because, as noted above, we do not believe that transfers are costs that should be included in total cost of regulation estimates. In addition, we do not include the process or paperwork cost estimated by Hopkins and others (Hopkins 1991 and 1992 and Weidenbaum and DeFina 1978) because these costs are for the most part already included in cost estimates supplied by the agencies and reviewed by OMB. However, there are costs of paperwork imposed by the independent agencies that should be added. According to OMB's latest Information Collection Budget, the burden hours of paperwork imposed by the independent agencies was about 390 million hours (or about $10 billion in costs using a $26.50 per hour estimate to take into account the fact that these agencies' paperwork often require some professional expertise to fill them out). Since these costs are mostly for economic regulation (the NRC paperwork is only two percent of the total), we add the $10 billion to the $81 billion estimate for the cost of economic regulation.

Our best estimate of the total cost of regulation for 1997 is thus the following:

TABLE 2.—ESTIMATE OF THE ANNUAL TOTAL COST OF REGULATION FOR 1997

[Billions of 1996 dollars]

Environmental	144
Other Social	54
Economic	91
Total	289

Total Benefits

Aggregating benefits from individual regulations poses special problems even beyond those discussed above for aggregating costs. There are several important limits to such an exercise. First among these is uncertainty. Because so much of the uncertainty in possible benefit estimation is unknown, and so little is known about the relationships among benefit estimates of different regulations, analysts have virtually no basis for aggregating benefits in a manner that might preserve information about the likely distribution of aggregate benefits.

Second, as noted above, benefits, like costs, may be presented as monetized, quantified, or in narrative forms. For a variety of reasons, many of them understandable, if not legitimate, agencies often do not express beneficial effects in monetizable terms that can easily be aggregated. What is being described may not be readily amenable to quantification or monetization (e.g., the value of greater national security or of increased individual privacy), or the agency may have chosen not to develop monetized estimates because of resource or time constraints. Moreover, while some of the effects are present as quantified estimates, these cannot be summed if they are not expressed in common units. Of course, when effects are not expressed in quantitative terms, this aggregation problem is even more acute. We can only conclude that estimates of the total benefits of regulation will be understated by an unknown amount until all significant benefits are monetized.

Because of the difficulty of estimating benefits, there are very few studies that attempt to estimate the total benefits as well as costs of regulation. Indeed the only study that has attempted to estimate the total benefits of all regulations is the study by Hahn and Hird that we relied upon for the 1988 cost baseline. Hahn and Hird present the following broad range of estimates of the annual benefits of regulation in billions as of 1988, which we have converted to 1996 dollars using the CPI:

TABLE 3.—HAHN AND HIRD'S 1988 BENEFIT ESTIMATES

[Billions of 1996 dollars]

	Low	High
Environmental	21.8	179.3
Other Social	33.5	60.3
Economic	0	0
Total	55.3	239.6

Note that while Hahn and Hird do not include any benefits from economic regulation (on the grounds that they are negligible in most cases), they state that the regulation of natural monopolies and antitrust can theoretically produce efficiency gains (p. 253). When Hahn and Hird take the midpoints of their benefit and cost estimates, they find net benefits of regulation of about $2 billion, which leads them to conclude that "* * * net benefits of social regulation are positive but small." (p. 253, f. 74).

Since the Hahn and Hird study, the only systematic study of the benefits together with the costs of major social regulations, of which we are aware, is a study by Hahn, published jointly by Oxford University Press and the AEI Press in 1996. In that study, Hahn reviewed the regulatory impact statements required by Executive Orders 12291 and 12866 for major regulations produced by agencies between 1990 and mid-1995. Hahn accepted the agency estimates of benefits at face value, used consensus estimates from the academic literature to value the benefits (e.g., the Viscusi 1992, estimate for a "statistical life") and used consistent assumptions across agencies to produce monetized benefit estimates (pp. 214–217). He found that 54 regulations had produced almost $500 billion in benefits in present value (discounting at 5 percent and using his middle value consensus estimates) (p. 218). Hahn also calculated that these regulations produced $220 billion in net costs (gross costs minus any costs savings produced by regulation).

Unfortunately, we do not have enough information to convert Hahn's present value estimates to annual estimates so that we could compare them to our annual cost estimates presented above. However, we can use Hahn's benefit/cost ratio ($500b/$220b) or 2.5, assume that it holds for the full period since 1988, and calculate an aggregate benefit estimate. It should be noted , however, that Hahn believes his aggregate net benefit estimates " * * * are likely to

substantially overstate actual net benefits" (p. 224). Both our estimates and Hahn's estimates would most likely include almost the same set of regulations issued between 1990 and 1995 because we both attempted to be exhaustive in our cost collection effort. According to our sample, about 80% of the costs of social regulation issued between 1989 and 1996 were issued between 1990 and 1995. Assuming that in 1988, social regulation produced net benefits of $2 billion as Hahn and Hird suggest, and using Hahn's benefit-cost ratios for environmental (1.4) and other social regulation (5.3), we calculate that the benefits of regulation in 1996 were as follows, and we present our cost estimates for comparison:

TABLE 4.—ESTIMATES OF THE TOTAL ANNUAL BENEFITS AND COSTS OF REGULATION FOR 1997

[Billions of 1996 dollars]

	Benefits	Costs
Environmental ...	162	144
Other Social	136	54
Economic	0	91
Total	298	289

As explained above, these are very rough estimates, probably overstating both the benefits and costs, and viewed alone not very informative. The total numbers on costs and benefits indicate that regulation has produced about as much in benefits as in costs, but this is because economic regulation produces negligible benefits. Disaggregating the totals a little reveals that "Other Social" regulation produces very large net benefits, but if one digs into both the Hahn and Hird, and Hahn studies in greater detail, it becomes clear that most of the benefits of this category are produced by highway safety regulation. Hahn and Hird state that they found very little "credible evidence" that as of 1988, OSHA regulations had produced any significant benefits (275–276), although Hahn's 1996 study found that OSHA regulations had produced over $50 billion (present value) in net benefits by 1995.

Hahn makes clear that even though his study found that the 53 regulations issued between 1990 and 1995 produce very large net benefits, only 23 would "pass" a cost-benefit test. He also points out that if the rules that had not passed the test had not been issued, net benefits would have been $115 billion, or about 40 percent greater (p. 221). He also finds that all safety regulations have benefits greater than costs, and that regulations based on the Clean Air Act and the Safe Drinking Water Act had positive net benefits (p. 221) (which is corroborated by the EPA Drinking Water study (1993)). An analysis of the costs and benefits of regulations based on other regulatory programs produced mixed results. The message is clear: the policy content is in the details.

3. Other Estimates of the Total Costs of Regulation

As noted, the estimates of total costs and benefits that we have provided overstates, we believe, both the benefits and most certainly the costs of regulation. Nonetheless, our cost estimates are substantially less than other numbers that are often cited and have gained a certain credibility in the debate. We would note that, apart from the Hahn and Hird study we used, all other estimates of total costs do not present benefit estimates. We believe that presenting costs without benefits is not very informative and potentially misleading. In any event, some explanation of the difference between our numbers and other numbers that have been cited is appropriate.

According to a 1995 report to Congress by the Small Business Administration's (SBA) Office of Advocacy, there are estimates of the total cost of regulation generated by the Heritage Foundation as high as $810 billion to $1.7 trillion for 1992 with benefits reportedly netted out. We cite this study because it is the largest estimate of the costs of regulation that we are aware of. Our reference to it should not be construed as any endorsement of it; indeed, it has not been peer reviewed, it has not been published in a reputable journal, and most importantly, the basis for the estimate has not been made publicly available. Our own view is that the numbers are either wrong or are measuring something other than what we are talking about.

On the other hand, there is a series of Hopkins studies of the total cost of regulation (1991, 1992, 1995, and 1996), which is both well known and better documented. The Hopkins estimates have also received attention from the Congress. A recent GAO study, Regulatory Reform: Information on Costs, Cost-Effectiveness, and Mandated Deadlines for Regulation (1995), was asked to focus on the Hopkins study because of its prominence and the fact that it was the only game in town.

Hopkins relied on the paper by Hahn and Hird (1991) that provided estimates of the costs and benefits of economic and social regulation for 1988, on the 1990 study by the EPA, The Cost of a Clean, and various reports from OMB: The Information Collection Budget (various years)—that is, the same materials that we used for our 1988 cost baseline. Hopkins also reviewed two earlier attempts at adding up the total costs of regulation as of 1976–77 by Weidenbaum and DeFina (1978) and Litan and Nordhaus (1983) to make estimates of the trend in total regulatory costs over this decade. He also projected cost to the year 2000, based on estimates from the Cost of Clean, extrapolations of past trends, and some educated guess work about the future costs of compliance with regulations required by statutes such as the Clean Air Act Amendments of 1990 and the Americans with Disabilities Act of 1990. Because we focus our attention on the state of regulation as of 1997, we do not directly critique the earlier studies by Weidenbaum and DeFina or Litan and Nordhaus, nor do we discuss Hopkins' extrapolations beyond 1997.

Hopkins' cost estimate for 1997 (presented by us in 1996 dollars using the CPI), is as follows:

TABLE 5.—HOPKINS' ESTIMATE OF THE ANNUAL COSTS OF REGULATION

[Billions of 1996 dollars]

Environmental	185
Other Social	62
Economic: Efficiency Costs	81
Economic: Transfer Costs	148
Process	232
Total	708

One important problem with these estimates is that, with the exception of the Process estimate, they are based on individual studies that were published, for the most part, between 1975 and 1990 and then, as mentioned above, extrapolated to 1997 based on the Cost of Clean cost projections for future years for environmental regulation and his own *ad hoc* "guesstimates" (his words (1991, p. 11)) for other social and economic regulation. Note that although we also use data from 1988 and earlier, his approach differs significantly from ours. Rather than extrapolation, we used timely information supplied by the agencies over the period 1987 to 1996 that was subject to notice and public comment and OMB review to update the estimates on benefits and costs to 1997. Ideally, to get a realistic picture of the total costs of regulation, one needs to do a comprehensive study of all regulatory costs facing the economy at a given point in time. But that would be prohibitively expensive and, as pointed out above, ex post surveys of the costs of existing regulations have their own problems.

A second problem relates to the appropriateness of Hopkins' adjustments. Specifically, Hopkins' adds to EPA's Cost of Clean report (the 1988 base), $10 billion for the Clean Air Act Amendments, $8 billion for Superfund/RCRA, and $1 billion for several DOT environmental regulations. It is not clear, however, how these figures are derived. Similarly, Hopkins' estimate for "other" social regulation costs starts with Hahn and Hird (as we did), but adds an additional $1 billion and an assumed rise of 5% percent per year for OSHA regulations, and adds $4 billion for the new universal accessibility standards, $500 million for food labeling regulations, $200 million for energy conservation standards, and $1.6 billion for clinical lab regulations. These amounts are taken from a combination of agency and industry sources, although again it is not clear how the specific numbers were derived.

As noted above, we used Hopkins' updates for the changes in economic costs to 1997. Moreover, we added $10 billion to his estimate of the cost of economic regulation to account for the paperwork costs imposed by the independent agencies. But we did not include Hopkins' estimate of transfer costs. Hopkins acknowledges that transfers are exchanges of funds from one group to another, but he argues that the existence of transfers creates real social costs because they give rise to "rent-seeking behavior." ("Rent seeking behavior" is behavior that attempts to capture or create excess profits usually by influencing government actions, such as regulations.) He states that the existence of transfers creates real costs that exhausts the amount of the transfer as interest groups and their lobbyists, lawyers and experts campaign for those funds (p. 29). We believe that Hopkins has the causality wrong. Rather than the existence of a transfer program causing rent-seeking behavior, rent-seeking behavior causes the transfer. It is the possibility that rent-seeking behavior may result in a gain that causes special interests to form and campaign for special treatment. The transfer program does not have to exist, just the possibility that one could be set up. Thus to the extent that rent-seeking behavior imposes real costs on society, those costs would be more appropriately attributable to our democratic political system than to a particular regulation.

We also believe that Hopkins' has overstated the costs of process regulation, which for the most part either represents double counting or more appropriately belongs elsewhere. Most of Hopkins' estimate is based on the burden hour estimates reported in OMB's annual Information Collection Budgets (various years) of the time it takes the public to comply with information requests made or generated by the Federal government. He multiplies burden hours by $26.50 per hour (in 1996 dollars), an estimate of the public's opportunity cost for filling out forms and gathering information. While average private nonagricultural hourly earnings was $11.82 in 1996 (less than 45 percent of the number he used), Hopkins argues that his time cost estimate is not too high because about 85 percent of the burden hour estimate is from the Treasury Department, much of which represents the time it takes high priced tax accountants to fill out income and corporate tax forms.

We believe the paperwork costs of the tax code should not be included in an estimate of the total cost of regulation. First, filling out tax forms is not the result of "regulations" but rather of the tax code itself, with most regulations merely providing interpretations and clarifications of tax law. Second, Hopkins assumes a zero baseline—that is, he implicitly assumes that replacing the revenue generated by the present tax code could be done with no record keeping or reporting costs. The implicit baseline is a world without taxes. Third, reforming the tax code is an entirely different public policy area than regulation, and lumping the two together, especially when the tax numbers are so large relative to social and economic regulatory costs, just confuses the issue.

Hopkins has removed the cost of procurement paperwork, such as that imposed by DOD and GSA, based on an OMB estimate that in 1990 the procurement paperwork burden was about 30 percent of the total non-tax-related paperwork. He correctly points out that those costs are mostly paid by taxpayers through higher procurement costs, and thus it would be double counting to include them as private sector regulatory costs. However, most of the remaining paperwork costs also represent double counting, because the estimates of regulatory costs for individual social and economic regulations that he uses already include these costs as a cost of compliance. Specifically, the compliance cost estimates submitted to OMB and included in our estimate for the cost of social regulation include associated paperwork costs. Although Hopkins admits the likelihood of double counting, he dismisses it because "the dominance in this category of tax-related paperwork suggests this is not likely a serious problem" (1991, p. 14). But once tax-related paperwork is removed, it becomes a serious problem.

Hopkins also adds to his process costs estimates $10 billion in 1997 as the amount that State and local government spent to comply with Federal mandates. However, we cannot determine a clear basis for his estimate. Because our approach of adding the costs of all social regulations issued since 1987 should capture State and local regulatory costs, there should not be a special provision for State and local mandates.

The final piece of Hopkins' process cost estimate is an estimate of how much more overhead the U.S. multi-payer health care system generates than Canada's single-government-payer system. His argument here is that because the United States has less regulation, it has higher regulatory costs. It is certainly true that regulation can improve efficiency, but it seems disingenuous to argue that because regulations have not mandated a single payer system or restricted private payment systems, etc., regulatory costs are increased. These increased cost estimates (Woolhandler and Himmelstein, 1991), if they are true (they are controversial), are more properly treated as benefits of regulation (or of a government program), not as costs of not regulating. Additionally, as discussed above, including these costs confuses the regulatory reform debate.

In sum, in our view, Hopkins' total cost estimate is about 240% greater than ours because he includes inappropriate transfers and process costs and less accurate estimates of the growth of social regulation since 1988.

4. Assessment of the Direct and Indirect Impact of Federal Rules

A proper assessment of the costs and benefits of regulation would have to take into account both the direct and indirect impact of regulation on the economy. As reported above, our estimate of the direct effect is that, in the aggregate, the net benefits of regulation issued to date is positive. The few studies that have attempted to determine the indirect effects of regulation on productively and welfare have found significant indirect effects, implying that the direct effects reported above are significant understatements of the full costs of regulation (Hazilla and Kopp 1990 and Jorgenson and Wilcoxen 1990). However, as Hahn and Hird (1991) point out, it is not clear how to evaluate these studies and others like them, which are based on huge, complex and often proprietary models of the U.S. economy. This makes it almost impossible to validate the

models or to view the assumptions on which they are based.

These studies have another major problem because they only take into account indirect cost effects and do not include the indirect beneficial effects that may result from better health and safer lives. Yet it is generally agreed that healthier people tend to work harder and longer and save and invest more, thereby increasing the growth of the economy. Therefore, without knowing what the indirect and general equilibrium benefits of regulation are, one should not draw conclusions by only looking at the indirect costs. Models that take into account the indirect benefits and general equilibrium effects of longer life spans, higher levels of environmental quality, and more equal opportunities remain to be developed.

The best survey of what we know about the full range of indirect costs and benefits of social regulation was recently published in one of the leading economic journals: the Journal of Economic Literature (Jaffe, Peterson, Portney, and Stavins 1995). Although concentrating on environmental regulation, their discussion should apply to health and safety regulation as well because they are similar in their economic effects and the direct costs of health and safety regulation are only about one third the amount of environmental regulation. The authors conclude from a survey of the literature that environmental regulation has little impact on "competitiveness as measured by net exports, overall trade flows, and plant location decisions (p. 157), " modest adverse impacts on productivity" (p. 151) and "significant dynamic impacts * * * in the form of costs associated with reduced investment" based on computable general equilibrium models (p. 151). However, they also point out that, for the most part, these estimates do not take into account the feedback effect from improvements in the environment (p. 153).

Jaffe et al. also examine the contention that environmental and other social regulation may actually enhance economic growth and competitiveness by stimulating improvements in productivity as firms compete among themselves to comply with regulations in the least cost way. We discussed this proposition above as a reason why the actual costs of compliance ex post often turns out to be less than predicted ex ante. Several authors have extended this proposition beyond the ad hoc to include the economy as a whole (Porter 1991 and Gardiner 1994). This line of reasoning claims that the country that leads in environmental protection will gain a lasting comparative advantage in international trade in the supplier industries because of having been the "first mover" into an area that other countries must follow.

We are cautious about extending such claims to the economy as a whole. To be sure, certain sectors benefit and we may even develop a comparative advantage in them, but other sectors must invariably lose their comparative advantage because resources are drawn from them and comparative advantage is by definition a relative phenomenon. Jaffe, et al., (p. 157) conclude:

> Thus, overall, the literature on the "Porter hypothesis" remains one with a high ratio of speculation and anecdote to systematic evidence. While economists have good reason to be skeptical of arguments based on nonoptimizing behavior where the only support is anecdotal, it is also important to recognize that if we wish to persuade others of the validity of our analysis we must go beyond tautological arguments that rest solely on the postulate of profit-maximization. Systematic empirical analysis in this area is only beginning, and it is too soon to tell if it will ultimately provide a clear answer.

We agree with this statement and hope that this report stimulates "systematic empirical analysis" in this area, as well as work on as the broader issue of how to improve the estimation of the costs and benefits of regulatory programs discussed in this report.

Chapter III. Estimates of Benefits and Costs of "Economically Significant" Rules

1. Scope

In this chapter, we examine the benefits and costs of "each rule that is likely to have a gross annual effect on the economy of $100,000,000 or more in increased costs," as required by Section 645(a)(2). We have included in our review those final regulations on which OIRA concluded review during the 12-month period April 1, 1996, through March 31, 1997. We chose this time period to ensure that we covered a full year's regulatory actions as close as practicable to the date our report is due, given the need to compile and analyze data and publish the report for public comment. In addition, we thought it would be useful to adopt a time period close to that used for the annual OMB report required by the Unfunded Mandates Reform Act of 1995.

The statutory language categorizing the rules we are to consider for this report is somewhat different from the definition of "economically significant" rules in Executive Order 12866 (Section 3(f)(1)). It also differs from similar statutory definitions in the Unfunded Mandates Reform Act and Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996—Congressional Review of Agency Rulemaking. Given these varying definitions, we interpreted Section 645(a)(2) broadly to include all final rules promulgated by an Executive branch agency that meet any one of the following three measures:

- Rules designated as "economically significant" under Section 3(f)(1) of Executive Order 12866;
- Rules designated as "major" under 5 U.S.C. 804(2) (Congressional Review Act);
- Rules designated as meeting the threshold under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538).

We did not include rules issued by independent regulatory agencies because we do not review their rules under Executive Order 12866. In any case, we believe that few of their individual regulations meet the statutory criteria of Section 645(a)(2).

During the time period selected, OIRA reviewed 41 final rules that met these criteria. (Table 6.) For 9 of these 41 final rules, OIRA also reviewed a proposed rule during the time period. (OIRA reviewed 13 additional proposed rules that met one or more of the three criteria listed above.)[1] Of the 41 final rules, USDA submitted 12; HHS submitted 8; EPA submitted 7; and the remainder were from the Departments of the Commerce (1), Housing and Urban Development (2), Interior (2), Justice (1), Labor (2), and Transportation (3), and the Social Security Administration (2). Also included is one multi-agency rule from HHS, DOL, and Treasury. These 41 rules represent about 15% of the final rules reviewed by OIRA during this period, and less than 1% of all final rules published in the **Federal Register** between April 1, 1996, and March 31, 1997. Nevertheless, because of their greater scale and scope, we believe that they represent the vast majority of the costs and benefits of new Federal regulations during this period.

[1] These proposals include several particularly significant proposals reviewed by OIRA: EPA's two proposals in November 1996 to revise the National Ambient Air Quality Standards for Particulate Matter and Ozone; EPA's proposal in the summer of 1996 expanding the industries covered by the Toxic Release Inventory; and FDA's January 1997 proposal regarding Animal Proteins Prohibited in Ruminant Feed. These proposals are not discussed because they were not yet final during the time frame on which we are reporting.

TABLE 6.—ECONOMICALLY SIGNIFICANT FINAL RULES
[4/1/96–3/31/97]

Department of Agriculture

Foreign Agriculture Service:
- CCC Supplier Credit Guarantee Program
- Dairy Tariff-Rate Import Quota Licensing

Farm Service Agency:
- 1995-Crop Sugarcane and Sugar Beet Price-Support Loan Rates
- Farm Program Provisions of the 1996 Farm Bill
- Peanut Poundage Quota Regulations—7 CFR Part 729 (Interim Final)
- Conservation Reserve Program—Long Term Policy

Federal Crop Insurance Corp.:
- Catastrophic Risk Protection Endorsement
- General Administrative Regulations—Subpart T

Animal and Plant Health Inspection Service: Karnal Bunt
Food Safety and Inspection Service: Hazard Analysis and Critical Control Points
Food and Consumer Service:
- Certification Provisions (Mickey Leland Childhood Hunger Relief Act), Food Stamp Program
- Child and Adult Care Food Program: Targeting of Day Care Home Reimbursements (Interim Final)

Department of Commerce

Bureau of Export Administration: Encryption Items Transferred from the U.S. Munitions List to the Commerce Control List

Department of Health and Human Services

Health Care Financing Administration:
- Limits on Aggregate Payments to Disproportionate Share Hospitals
- Hospital Inpatient Prospective Payment Systems FY 1997 Rates
- Medicare Revisions to Policies Under Physician Fee Schedule 1997
- Requirements for Physician Incentive Plans in Prepaid HCOs
- Individual Market Health Insurance Reform (Interim Final)

Food and Drug Administration:
- Food Labeling Nutrition Labeling, Small Business Exemption
- Medical Devices: CGMP Quality Systems Regulation
- Sale and Distribution of Tobacco

Department of Housing and Urban Development

Office of Housing:
- Single-Family Mortgage Insurance (Interim Final)
- Sale of HUD-Held Single-Family Mortgages

Department of Interior

Fish and Wildlife Service:
- Migratory Bird Hunting—Final Frameworks Early Season
- Migratory Bird Hunting—Final Frameworks Late Season

Department of Justice

Immigration and Naturalization Service: Inspection and Expedited Removal of Aliens (Interim Final)

Department of Labor

Employment Standards Administration: Service Contract Act Standards for Federal Service Contracts
Occupational Safety and Health Administration: Methylene Chloride

Department of Transportation

National Highway Traffic Safety Administration:
- Occupant Crash Protection (Airbag Depowering)
- Light Truck Corporate Average Fuel Economy MY 1999

Federal Railroad Administration: Roadway Worker Protection

Environmental Protection Agency

Office of Solid Waste and Emergency Response:
- Accidental Release Prevention—112(r)
- Financial Assurance for Local Gov't. Owners of MSW Landfills

Office of Air and Radiation:
- Deposit Control Gasoline
- Acid Rain Phase II NO_x
- Federal Test Procedure Revisions
- Voluntary Standards for Light Duty
- Vehicles (49-State)

Office of Prevention, Pesticides, and Toxic Substances: Lead-Based Paint Activities in Target Housing

Social Security Administration

Cycling Payment of Social Security Benefits
Determining Disability for Individuals Under Age 18 (Interim Final)
Common Rule—Health and Human Services/Labor/Treasury: Health Insurance Portability of Group Health Plans (Interim Final)

2. Overview

As noted in chapter I, Executive Order 12866 "reaffirms] the primacy of Federal agencies in the regulatory decision-making process" because agencies are given the legal authority and responsibility for rulemaking under both their organic statutes and certain process-oriented statutes, such as the Administrative Procedure Act, the Unfunded Mandates Reform Act, and the Small Business Regulatory Enforcement Fairness Act. The Executive Order also reaffirms the legitimacy of centralized review generally and in particular review of the agencies' benefit-cost analyses that are to accompany their proposals. The Executive Order recognizes that in some instances the consideration of benefits or costs is precluded by law. For example, the National Ambient Air Quality Standards under the Clean Air Act are to be health-based standards set by EPA solely on the basis of the scientific evidence. In addition, under the Clean Water Act, technology-based standards must be established without regard to benefits. A variation is the Occupational Safety and Health Act, where health standards must be based on significant risks to the extent they are economically and technologically feasible. However, the Executive Order requires agencies to prepare and submit benefit-cost analysis even if those considerations are not a factor in the decision-making process. Again, it is the agencies that have the responsibility to prepare these analyses, and it is expected that OIRA will review (but not redo) this work.

Reviewing for this report the benefit-cost analyses accompanying the 41 final rules listed in Table 6, we found a wide variety in the type, form, and format of the data generated and used by the agencies. For example, agencies developed estimates of benefits, costs, and transfers that were sometimes monetized, sometimes quantified but not monetized, sometimes qualitative, and, most often, some combination of the three. Generally, the boundaries between these types of estimates are relatively well-defined.

As discussed above, all monetized estimates are, by definition, given in dollars and permit ready comparison and aggregation. Monetized estimates of effects are what is most generally thought of as the basis of benefit-cost analysis. Even when such figures are available, however, care must be taken when interpreting them because they depend for comparability on a number of distinct elements. Specifically, monetized estimates consist of: (1) the dollar value itself; (2) the base year of the dollar used; (3) the initial year in which the effects occur; (4) the final year after which the effects disappear; (5) the discount rate used (whether explicitly or implicitly) to convert future into current values (or vice versa); and (6) the format in which the monetized value is represented.

Format means the characterization of the monetized or quantified effects over time. In the rules on which we are reporting, we found that agencies used a variety of formats:

1. Annualized values, which spread out variable effects into yearly sums that are financially equivalent to the actual temporal schedule, regardless of how "lumpy" it might be;
2. Present values, which convert over time into an immediate lump-sum;
3. Constant annual values, in which effects have been estimated (or are assumed) to be fixed each year over the time horizon in which the regulation applies;
4. Other formats, such as varying annual values or values reported only for selected years, which can be converted into annualized or present value format under certain specified conditions and assumptions; and
5. Unknown formats, which cannot be interpreted without additional information.

From the perspective of benefit-cost analysis, annualized and present value formats are always preferred because they permit aggregation and comparisons within and across regulatory actions. Constant annual values are slightly less desirable insofar as they require the additional step of discounting to permit such aggregation and comparison. Constant annual values are typically found in monetized cost estimates involving federal budget outlays, and in quantified benefit estimates where agencies have chosen not to discount; aggregation and comparison within and across regulations generally cannot be performed without a common discounting methodology. Where an agency's estimation methodology follows an unknown format, further research needs to be performed to ascertain how to convert or reconstruct annualized or present value estimates.

Quantified estimates may take the form of a variety of different units, but they share in common a numeric measure. Generally, quantified estimates of benefits, costs, and transfers must be interpreted with the same elements noted above in mind. The most important difference, of course, is that quantified estimates are expressed in units other than dollars. Such estimates may be aggregated only if they are presented in the same or similar units. Also, a quantified estimate should identify the applicable time period (e.g., tons of pollution controlled per year, number of endangered species protected from extinction per decade). Quantified estimates that lack reference to the time periods to which they apply may be highly misleading, and should be converted to similar time periods to be comparable. Indeed, even when estimates of similar type include explicit reference to their underlying time periods, care must be taken when aggregating or comparing them because of the risk of summing estimates based on different time periods or inconsistent base years.

In contrast, qualitative estimates may not have any units at all, or they may be expressed in units that do not lend themselves to simple comparisons. As has often been observed, it is more frequently the case that costs are monetized and benefits are more often quantified or presented in qualitative form. Qualitative effects should be evaluated in terms of their uniqueness, reversibility, timing, and geographic scope and severity. These effects are the most difficult to interpret, and this may lead some to give them short shrift. The fact that an effect has not been monetized or quantified does not, however, necessarily mean that it is small or unimportant. In discussing agencies' descriptions of qualitative effects, we use the first year in which such effects are expected to occur where it can be determined.

Qualitative effects must be used with care for other reasons as well. Because they tend to be general and descriptive, they may be broader than the incremental effects of the particular regulation being analyzed. For example, in developing a rule designed to address a particular safety problem, an agency may describe the extent of the problem—that is, so many persons injured per year from this particular cause. While important in estimating the benefits of the rule, this figure itself is not a benefit estimate unless and until it is linked to the likely effectiveness of the proposed rule. Finally, qualitative estimates cannot be aggregated at all because they do not contain units that permit arithmetic operations. In addition, not infrequently they fail to contain relevant information about the period of time during which they apply.

Cost-effectiveness measures and break-even analyses, which are frequently used in regulatory analyses, are not equivalent to either monetized or quantified estimates. Unlike benefits and costs, which are expressed with

time as the explicit or implicit denominator, cost-effectiveness estimates (e.g., dollars per ton of pollution controlled) are expressed in terms of cost per unit of benefit—that is, as ratios in which "cost" is the numerator and "benefit" is the denominator. Frequently, such estimates are quite useful, particularly when comparing alternative methods of achieving a predetermined objective. Nevertheless, cost-effectiveness estimates cannot be compared with either cost or benefit estimates, nor can they themselves be aggregated in any manner.

Similarly, break-even analyses reveal the minimum level of benefits necessary for net benefits to be positive. For example, if a regulation is estimated to prolong one "statistical life" at a cost of $X million, break-even analysis reveals that if society's willingness-to-pay to prolong one statistical life is greater than $X million, then the benefit of the regulation exceeds its cost. Likewise, if we know that society's willingness-to-pay to prolong one statistical life is $X million, and that the regulation will cost $X million then break-even analysis reveals that benefits exceed costs if more than one statistical life is saved. While this form of analysis is often useful to decision makers, it does not address either the absolute or marginal magnitude of benefits and costs.

3. Benefits and Costs of Economically Significant Final Rules

A. Social Regulation

Of the 41 rules reviewed by OIRA, 22 represent major new regulatory initiatives requiring substantial additional private expenditures and/or providing new social benefits. (See Table 7). EPA issued 7 of these rules; USDA issued 4; HHS and DOT each issued 3; and the remaining 5 were spread among DOC, DOI, DOJ, and DOL. Agency estimates and discussion are presented in a variety of ways, ranging from an extensive qualitative discussion of benefits, e.g., USDA's rules implementing the 1996 Farm Bill, to a more complete benefit-cost analysis, e.g., the HHS rule on the Sale and Distribution of Tobacco.

Benefits Analysis. Of the 22 rules listed in Table 7, agencies provided monetized benefit estimates in 8 cases. Monetized benefit estimates included items such as: (1) FDA's estimated $275 to $360 million per year in annualized cost savings from its deregulatory food labeling rule (these are savings in the costs associated with compliance with labeling requirements on low-volume products that FDA estimated would be enjoyed by small businesses); (2) FDA's estimated $9.2 to $10.4 billion per year reduced incidence of morbidity and mortality from its rule restricting cigarette sales and marketing; (3) EPA's estimated $174 million per year in reduced damage to chemical and other facilities from its accidental release prevention rule; and (4) USDA's estimated $2 billion per year in the value of improved soil productivity, water quality, and wildlife from rules implementing its Conservation Reserve Program.

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TABLE 7: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of the date of completion of OMB review)

AGENCY / Rule	BENEFITS	COSTS	OTHER INFORMATION
USDA			
1996 Farm Bill Farm Program	Not Estimated	Not Estimated	"Net farm income (including crop and livestock sectors) during the 1996-2002 calendar years is expected to be about $15 billion higher under the 1996 Act than under the FY 1997 President's Budget baseline. This largely reflects higher Government payments to farmers under the 1996 Act as production flexibility contract payments exceed projected deficiency payments. Additionally, changes in the timing of payments to farmers provide an additional boost to farm income in the first year of the program--pushing 1996 net income up about $4 billion. However, net farm income is up by less than the increase in Government payments due to changes in the dairy and peanut programs. Crop sector receipts are down slightly under the 1996 Act due to lower plantings and production of the eight major commodities. Livestock sector receipts are lower due primarily to lower dairy sector receipts. Cash production expenses are up slightly due to increases in net cash rents, which offset lower crop production expenses from lower plantings. "Farmland values are higher under the 1996 Act compared with the FY 1997 President's Budget, reflecting the capitalized value of higher income. Land values average about 3 percent higher under the 1996 Act compared with FY 1997 President's Budget estimates. "Consumer costs are expected to be only slightly lower under the 1996 Act. Because grain prices, on average, are expected to be essentially unaffected, no appreciable change in grain-based food product costs, such as cereal and meat products, is expected." 61 FR 37544-5. "Alternatively, the 1996 Act can be compared to a 'no program" baseline. Under the 1996 Act, contract commodity payments represent a large portion of the benefits received by producers and there are few planting restrictions. The major differences between a no-program scenario (if the CRP and export programs were continued) and the 1996 Act are that producers would no longer receive contract commodity payments of about $35.9 billion and would no longer be subject to farm conservation and wetland protection requirements. The loss in farm income would likely entail substantial short-term adjustments and financial stress. However, over the longer term, a no-program scenario is expected to have little or no impact on supply, demand, and prices compared with the 1996 Act for most commodities except for peanuts, sugar, and, in the initial years of the period, dairy. "Plantings would be expected to decrease marginally with little or no change in market prices. Farm income would likely be lower, but lost revenue from eliminating contract commodity payments would be partially offset by lower cash rents. Land values would be lower if there were no program. In the aggregate, compared with a no-program scenario, impacts of the 1996 Act on the livestock industry, input industry, consumers, and the general economy would be minimal in the long run. However, impacts in some sectors, such as those dependent on the peanut program and sugar program, may be more significant.." 61 FR 37545-46.

TABLE 7: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of the date of completion of OMB review)

AGENCY / Rule	BENEFITS	COSTS	OTHER INFORMATION
USDA			
Conservation Reserve Program	$2 billion/yr, 1997- 2002	$900 million/yr, 1997 - 2002	Other miscellaneous (unquantified) benefits: swimming, boating, wetland conservation, human health impacts, and reduced nutrients in habitats; $5.8 billion/yr in transfers from consumers and taxpayers to farmers.
Kamal Bunt	Not Estimated	Not Estimated	"This rule is being published on an emergency basis in order to give affected growers the opportunity to make planting decisions for the 1996-97 crop season on a timely basis...This rule may have a significant economic impact on a substantial number of small entities. If we determine this is so, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis, which we will publish in a future Federal Register." 61 FR 52206.
Hazard Analysis and Critical Control Points	$0.71-$26.59 billion present value discounted over 20 years	$0.97-1.16 billion present value discounted over 20 years	"The benefits are based on reducing the risk of foodbome illness due to Campylobacter jejuni/coli, Escherichia coli 0157:H7, Listeria monocytogenes and Salmonella. ... these four pathogens are the cause of 1.4 to 4.2 million cases of foodbome illness per year. FSIS has estimated that 90 percent of these cases are caused by contamination occurring at the manufacturing stage that can be addressed by improved process control. This addressable foodbome illness costs society from $0.99 to $3.69 billion, annually. The high and low range occurs because of the current uncertainty in the estimates of the number of cases of foodbome illness and death attributable to the four pathogens. Being without the knowledge to predict the effectiveness of the requirements in the rule to reduce foodborne illness, the Department has calculated projected health benefits for a range of effectiveness levels, where effectiveness refers to the percentage of pathogens eliminated at the manufacturing stage..." 61 FR 38956. "The link between regulatory effectiveness and health benefits is the assumption that a reduction in pathogens leads to a proportional reduction in foodborne illness. FSIS has presented the proportional reduction calculation as a mathematical expression that facilitates the calculation of a quantified benefit estimate for the purposes of this final RIA. FSIS has not viewed proportional reduction as a risk model that would have important underlying assumptions that merit discussion or explanation. For a mathematical expression to be a risk model, it must have some basis or credence in the scientific community. That is not the case here. FSIS has acknowledged that very little is known about the relationship between pathogen levels at the manufacturing stage and dose, i.e., the level of pathogens consumed." 61 FR 38945-6.

TABLE 7: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of the date of completion of OMB review)

AGENCY / Rule	BENEFITS	COSTS	OTHER INFORMATION
COMMERCE			
Encryption Items Transferred from the U.S. Munitions List to the Commerce Control List	Not Estimated	$834,000 (govt admin cost FY97), $591,850 (paperwork burden costs)	Unquantified benefits in terms of improved national security, law enforcement and public safety benefits, and economic benefits for industry: "This initiative will support the growth of electronic commerce; increase the security of the global information infrastructure; protect privacy, intellectual property and other valuable information; and sustain the economic competitiveness of U.S. encryption product manufacturers during the transition to a key management infrastructure. 61 FR 68573.
HEALTH AND HUMAN SERVICES			
Food Labeling/ Nutrition Labeling: Small Business Exemption	$275-360 million/yr	$4 million in first year, expected to decline thereafter	None reported.
Restriction on the Sale and Distribution of Cigarettes and Smokeless Tobacco	$9.2-10.4 billion/yr at 7% discount rate; $28.1-43.2 billion/yr at 3% discount rate	$180 million/yr at 7% discount rate	Unspecified costs of mandatory consumer education program. "These totals do not include the benefits expected from fewer fires (over $160 million annually), reduced passive smoking, or infant death and morbidity associated with mothers' smoking...." "In addition, while FDA could not quantify the benefits that will result from the projected decline in the use of smokeless tobacco, they would be considerable." 61 FR 44396ff.

TABLE 7: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of the date of completion of OMB review)

AGENCY / Rule	BENEFITS	COSTS	OTHER INFORMATION
HEALTH AND HUMAN SERVICES			
Medical Devices: Quality Systems Regulation	$29 million/yr; 44 deaths avoided/yr; 484 to 677 serious injuries avoided/yr;	$82 million/yr	"The medical device industry would gain substantial economic benefits from the proposed changes to the [Comprehensive Good Manufacturing Practices, "CGMP"] regulation in three ways: Cost savings from fewer recalls, productivity gains from improved designs, and efficiency gains for export-oriented manufacturers who would now need to comply with only one set of quality standards. "These estimates of the public health benefits from fewer design-related deaths and serious injuries represent FDA's best projections, given the limitations and uncertainties of the data and assumptions. The above numbers, however, do not capture the quality of life losses to patients who experience less severe injuries than those reported in [medical device recalls, "MDR's"], who experience anxiety as a result of treatment with an unreliable medical device, or who experience inconvenience and additional medical costs because of device failure. "Medical device malfunctions are substantially more numerous than deaths or injuries from device failures and also represent a cost to society. Malfunctions represent a loss of product and an inconvenience to users and/or patients. Additionally, medical device malfunctions burden medical personnel with additional tasks, such as repeating treatments, replacing devices, returning and seeking reimbursement for failed devices, and providing reports on the circumstances of medical device failures. No attempt was made to quantify these additional costs." 61 FR 52602ff.
INTERIOR			
Migratory Bird Hunting (Early Season Frameworks)	Not Estimated	Not Estimated	Reports that duck hunters spend an estimated $416 million/yr; unquantified economic stimulus benefits derived from spending on duck hunting; unquantified benefit of value to hunters (consumer surplus) from more than 11 million hunting days per year; unquantified benefit to bird population by reducing overcrowding and ensuring continued use of resource in future.
Migratory Bird Hunting (Late Season Frameworks)	Not Estimated	Not Estimated	Reports that duck hunters spend an estimated $416 million/yr; unquantified economic stimulus benefits derived from spending on duck hunting; unquantified benefit of value to hunters (consumer surplus) from more than 11 million hunting days per year; unquantified benefit to bird population by reducing overcrowding and ensuring continued use of resource in future.

TABLE 7: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of the date of completion of OMB review)

AGENCY / Rule	BENEFITS	COSTS	OTHER INFORMATION
JUSTICE			
Inspection and Expedited Removal of Aliens	Not Estimated	$235 million/yr	None reported.

TABLE 7: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of the date of completion of OMB review)

AGENCY / Rule	BENEFITS	COSTS	OTHER INFORMATION
LABOR			
Exposure to Methylene Chloride (MC)	31 cancer cases/yr avoided; 3 deaths/yr avoided from acute central nervous system effects and carboxyhemo-globinemia	$101 million/yr	"MC exposures above the level at which the final rule's STEL is set--125 ppm--are also associated with acute central nervous system effects, such as dizziness, staggered gait, and diminished alertness, all effects that can lead to workplace accidents. OSHA estimates that as many as 30,000 to 54,000 workers will be protected by the final rule's STEL from experiencing CNS effects and episodes of carboxyhemoglobinemia every year. Moreover, exposure to the liquid or vapor forms of MC can lead to eye, skin, and mucous membrane irritation, and these material impairments will also be averted by compliance with the final rule. Finally, contact of the skin with MC can lead to percutaneous absorption and systemic toxicity and thus lead to additional cases of cancer that have not been taken into account in the benefits assessment. " 62 FR 1567-68.
TRANSPORTATION			
Airbag Depowering	83-101 fewer fatalities, 5,100 - 8,800 fewer serious injuries over lifetime of one full model-year's vehicles	$0	50 - 431 more fatalities and 171 - 553 more serious/severe chest injuries over lifetime of one full model-year's vehicles; substantial unquantified reduction in minor/moderate injuries.
Light Truck CAFE Model-Year 1999	Not Estimated	Not Estimated	None reported.
Roadway Worker Protection	$240 million present value discounted over 10 years	$229 million present value discounted over 10 years	Possible increased capacity of rail lines and improved morale.
EPA			
Accidental Release Prevention	$174 million/yr	$97 million/yr	Unspecified value of information made available through disclosure/reporting requirements; efficiency gains, increased technology transfer, indirect cost savings, and increased goodwill; possible damage reductions attributable to offsite consequence analysis and to a reduction in routine emissions.

TABLE 7: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of the date of completion of OMB review)

AGENCY / Rule	BENEFITS	COSTS	OTHER INFORMATION
EPA			
Financial Assurance for Municipal Solid Waste Landfills	$105 million/yr	$0	None reported.
Deposit Control Gasoline	AVG EMISSION REDUCTIONS PER YEAR, 1997-2001: 25,000 t HC, 474,000 t CO, 95,000 t NOx	AVG COST/YR, 1997 - 2000: $138 million/yr	Fuel economy benefits are also expected as a result of the detergent program, amounting to nearly 450 million gallons during the 1995-2001 period. The savings associated with this fuel economy benefit are expected to partially offset the costs of the program. This rule should result in increased sales and business opportunities within the fuel additive industry. EPA anticipates that this program may result in significant vehicle maintenance benefits. However, due to uncertainties in their magnitude, and for other reasons, they were not considered quantitatively in the analysis.
Acid Rain Phase II Nitrogen Oxides Emission Controls	EMISSION REDUCTIONS PER YEAR: 890,000 t NOx	$204 million/yr	None reported.
Federal Test Procedure Revisions	EMISSION REDUCTIONS: In 2005: 30,994 t NMHC 1,937,114 t CO 164,112 t NOx In 2010: 54,892 t NMHC 3,430,769 t CO 290,655 t NOx In 2015: 72,025 t NMHC 4,501,555 t CO 381,372 t NOx In 2020: 81,977 t NMHC	$199-245 million/yr	Analysis does not include potential fuel savings of $13.45 discounted over the lifetime of the average vehicle, or about $202 million/yr.

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TABLE 7: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of the date of completion of OMB review)

AGENCY / Rule	BENEFITS	COSTS	OTHER INFORMATION
EPA			
Voluntary Standards for Light-Duty Vehicles	EMISSION REDUCTIONS (tons/ozone season-weekday): In 2005: 279 t NMOG, 3,756 t CO, 400 t NOx In 2007: 399 t NMOG, 5,302 t CO, 600 t NOx In 2015: 778 t NMOG, 9,723 t CO, 1,249 t NOx	$600 million/yr	None reported.
Lead-Based Paint Activities in Target Housing	Not Estimated	$1.114 billion present value over 50 years discounted at 3%	Will provide consumers with greater assurance that they will be able to purchase abatement services of reliable quality.

ABBREVIATIONS: CO = carbon monoxide, HC = hydrocarbons, Kt = kilotons, NMHC = non-methane hydrocarbons, NMOG= non-methane organic gases, NOx = nitrogen oxides, t = tons.

An innovative feature of FDA's estimate for monetized benefits from the tobacco rule is explicit recognition of the increases in longevity, the timing of these increases, and their value. In part of its benefits analysis, FDA estimated more than 900,000 years of life would be gained by each cohort (about 4 years per would-be smoker). FDA discounted these life-years to account for the delay associated with smoking related health effects, and then monetized the life-years gained at $117,000 per life-year, an estimate derived from academic literature.

In 6 cases, agencies provided benefit estimates that were quantified but not monetized. These included: (1) OSHA's estimated 31 cancer cases per year avoided and 3 deaths per year avoided from acute central nervous system effects and carboxyhemoglobinemia from its methylene chloride rule; (2) NHTSA's estimated 83 to 101 fatalities prevented and 5,100 to 8,800 fewer serious injuries (primarily to children) over the lifetime of one model year's vehicles from its airbag depowering rule; and (3) EPA's estimated number of tons of hydrocarbons, carbon monoxide, and nitrogen oxide emissions which it expected would be reduced annually from several of its rules. In one case, the medical device rule, FDA provided some of its benefit estimates in monetized form; other benefits were quantified.

In a number of cases where agencies reported monetized or quantified benefit estimates, they also provided a qualitative description of unquantified effects. For example, DOT discussed the possibility that its railroad worker protection rule could increase the carrying capacity of the nation's railroads and boost railroad employee morale. OSHA reported that its methylene chloride rule would lower exposure for as many as 30,000 to 54,000 workers, reducing the risk of adverse central nervous system effects (other than death) of carboxyhemoglobinemia every year. FDA reported that its medical device rule would yield additional benefits in the form of fewer injuries in other less severe categories (that were not quantified by the FDA), reduced inconvenience to users and/or patients, and reduced burden on medical personnel in terms of having to repeat treatments, replace devices, and complete the paperwork and reporting associated with medical device failures. EPA reported that the accidental release prevention rule would result in efficiency gains by providing the public with additional information on accident prevention plans for manufacturing facilities and by improving the transfer and adoption of new technologies between industries.

Finally, in 8 cases, agencies reported neither monetized nor quantified benefit estimates. In some (but not all) of these cases, the agency provided a qualitative description of benefits. For example, USDA's analysis of the 1996 Farm Bill program rules included a qualitative discussion of the benefits of increased efficiency due to the additional flexibility the rule provided for farmers to decide which crops to plant. In its rule establishing training requirements for lead abatement contractors, workers, etc., EPA discussed in qualitative terms the value to consumers of being able to purchase abatement services of reliable quality.

Cost Analysis. In 17 of the 22 cases, agencies provided monetized cost estimates. These include such items as: (1) USDA's estimated $900 million per year in consumer "deadweight" losses from restrictions on farm output under its Conservation Reserve Program; (2) EPA's estimated $138 million per year for gasoline detergent additives under its deposit control gasoline rule; and (3) OSHA's estimated $101 million per year to reduce occupational exposures to methylene chloride. For 2 deregulatory rules—FDA's food labeling rule and EPA's municipal solid waste landfill financial assurance rule—agencies' monetized cost estimates were very small or zero.

In 4 of the 22 cases, agencies provided estimates of non-monetized, quantitative effects that were intended to better inform decision makers, but which were not identified as benefit or cost estimates per se. For example, NHTSA estimated that its airbag depowering rule would result in 50 to 431 more fatalities and an increase of 171 to 553 serious chest injuries (primarily to adults not wearing seatbelts) over the lifetime of one full model-year of vehicles, and DOI estimated that duck hunters spend over $400 million per year on duck-hunting activities.

Seven (7) of these 22 rules have positive net monetized benefits—that is, the estimated monetized benefits exceed the estimated monetized costs of the rules. For example, FDA estimated its tobacco rule would result in $9 to 10.2 billion per year in net benefits (benefits minus costs). EPA estimated its Accidental Release Prevention rule would generate $77 million per year in net benefits. For the remaining 15 rules, agency analysis did not provide enough information to allow an estimate of net benefits. Five (5) of the rules provided quantified estimates of the expected benefits in terms of tons of emissions reduced or injuries avoided; but in those cases, the agencies did not assign values to these effects. Five (5) additional rules identified qualitative benefits associated with the rule; but in these cases, the agencies did not develop any quantified estimates of the likely magnitude of these effects. Finally, in 5 cases, we classified a rule as economically significant although little economic data on the effects of the rule existed. These deserve comment.

USDA Karnal Bunt: Karnal bunt is a fungal disease that infects wheat, and during the past year was closely controlled to prevent potential losses in wheat exports. Fear of widespread Karnal bunt infestation led USDA's Animal and Plant Health Inspection Service (APHIS) to take several emergency quarantine actions beginning in March 1996. The quarantine severely restricted the movement of wheat grown in Arizona, two counties in Southern California, New Mexico, and portions of west Texas. It also directed the plowing under of several thousand acres of wheat and instituted mandatory disinfection procedures for combines and wheat handling equipment. APHIS instituted these procedures on an emergency basis to prevent the spread of the disease. These restrictions were known to be expensive, but estimates of how expensive were not developed at the time the actions were taken.

In October 1996, APHIS issued the rule included on Table 7, which continued the quarantine and its restrictions, and established provisions for compensating wheat farmers and handlers who suffered losses. The rule was designated economically significant because, although economic data were not then available, both agency and OIRA staff agreed that the impacts associated with the rule were significant. For the same reason, it was designated "major" under SBREFA. While needing to issue this rule promptly APHIS agreed that it would conduct a Regulatory Flexibility Analysis and an economic analysis. In an analysis developed after the time period of our report, USDA estimated one-year costs totaling about $42 million. The Federal government paid $24 million to affected parties to compensate for these losses. However, the Department acknowledged that other potentially significant costs had not been formally estimated. The Department estimated the benefits of the rule to be approximately $2 billion—based upon the potential loss of export markets if our trading partners chose not to buy U.S. wheat—clearly making it an economically significant rule.

DOI Migratory Bird Hunting (2 rules): These are unusual rules in that they are permissive rather than restrictive—that is, migratory bird hunting is prohibited absent these annual regulations which allow hunting, setting bag limits and other controls on both early and late season hunts. Thus the rules permit spending rather than requiring the expenditure of private resources. DOI reports that the National Survey of Fishing, Hunting, and Wildlife Associated Recreation indicated that expenditures by migratory bird hunters (exclusive of licenses, tags, permits, etc.) totaled $686 million in 1991. Based on this estimate, DOI estimated expenditures by duck hunters would be over $400 million per year in 1995. However, this figure is not a social benefit in the commonly used sense of the term.

DOT Light Truck CAFE: Each year DOT must establish a Corporate Average Fuel Economy (CAFE) standard for light trucks, including sport-utility vehicles and minivans, (DOT also sets a separate standard for passenger cars). For the past two years, however, appropriations language has prohibited NHTSA from spending any funds to change the standards. In effect, Congress has frozen the light truck standard at its existing level of 20.7 miles per gallon (mpg) and has prohibited NHTSA from analyzing effects at either 20.7 mpg or alternative levels. Although benefits and costs are not estimated, DOT's experience in previous years indicates that they may be substantial. Over 5 million new light trucks are subject to these standards each year, and the standard, at 20.7mpg, is binding on several manufacturers; some are just above the standard and at least one is currently below 20.7 mpg. Because of these likely substantial effects, the rule was designated as economically significant even though analysis of the effects was prohibited by law.

DOC Encryption: Commerce's encryption rule allows the exportation of more effective encryption products, subject to certain conditions such as the development of a key management infrastructure. Although quantitative estimates are not available, the rule is economically significant, because, as commerce's analysis notes,

> The initiative addresses important foreign policy and national security concerns identified by the President. Export controls on cryptographic items are essential to controlling the spread abroad of powerful encryption products which could be harmful to critical U.S. national security, foreign policy and law enforcement interests. This initiative will preserve such controls and foster the development of a key management infrastructure necessary to protect important national security, foreign policy and law enforcement concerns.

(61 FR 68573).

Aggregate Effects. As noted above in chapter II, the substantial limitations of the available data on the benefits and costs of this set of rules make it virtually impossible to develop an aggregate estimate of benefits and costs for even a single year's regulation. First, there are no quantified or monetized estimates for 6 of the rules. In addition, since many effects are not expressed in monetized terms, there is a problem of apples and oranges in aggregating estimates. Eight (8) of the rules listed in Table 7 have quantified estimates of significant effects. Some of the quantified effects—premature deaths and serious injuries avoided—are not unique to these rules but rather are frequently identified in the RIAs for a variety of rules, and other agencies have assigned monetized estimates to these outcomes. In any event, the different quantitative effects cannot be summed because they are not expressed in common units. Finally, when effects are only described in a qualitative way, the aggregation problem becomes all the more problematic.

Because of the substantial variation in the presentation of agency estimates and the differences in their discussion of benefits and costs, Table 8 takes some initial steps in presenting agency estimates in a more consistent way. This presentation re-formats the monetized benefit and cost information on a rule-by-rule basis to enhance their comparability. One key factor involves discounting where the timing of effects matters. In order to make the agency estimates more consistent, we performed some basic adjustments to agency estimates. For example, the FRA presented monetized benefit and cost numbers in the form of a present value over 10 years ($240 million in benefits and $229 million in costs). We converted these to equal annual payments of $33 million and $32 million respectively, using the 7 percent discount rate FRA used to generate the present value estimates. We performed a similar procedure for EPA's Lead-Based Paint rule, using the 3 percent discount rate the agency used in calculating the rule's $1.114 billion present value cost over 50 years. In the case of EPA's Federal Test Procedure rule, the agency reported emission reductions for only four specific years (2005, 2010, 2015, and 2010); in order to facilitate comparisons with other emission-reducing rules, we used a linear interpolation procedure to infer emission reductions in the interim years, and then generated an equivalent annual stream of emission reductions.

TABLE 8.—SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES

[4/1/96–3/31/97]

Agency/rule	Benefit estimate	Cost estimate	Other quantitative effects
USDA:			
1996 Farm Bill			
Farm Program Conservation	$2 Billion/Yr	$900 Million/Yr	
Reserve Program	(1997–2002)	(1997–2002).	
Karnal Bunt	(1)		
Hazard Analysis and Critical Control Points.	$.065–2.43 Billion/Yr	$88–106 Million/Yr	
Commerce:			
Encryption Items Transferred from the U.S. Munitions List to the Commerce Control List.		$1.4 Million/Yr	
Health and Human Services:			
Food Labeling/Nutrition Labeling: Small Business Exemption.	$275–360 Million/Yr	$4 Million/Yr [2]	
Medical Devices: Quality Systems Regulation.	$29 Million/Yr; 44 deaths and 484–677 serious injuries avoided/Yr.	$82 Million/Yr	

TABLE 8.—SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES—Continued

[4/1/96–3/31/97]

Agency/rule	Benefit estimate	Cost estimate	Other quantitative effects
Restriction on Sale and Distribution of Tobacco.	$9.2–10.4 Billion/Yr[3]	$180 Million/Yr	$160 Million/Yr in reduced house fire damage.
Interior:			
Migratory Bird Hunting (Early Season Frameworks).			
Migratory Bird Hunting (Late Season Frameworks).			
Justice:			
Inspection and Expedited Removal of Aliens.		$235 Million/Yr	
Labor:			
Methylene Chloride	31 Cancer Cases/Yr; 3 Deaths/Yr from acute central nervous system effects.	$101 Million/Yr	30,000 to 54,000 workers protected from central nervous system effects and episodes of carboxyhemoglobinemia.
Transportation:			
Airbag Depowering	83–101 fatalities and 5,100–8,800 serious injuries prevented over lifetime of one full model year's vehicles.	$0	Increases of 50–431 fatalities and 261–842 serious chest injuries over lifetime of one full model year's vehicles.
Light Truck CAFE Model Year 1999.			
Roadway Worker Protection	$33 Million/Yr	$32 Million/Yr	
EPA:			
Accidental Release Prevention	$174Million/Yr	$97 Million/Yr	
Financial Assurance for Municipal Solid Waste Landfills.	$105 Million/Yr	$0	
Deposit Control Gasoline	25,000 tons hydrocarbons; 474,000 tons carbon monoxide; 95,000 tons nitrogen oxides average annual emission reductions (1997–2001).	$138 Million/Yr average (1997–2000).	Average savings of 64 million gallons of gasoline/Yr (1995–2001).
Acid Rain Phase II NO_x Controls.	890,000 tons nitrogen oxide annual emission reduction.	$204 Million/Yr	
Federal Test Procedure Revisions.	41,280 tons hydrocarbons; 2,580,000 tons carbon monoxide; 218,582 tons nitrogen oxides annualized emission reductions.	$199–245 Million/Yr	$202 Million/Yr in potential fuel savings.
Voluntary Standards for Light-Duty Vehicles.	279 tons hydrocarbons; 3,756 tons carbon monoxide; 400 tons nitrogen oxides DAILY emission reductions in 2005.	$600 Million/Yr	
Lead-Based Paint Activities in Target Housing.		$33 Million/Yr[4]	

[1] Agency performed analysis after the fact and released it after 3/31/97.
[2] Maximum first-year cost; expected to decline thereafter.
[3] Benefits and cost at 7% discount rate. FDA also provided estimates at 3%.
[4] Using EPA's 3% discount rate.

Any comparison or aggregation across rules must also consider a number of factors which the presentation in Table 8 does not address. First, for example, these rules may use different baselines in terms of the regulations and controls already in place, the initial year for the rule, and the time period over which the rule was considered to be effective. In addition, these rules may well treat uncertainty in different ways. In some cases, agencies may have developed alternative estimates reflecting upper and lower bound estimates. In other cases, the agencies may offer a midpoint estimate of benefits and costs, and in some cases the agency estimates may reflect only upper bound estimates of the likely benefits and costs. Also, in order for comparisons or aggregation to be meaningful, benefit and cost estimates should correctly account for all substantial effects of regulatory actions, including potentially offsetting effects, which may or may not be reflected in the available data.

A final reason that any regulatory accounting effort has limits is the treatment of the effects of regulations on distribution or equity. None of the analyses addressed in this report provide quantitative information on the distribution of benefits or costs by income category, region, or any other factor. As a result, there is no basis for quantifying distributional or equity impacts.

Transfer Regulations

Of the 41 rules listed in Table 6, 19 were rules necessary to implement Federal budgetary programs. (See Table 9.) The budget outlays associated with these rules generally provided "transfers" or reduced transfers to program beneficiaries. Of the 19, 8 are USDA rules that implement federal appropriations regarding agricultural and food stamp policies; 7 are HHS and SSA rules that implement Medicare, Medicaid, and Social Security policy; 2 are HUD rules associated with Federal mortgage protections; 1 is a DOL rule

associated with Federal service contracts; and 1 is a joint HHS, Treasury, and DOL action setting standards for health insurance portability group health plans.

TABLE 9.—TRANSFER RULES

Department of Agriculture:
Commodity Credit Corporation Supplier Credit Guarantee Program
Dairy Tariff-Rate Import Quota Licensing
1995-Crop Sugar Cane and Sugar Beet Price-Support Loan Program
Peanut Poundage Quota Regulations
Catastrophic Risk Protection Endorsement
General Administrative Regulations * * * Subpart T
Food Stamp Program Certification Provisions
Child and Adult Care Food Program: Day Care Home Reimbursements
Housing and Urban Development:
Single-Family Mortgage Insurance
Sale of HUD-Held Single-Family Mortgages
Labor:
Service Contract Act Standards for Federal Service Contracts
Health and Human Services:
Limits on Aggregate Payment to Disproportionate Share Hospitals
Hospital Inpatient Prospective Payment Systems (FY 1997)
Medicare Revisions to Policies Under Physician Fee schedule 1997
Requirements for Physician Incentive Plans in Prepaid Health Care Organizations
Individual Market Health Insurance Reform: Portability from Group to Individual Coverage
Social Security Administration:
Cycling Payment of Social Security Benefits
Determining Disability for Individuals Under Age 18
Multi-Agency Common Rule—HHS/Treasury/Labor: Interim Rules for Health Insurance Portability for Group Health Plans

The transfers arising from these programs represent payments from one group to another (often from the Federal government to program beneficiaries, but also within beneficiary groups and from recipients back to taxpayers) that redistribute wealth; they are not social costs (or social benefits) and do not directly reflect the "opportunity cost" of resources used or benefits foregone. Social costs may arise indirectly from these transfers, however, because they must be financed through mechanisms—for example, income and payroll taxes—that affect the use of real resources. Similarly, social benefits may arise from these transfers if the beneficiaries realize marginal benefits from the payments that are greater than the loss for those who finance the payments (i.e., taxpayers).

Estimates of the magnitude of the social costs and benefits associated with these rules are typically not available. As a practical matter, the transfers arising form these rules are a product of the Federal program authorization and budget appropriations processes, and the social costs involved are generally viewed as subsidiary to the transfers involved. For these reasons, the Best Practices document specifically notes that instead of a complete benefit-cost analysis, a different form of regulatory analysis may be appropriate for regulations implementing these Federal programs.

Chapter IV. Recommendations

This report is to include "recommendations from the Director of OMB and a description of significant public comments to reform or eliminate any Federal regulatory program or program element that is inefficient, ineffective, or is not a sound use of the Nation's resources" (Section 645 (a)(4)). As indicated in the Introduction, we are soliciting comment on a wide range of issues related to our discussions of the methodology we use in evaluating total annual benefits and costs of Federal regulatory programs; estimates of the benefits and costs of "economically significant" or "major" rules; and direct and indirect impacts of Federal rules on the private sector and governmental bodies. We are also seeking comment on regulatory programs or program elements that are "inefficient, ineffective, or * * * not a sound use of the Nation's resources."

As we indicated in chapter II, the current state of knowledge of benefits and costs of Federal regulatory programs is limited, although growing. While some aggregate estimates of the benefits and costs of Federal regulations have been made based on adding the results from various studies, these aggregate estimates are best viewed as valiant first attempts to summarize existing knowledge. They may be viewed as general indicators of the importance of regulation to the American people and to the economy, but not as guides to specific regulatory reforms.

Although many difficult methodological problems have yet to be solved, we presented in chapter II our own aggregate estimates of the costs and benefits of regulation to further the discussion and generate comments that we hope will lead to better estimates. Except for the consensus among economists that there appear to be little long run economic benefits from most economic, as opposed to environmental and other social, regulation, we do not believe that the existing evidence on aggregate costs and benefits rises to the level that would support a recommendation to eliminate any regulatory programs. Virtually all of the evidence discussed above is based either on estimates for proposed regulations or on dated studies of existing regulations. These data are not appropriate for determining whether existing regulations should be repealed or significantly modified because of the sunk cost and rising baseline problems discussed above. Before supportable recommendations are made to eliminate existing regulatory programs or elements of programs, empirical evidence based on analytical techniques designed to solve the methodological problems discussed above must be developed. We are interested in receiving studies and suggestions for methodological approaches appropriate for evaluating existing regulations in

order to develop the strong empirical evidence necessary to propose supportable recommendations for eliminating or reforming regulatory programs.

Chapter III points out that we also need better evidence for determining whether proposed regulations are cost-effective and produce the greatest net benefits. Agencies have had difficulties generating sufficient data to make these determinations for individual regulations. In some instances, there are significant technical problems to assessing costs and, in particular, benefits. In other instances, the ability of the government to conduct analysis is limited by factors that direct use of limited agency resources—for example, statutory and judicial deadlines—forcing agency action within time frames that preclude adequate analysis. In some other instances, it is not at all clear that given limited financial and human resources, additional analysis would be useful. Finally, there are occasionally emergencies that demand swift federal action, where the public expect their elected officials to respond as best they can without the delay that careful analysis would entail.

In summary, based on our discussion and findings in chapters I, II and III above, we see three major themes:

- Our estimates of the total costs and benefits of regulation in the $300 billion (4 % of GDP) range clearly indicate that regulation is important in providing both health, safety, and environmental benefits and a well functioning economy.
- It is very difficult to draw strong conclusions about how to improve regulatory policy from macro data on benefits and costs. Micro data on individual regulations are needed.
- Although considerable progress has been made in providing micro data in advance of regulatory proposals and in developing best practice guidance, further progress is needed to continue improving regulatory decisions. Specifically, we need to ensure that the quality of data and analysis used by the agencies improves, that standardized assumptions and methodologies are applied more uniformly across regulatory programs and agencies, and that data and methodologies designed to determine whether existing regulations need to be reformed is developed and used appropriately.

Consequently, at this stage, we do not believe substantial economic evidence exits on which to base proposals for major reforms or eliminations of social regulatory programs or their elements. We specifically solicit comment on such programs or program elements on which members of the public may have information that would lead to a conclusion that such programs are inefficient or ineffective and should be eliminated or reformed. In particular, we solicit studies or comments on studies that provide strong, objective and verifiable evidence on the true social benefits and costs of eliminating or reforming specific regulatory programs or their elements using appropriate methodology.

We are proposing for comment the following recommendations designed to improve the quality of data and analysis on individual regulations and on regulatory programs and program elements as a first step toward developing the evidence needed to propose major changes in regulatory programs.

- OIRA should lead an effort among the agencies to raise the quality of agency analyses used in developing new regulations by promoting greater use of the Best Practice guidelines and offering technical outreach programs and training sessions on the guidelines.
- An interagency group should subject a selected number of agency regulatory analyses to *ex post* disinterested peer review in order to identify areas that need improvement and stimulate the development of better estimation techniques useful for reforming existing regulations.
- OIRA should continue to develop a data base on benefits and costs of major rules by using consistent assumptions and better estimation techniques to refine agency estimates of incremental costs and benefits of regulatory programs and elements.
- OIRA should continue to work on developing methodologies appropriate for evaluating whether existing regulatory programs or their elements should be reformed or eliminated using its Best Practices manual as the starting point.
- OIRA should work toward a system to track the net benefits (benefits minus costs) provided by new regulations and reforms of existing regulations for use in determining the specific regulatory reforms or eliminations, if any, to recommend.

Regulation and regulatory reform have the potential to do much good for society or much harm. The key to doing the former is having the information and analysis necessary for wise decision-making. The steps outlined above are aimed at continuing our efforts to improve our ability to make better regulatory decisions.

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federal register

Tuesday
July 22, 1997

Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1215
Popcorn Promotion, Research, and Consumer Information Order; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1215

[FV–96–706FR]

Popcorn Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document establishes a Popcorn Promotion, Research, and Consumer Information Order (Order) under the Popcorn Promotion, Research, and Consumer Information Act of 1996. Under the Order, processors will pay an assessment rate of 5 cents per hundredweight of popcorn to the Popcorn Board (Board). Composed of popcorn processors, the Board will use the assessments collected to conduct a generic program of promotion, research, and consumer information to maintain and expand markets for popcorn. The U.S. Department (Department) of Agriculture conducted a referendum among eligible popcorn processors to determine whether they favor the implementation of the Order. The Order was approved by a majority of those voting in the referendum with such majority, processing more than 50 percent of the popcorn processed by all those voting in the referendum.

EFFECTIVE DATE: September 1, 1997.

ADDRESSES: Stacey L. Bryson, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Stacey L. Bryson at the above address or telephone (888) 720–9917 (toll free) or (202) 720–6930.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Proposed Rule published in the September 30, 1996, issue of the **Federal Register** (61 FR 51046); Proposed Rule and Referendum Order published in the March 21, 1997, issue of the **Federal Register** (62 FR 13551).

This final rule is issued under the Popcorn Promotion, Research, and Consumer Information Act (7 U.S.C. 7481–7491), hereinafter referred to as the Act.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. Further, § 580 of the Act states that nothing in the popcorn statute preempts or supersedes any other program relating to popcorn promotion organized and operated under the laws of the United States or any State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 577 of the Act, after an Order is implemented, a person subject to the Order may file a petition with the Secretary stating that the Order or any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency has examined the impact of the proposed rule on small entities.

Legislation to create a generic program of promotion and research for popcorn became effective on April 4, 1996. Congress found that this program is vital to the welfare of popcorn processors and persons concerned with marketing, using, and producing popcorn for the market, as well as to the agricultural economy of the United States.

This program is intended to develop and finance an effective and coordinated program of promotion, research, and consumer information to maintain and expand the markets for popcorn. The program was initiated by the popcorn industry, which approved the program in a referendum in advance of its implementation, and industry members will serve on the Board that will administer the program under the Department's supervision. In addition, any person subject to the program may file with the Secretary a petition stating that the order or any provision is not in accordance with law and requesting a modification of the order or an exemption from the order. Administrative proceedings were discussed earlier in this rule.

In this program, processors will submit assessments and reports to the Board. In addition, exempt processors will be required to file an exemption application. While the Order will impose certain recordkeeping requirements on processors, information required under the Order could be compiled from records currently maintained. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. The estimated cost in providing information to the Board by the estimated 67 respondents will be $40.32 per respondent annually.

The Department will oversee program operations and, the Secretary may conduct referenda at the request of the Board or a representative group of processors to determine whether the popcorn industry supports continuation of the program.

There are approximately 35 processors who will pay the assessments, out of an industry of 67 processors in total.

Small agricultural service firms, which will include processors who will be covered under the Order, have been defined by the Small Business Administration [13 CFR 121.607] as those whose annual receipts are less than $5 million.

Almost 50 percent of the industry will be exempt from the program. Those processors marketing 4 million pounds of popcorn or less annually will be exempt from the Order. It is also estimated that only 2 of the 35 eligible processors will be classified as small entities. Those processors marketing more than 4 million pounds of popcorn annually represent the majority of the tonnage processed each year.

The Department will seek ways to minimize the burden of complying with the program for the small businesses that will be affected by it. A compliance guide will be issued for the small businesses that will pay assessments as well as those that will be exempt. In addition, the Department will work with the Popcorn Board to ensure, to the extent practicable, that the procedures implemented represent the least burdensome alternatives while meeting the needs of the program.

It was estimated that there were 35 popcorn processors who were eligible to vote in the referendum. An average of 15 minutes was needed for each voter to

read the voting instructions and complete the referendum ballot. The total burden on the total number of voters was 2.9 hours.

The information collection requirements under the Order require the minimum information necessary to effectively carry out the requirement of the program, and their use is necessary to fulfill the intent of the Act. The monthly collection of information coincides with normal business practices and can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The estimated cost in providing information to the Board by the estimated 67 respondents will be $19.28 per respondent annually. This total has been estimated by multiplying 129.15 (total burden hours requested) by $10.00 per hour, a sum deemed to be reasonable if the respondents were compensated for their time.

According to the Popcorn Institute (Institute), a trade association consisting of popcorn processors representing the industry, annual sales of popcorn were 77.240 million pounds less in 1994 than they were in 1993, when sales totaled approximately 1.156 billion pounds.

The peak period for popcorn sales for home consumption is the fall. Sales remain constant throughout the winter months and taper off during the spring and summer.

Almost all of the popcorn consumed throughout the world is grown in the United States, and Americans consume more popcorn than the citizens of any other country. Popcorn is grown in 19 states. According to the latest Census on Agriculture, the top five major popcorn-producing states in 1992 were, in descending order, Indiana (23 percent), Illinois (19 percent), Nebraska (18 percent), Ohio (10 percent), and Missouri (7 percent). This is the most recent official information on popcorn production released by the U.S. government.

U.S. exports of popcorn totaled nearly 290 million pounds in 1995, with a value of $64.7 million. According to the Snack Food Association, retail sales of popcorn in the United States totaled $1.469 billion in 1994.

The popcorn Order authorizes an initial assessment on processors of 5 cents per hundredweight. The Order provides that the rate of assessment may be raised or lowered as recommended by the Board and approved by the Secretary, but shall not exceed 8 cents per hundredweight in any fiscal year. At the maximum rate of assessment, it is estimated that $800,000 will be collected under the program. The promotion Board will be composed of processors, who will be knowledgeable of the impact of any proposed assessment on processors, and other small entities prior to recommending any change of the assessment rate to the Secretary.

This Order is necessary to accomplish the statutory objectives, to strengthen the position of the popcorn industry in the marketplace, and to maintain and expand domestic and foreign markets and uses for popcorn.

Over the past several years, the popcorn industry pursued several limited efforts to promote the sales and consumption of popcorn. These were financed primarily through voluntary contributions of some, but not all, popcorn processors. Under the limited and voluntary program, the resources available were not adequate to address the issues facing the industry from a national perspective and did not allow the industry to work collectively in an industry-wide manner.

The Order provides the industry with the opportunity to collectively address issues in areas such as nutrition and quality, which individual processors could not effectively accomplish due to lack of resources.

The industry considered pursuing a marketing order; however, industry believes that popcorn is not a commodity covered under the existing marketing order statute. Furthermore, the marketing order system did not lend itself to addressing the issues that the promotion legislation clearly addresses, for example, establishing the definition of a processor.

In order to conduct the Regulatory Flexibility Analysis regarding the impact of this Order on small entities, the proposed rule that was published in the **Federal Register** on September 30, 1996 (61 FR 51046) invited comments concerning the potential effects of the proposed Order. No specific comments were received concerning the impact of the proposed order on small entities except that a comment from the Popcorn Institute did note that the order will be very beneficial to popcorn processors, especially small processors who will not otherwise be able to afford a nationwide comprehensive program.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that will be imposed by this Order were approved by OMB on December 16, 1996.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: October 31, 1997.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act.

While the Order will impose certain recordkeeping requirements on processors, information required under the Order could be compiled from records currently maintained. The Order's provisions have been carefully reviewed and every effort has been made to minimize any unnecessary recordkeeping costs or requirements.

Although the Order will impose some additional costs and requirements, it is anticipated that the program under the Order will help to increase the demand and expand markets for popcorn. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting all segments of the popcorn industry.

The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the promotion Board. The forms will be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information less frequently will hinder the Board from effectively carrying out the provisions of its program. Collecting information monthly coincides with normal business practices. Requiring reports less frequently than monthly will impose additional recordkeeping requirements by requiring information from several months to be consolidated prior to filling out the form rather than just copying end-of-month figures already available on to the forms. The timing and frequency of collecting information is intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on these forms is not available from other sources because such information relates

specifically to individual processors who are subject to or exempted from the provisions of the Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

The estimated cost in providing information to the Board by the estimated 67 respondents will be $19.28 per respondent annually. This total has been estimated by multiplying 129.15 (total burden hours requested) by $10.00 per hour, a sum deemed to be reasonable if the respondents were compensated for their time.

A comment concerning the proposed Order's information collection requirements as published on September 30, 1996, in the **Federal Register** (61 FR 51046) was addressed in the proposed rule published in the **Federal Register** on March 21, 1997, (62 FR 13551).

Information collection requirements that are included in this rule include:

(1) *A periodic report by each person who processes popcorn.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per each processor reporting on popcorn processed.

Respondents: Processors.

Estimated Number of Respondents: 35.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 70 hours.

(2) *An exemption application for processor of popcorn processing 4 million pounds or less a year.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response for each exempt processor.

Respondents: Exempt processors.

Estimated Number of Respondents: 32.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 8 hours.

(3) *A referendum ballot to be used to determine whether processors covered by the Order favor implementation or continuance of the Order.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response for each processor.

Respondents: Processors.

Estimated Number of Respondents: 35.

Estimated Number of Responses per Respondent: 1 every 3 years.

Estimated Total Annual Burden on Respondents: 2.9 hours.

(4) *Nominations.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: Processors.

Estimated number of Respondents: 35.

Estimated Number of Responses per Respondent: 1 every 3 years (.33).

Estimated Total Annual Burden on Respondents: 5.75 hours.

(5) *Nominations background statement.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: Processors.

Estimated number of Respondents: 18 for initial Board and 6 annually thereafter.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 9 hours for initial Board and 3 hours annually thereafter.

(6) *A requirement to maintain records sufficient to verify reports submitted under the Order.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average .5 hours per recordkeeper maintaining such records.

Recordkeepers: Processors.

Estimated number of Recordkeepers: 67.

Estimated Total Recordkeeping Hours: 33.5 hours.

Background

The Act authorizes the Secretary of Agriculture (Secretary) to establish a popcorn promotion, research, and consumer information program. The program will be funded by an assessment on processors not to exceed 8 cents per hundredweight of popcorn.

Assessments will be used to pay for: promotion, research, and consumer information; administration, maintenance, and functioning of the Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

Consistent with the Act, processors will be required to maintain records regarding the collection, payment, or remittance of the assessments. All information obtained through processor reports will be kept confidential.

Assessments will be collected in a manner prescribed by the Board. The collection of assessments will commence on all popcorn processed in the United States on or after the date established by the Secretary, and will continue until terminated by the Secretary.

The Act requires the Secretary to conduct a referendum during the 60-day period preceding the proposed Order's effective date. Popcorn processors of more than 4 million pounds annually are eligible to vote in the referendum to determine whether they favor the proposed Order's implementation. The proposed Order must be approved by a majority of eligible processors voting in the referendum, and processors favoring approval must process more than 50 percent of the total volume of popcorn processed by persons voting in the referendum. Subsequent referenda will be conducted not earlier than three years after the effective date of the proposed Order at the request of the Board or a representative group of processors covered by the proposed Order.

The Act provided for the submission of proposals for a popcorn promotion, research, and consumer information order by industry organizations or any other interested person affected by the Act. As stated earlier, the Act requires that the proposed Order provide for the establishment of the Board. The Board will be composed of nine members. Each member will serve a three-year term of office.

The Department issued a news release on May 22, 1996, requesting proposals for an initial Order or portions of an initial Order.

An entire proposed Order was submitted by the Institute. The Department slightly modified the Institute's proposed Order and published it on September 30, 1996, in the **Federal Register** (61 FR 51046). Comments were to be received by November 29, 1996. Six comments concerning the proposed rulemaking were received. These comments were addressed in the proposed rule which was published in the **Federal Register** (62 FR 13533) on March 21, 1997.

Also on March 21, the Department published a referendum order directing that the initial referendum be conducted from April 15 to 30, 1997.

The Order is summarized as follows:

Sections 1215.1 through 1215.20 of the proposed Order define certain terms, such as popcorn, processor, and process, which are used in the proposed Order.

Sections 1215.21 through 1215.30 include provisions relating to the establishment and membership of the Board; nominations and appointment; terms of office; vacancies; removal; procedure; compensation and reimbursement; powers; and duties of the Board. The Board will be the body organized to administer the Order through the implementation of

programs, plans, projects, budgets, and contracts to promote and disseminate information about popcorn, under the supervision of the Secretary. Further, the Board will be authorized to incur expenses necessary for the performance of its duties and to set a reserve fund. Sections 1215.40 through 1215.41 and 1215.50 provide information on these activities.

Sections 1215.51 through 1215.53 will authorize the collection of assessments, specify who pays them and how, and specifies individuals who will be exempt from paying the assessment. In addition, it will prohibit use of funds to influence government policy or action.

Except as otherwise provided by the Board and approved by the Secretary, the rate of assessment will be 5 cents per hundredweight of popcorn.

The assessment section also outlines the procedures to be followed by processors for remitting assessments and authorize a interest charge for unpaid or late assessments.

Sections 1215.60 thorough 1215.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information obtained from such books, records, or reports.

Sections 1215.60 through 1215.63 describe the rights of the Secretary, authorize the Secretary to suspend or terminate the Order when deemed appropriate, and prescribe proceedings after suspension or termination.

Sections 1215.64 through 1215.77 include the provisions involving personal liability of Board members and employees; handling of patents, copyrights, inventions, and others; amendments to the Order; and separability of Order provisions.

General Findings

The Department conducted a referendum among popcorn processors from April 15 through 30, 1997, to determine whether the Order will become effective. The representative period for establishing voter eligibility was from January 1, through December 31, 1996. Only processors who processed over 4 million pounds of popcorn during this period were eligible to vote.

It is determined that a majority of those who voted favored the implementation of the Order and that those voters favoring implementation represented a majority of processors voting in the referendum, which majority, annually processed more than 50 percent of the popcorn processed annually by all those voting in the referendum. After consideration of all relevant material presented, including the initial proposal, comments received, and the referendum results, it is found that the Order effectuates the declared policy of the Act.

List of Subjects in 7 CFR Part 1215

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Popcorn, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7, chapter XI of the Code of Federal Regulations is amended as follows:

1. Part 1215 is added to read as follows:

PART 1215—POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Popcorn Promotion, Research, and Consumer Information Order

Definitions

Sec.

Popcorn Board

Promotion, Research, Consumer Information, and Industry information

Expenses and Assessments

Reports, Books, and Records

Miscellaneous

Subpart B—Rules and Regulations

Definitions

Exemption Procedures

Miscellaneous

Authority: 7 U.S.C. 7481–7491.

Subpart A—Popcorn Promotion, Research, and Consumer Information Order

Definitions

§ 1215.1 Act.

Act means the Popcorn Promotion, Research, and Consumer Information Act of 1995, Subtitle E of Title V of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127, 7 U.S.C. 7481–7491, and any amendments thereto.

§ 1215.2 Board.

Board means the Popcorn Board established under section 575(b) of the Act.

§ 1215.3 Board member.

Board member means an officer or employee of a processor appointed by the Secretary to serve on the Popcorn Board as a representative of that processor.

§ 1215.4 Commerce.

Commerce means interstate, foreign, or intrastate commerce.

§ 1215.5 Consumer information.

Consumer information means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing, and use of popcorn.

§ 1215.6 Department.

Department means the United States Department of Agriculture.

§ 1215.7 Fiscal year.

Fiscal year means the 12-month period from January 1 through December 31 each year, or such other period as recommended by the Board and approved by the Secretary.

§ 1215.8 Industry information.

Industry information means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the popcorn industry, or activities to enhance the image of the popcorn industry.

§ 1215.9 Marketing.

Marketing means the sale or other disposition of unpopped popcorn for human consumption in a channel of commerce but shall not include sales or disposition to or between processors.

§ 1215.10 Part and subpart.

Part means the Popcorn Promotion, Research, and Consumer Information Order and all rules and regulations and supplemental orders issued thereunder, and the term *subpart* means the Popcorn Promotion, Research, and Consumer Information Order.

§ 1215.11 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1215.12 Popcorn.

Popcorn means unpopped popcorn (Zea Mays L) that is commercially grown, processed in the United States by shelling, cleaning, or drying, and introduced into a channel of commerce.

§ 1215.13 Process.

Process means to shell, clean, dry, and prepare popcorn for the market, but does not include packaging popcorn for the market without also engaging in another activity described in this paragraph.

§ 1215.14 Processor.

Processor means a person engaged in the preparation of unpopped popcorn for the market who owns or who shares the ownership and risk of loss of such popcorn and who processes and distributes over 4 million pounds of popcorn in the market per year.

§ 1215.15 Programs, plans, and projects.

Programs, plans, and projects means promotion, research, consumer information, and industry information plans, studies, projects, or programs conducted pursuant to this part.

§ 1215.16 Promotion.

Promotion means any action, including paid advertising, to enhance the image or desirability of popcorn.

§ 1215.17 Research.

Research means any type of study to advance the image, desirability, marketability, production, product development, quality, or nutritional value of popcorn.

§ 1215.18 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1215.19 State.

State means each of the 50 States and the District of Columbia.

§ 1215.20 United States.

United States means all of the States.

Popcorn Board

§ 1215.21 Establishment and membership.

(a) There is hereby established a Popcorn Board of nine members. The number of members on the Board may be changed by regulation: *Provided,* That the Board consist of not fewer than four members and not more than nine members. The Board shall be composed of popcorn processors appointed by the Secretary under § 1215.24.

(b) For purposes of nominating and appointing processors to the Board, the Secretary shall, to the extent practicable, take into account the geographic distribution of popcorn production.

(c) No more than one officer or employee of a processor may serve as a Board member at the same time.

§ 1215.22 Nominations and appointment.

(a) All nominations for appointments to the Board established under § 1215.21 shall be made as follows:

(1) As soon as practicable after the effective date of this subpart, nominations for appointment to the initial Board shall be obtained from processors by the Secretary. In any subsequent year in which an appointment to the Board is to be made, nominations for positions for which the term will expire at the end of that year shall be obtained from processors at least six months prior to the expiration of terms.

(2) Except for initial Board members, whose nomination process will be initiated by the Secretary, the Board shall issue a call for nominations in each year for which an appointment to the Board is to be made. The call shall include, at a minimum, the following information:

(i) A list of the vacancies for which nominees may be submitted and qualifications for nomination; and

(ii) The date by which the names of nominees shall be submitted to the Secretary for consideration to be in compliance with paragraph (a) of this section.

(3)(i) Nominations for each position shall be made by processors. Notice shall be publicized to all processors.

(ii) All processors may participate in submitting nominations.

(4) Two nominees must be submitted for each vacancy. If processors fail to nominate a sufficient number of nominees, additional nominees shall be obtained in a manner prescribed by the Secretary.

(b) The Secretary shall appoint the members of the Board from nominations made in accordance with paragraph (a).

(1) The Secretary may reject any nominee submitted. If there is an insufficient number of nominees from whom to appoint members to the Board as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary in a manner prescribed by the Secretary.

(2) Whenever processors cannot agree on nominees for a position on the Board under the preceding provisions of this section, or whenever they fail to nominate individuals for appointment to the Board; the Secretary may appoint members in such a manner as the Secretary determines appropriate.

(3) If a processor nominates more than one officer or employee, only one may be appointed to the Board by the Secretary.

§ 1215.23 Acceptance.

Each individual nominated for membership of the Board shall qualify by filing a written acceptance with the Secretary at the time of nomination.

§ 1215.24 Term of office.

(a) The members of the Board shall serve for terms of three years, except that members appointed to the initial Board shall serve, to the extent practicable, proportionately for terms of two, three, and four years.

(b)(1) Except with respect to terms of office of the initial Board, the term of office for each Board member shall begin on the date the member is seated at the Board's annual meeting or such other date that may be approved by the Secretary.

(2) The term of office for the initial Board member shall begin immediately following the appointment by the Secretary.

(c) Board members shall serve during the term of office for which they are appointed and have qualified, and until their successors are appointed and have qualified.

(d) No Board member may serve more than two consecutive three-year terms,

except as provided in § 1215.25(d). Initial members serving two- or four-year terms may serve one successive three-year term.

§ 1215.25 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary may appoint a successor from the most recent nominations submitted for positions on the Board or the Secretary may obtain nominees to fill such vacancy in such a manner as the Secretary deems appropriate.

(b) Each such successor appointment shall be for the remainder of the term vacated.

(c) A vacancy will not be required to be filled if the unexpired term is less than six months.

(d) If an unexpired term is less than 1.5 years, serving the term shall not prevent the appointee from serving two successive three-year terms.

(e) A Board member shall be disqualified from serving on the Board if such individual ceases to be affiliated with the processor the member represents.

§ 1215.26 Removal.

If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board is known to be engaged in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service will be detrimental to the achievement of the purposes of the Act.

§ 1215.27 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum.

(b) Each member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by a simple majority of those voting. At assembled meetings of the Board, all votes will be cast in person.

(c) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action upon the concurring votes by a majority of its members by mail, telephone, facsimile, or any other means of communication. If appropriate, any such action shall be confirmed promptly in writing. In that event, all members must be given prior notice and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All votes shall be recorded in Board minutes.

(d) Meetings of the Board may be conducted by electronic communications, provided that each member is given prior notice of the meeting and has the opportunity to be present either physically or by electronic connection.

(e) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Secretary.

§ 1215.28 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by such members in the performance of their responsibilities under this subpart.

§ 1215.29 Powers.

The Board shall have the following powers:

(a) To administer the Order in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of the Order;

(c) To select committees and subcommittees of Board members, including an executive committee, and to adopt such bylaws and other rules for the conduct of its business as it may deem advisable;

(d) To appoint or employ such individuals as it may deem necessary, define the duties, and determine the compensation of such individuals;

(e) To disseminate information to processors or industry organizations through programs or by direct contact using the public postal system or other systems;

(f) To propose, receive, evaluate and approve budgets, plans and projects of popcorn promotion, research, consumer information and industry information, as well as to contract with the approval of the Secretary with appropriate persons to implement plans and projects.

(g) To receive, investigate, and report to the Secretary for action any complaints of violations of the Order;

(h) To recommend to the Secretary amendments to the order;

(i) To accept or receive voluntary contributions;

(j) To invest, pending disbursement pursuant to a program, plan or project, funds collected through assessments authorized under this Act provided for in § 1215.51, and any other funds received by the Board in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest bearing account or certificate of deposit or a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

(k) With the approval of the Secretary, to enter into contracts or agreements with national, regional, or State popcorn processor organizations, or other organizations or entities, for the development and conduct of programs, plans or projects authorized under § 1215.40 and for the payment of the cost of such programs with assessments received pursuant to this subpart; and

(l) Such other powers as may be approved by the Secretary.

§ 1215.30 Duties.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson and such other officers as may be necessary;

(b) To evaluate or develop, and submit to the Secretary for approval, promotion, research, consumer information, and industry information programs, plans or projects;

(c) To prepare for each fiscal year, and submit to the Secretary for approval at least 60 days prior to the beginning of each fiscal year, a budget of its anticipated expenses and disbursements in the administration of this subpart, as provided in § 1215.50;

(d) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(e) To prepare and make public, at least annually, a report of its activities carried out, and an accounting for funds received and expended;

(f) To cause its financial statements to be prepared in conformity with generally accepted accounting principles and to be audited by an independent certified public accountant

in accordance with generally accepted auditing standards at least once each fiscal year and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(g) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(h) To submit to the Secretary such information as may be requested pursuant to this subpart;

(i) To keep minutes, books and records that clearly reflect all the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(j) To act as intermediary between the Secretary and any processor;

(k) To investigate violations of the Act, order, and regulations issued under the order, conduct audits, and report the results of such investigations and audits to the Secretary for appropriate action to enforce the provisions of the Act, order, and regulations; and

(l) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to strengthen the popcorn industry's position in the marketplace, maintain and expand existing markets and uses for popcorn, develop new markets and uses for popcorn, and to carry out programs, plans, and projects designed to provide maximum benefits to the popcorn industry.

Promotion, Research, Consumer Information, and Industry Information

§ 1215.40 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan or project authorized under this subpart. Such programs, plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, consumer information, and industry information with respect to popcorn; and

(2) The establishment and conduct of research with respect to the sale, distribution, marketing, and use of popcorn, and the creation of new uses thereof, to the end that the marketing and use of popcorn may be encouraged, expanded, improved, or made more acceptable.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board may take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, consumer information, or industry information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, consumer information, or industry information, then the Board shall terminate such program, plan, or project.

(d) In carrying out any program, plan, or project, no reference to a brand name, trade name, or State or regional identification of any popcorn will be made. In addition, no program, plan, or project shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

§ 1215.41 Contracts.

The Board shall not contract with any processor for the purpose of promotion or research. The Board may lease physical facilities from a processor for such promotion or research, if such an arrangement is determined to be cost effective by the Board and approved by the Secretary. Any contract or agreement shall provide that:

(a) The contractor or agreeing party shall develop and submit to the Board a program, plan or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(b) Any such program, plan, or project shall become effective upon approval by the Secretary;

(c) The contracting or agreeing party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted, submit accountings for funds received and expended, and make such other reports as the Secretary or the Board may require; and the Secretary may audit the records of the contracting or agreeing party periodically; and

(d) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

Expenses and Assessments

§ 1215.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart.

(b) Each budget shall include:

(1) A rate of assessment for such fiscal year calculated, subject to § 1215.51(b), to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in paragraph (g) of this section;

(2) A statement of the objectives and strategy for each program, plan, or project;

(3) A summary of anticipated revenue, with comparative data for at least one preceding year;

(4) A summary of proposed expenditures for each program, plan, or project; and

(5) Staff and administrative expense breakdowns, with comparative data for at least one preceding year.

(c) In budgeting plans and projects of promotion, research, consumer information, and industry information, the Board shall expend assessment and contribution funds on:

(1) Plans and projects for popcorn marketed in the United States or Canada in proportion to the amount of assessments projected to be collected on domestically marketed popcorn (including Canada); and

(2) Plans and projects for exported popcorn in proportion to the amount of assessments projected to be collected on exported popcorn (excluding Canada).

(d) The Board is authorized to incur such reasonable expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects approved by the Secretary. Such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use. The Board may also receive funds provided through the Foreign Agricultural Service of the United States Department of Agriculture for foreign marketing activities.

(f) As stated in section 75(f)(4)(A)(ii) of the Act, the Board shall reimburse the Secretary, from funds received by the Board, for costs incurred by the Secretary in implementing and administering this subpart: *Provided,* That the costs incurred by the Secretary to be reimbursed by the Board, excluding legal costs to defend and enforce the order, shall not exceed 15

percent of the projected annual revenues of the Board.

(g) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established, except that the funds in this reserve shall not exceed approximately one fiscal year's expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

(h) With the approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board during its first year of operation only.

§ 1215.51 Assessments.

(a) Any processor marketing popcorn in the United States or for export shall pay an assessment on such popcorn at the time of introduction to market at a rate as established in § 1215.51(c) and shall remit such assessment to the Board in such form and manner as prescribed by the Board.

(b) Any person marketing popcorn of that person's own production to consumers in the United States either directly or through retail or wholesale outlets, shall remit to the Board an assessment on such popcorn at the rate set forth in paragraph § 1215.51(c), and in such form and manner as prescribed by the Board.

(c) Except as otherwise provided, the rate of assessment shall be 5 cents per hundredweight of popcorn. The rate of assessment may be raised or lowered as recommended by the Board and approved by the Secretary, but shall not exceed 8 cents per hundredweight in any fiscal year.

(d) The collection of assessments under this section shall commence on all popcorn processed in the United States on or after the date established by the Secretary, and shall continue until terminated by the Secretary. If the Board is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments on behalf of the Board and may hold such assessments until the Board is constituted, then remit such assessments to the Board.

(e) Each person responsible for remitting assessments under paragraphs (a) and (b) of this section shall remit the amounts due from assessments to the Board on a quarterly basis no later than the last day of the month following the last month in the previous quarter in which the popcorn was marketed, in such manner as prescribed by the Board.

(f) The Board shall impose a late payment charge on any person who fails to remit to the Board the total amount for which the person is liable on or before the payment due date established under this section. The amount of the late payment charge shall be prescribed in rules and regulations as approved by the Secretary.

(g) The Board shall impose an additional charge on any person subject to a late payment charge, in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in rules and regulations as approved by the Secretary.

(h) In addition, persons failing to remit total assessments due in a timely manner may also be subject to penalties and actions under federal debt collection procedures as set forth in 7 CFR 3.1 through 3.36.

(i) Any assessment that is determined to be owing at a date later than the payment due established under this section, due to a person's failure to submit a report to the Board by the payment due date, shall be considered to have been payable on the payment due date. Under such a situation, paragraphs (f), (g), and (h) of this section shall be applicable.

(j) The Board, with the approval of the Secretary, may enter into agreements authorizing other organizations or entities to collect assessments on its behalf. Any such organization or entity shall be required to maintain the confidentiality of such information as is required by the Board for collection purposes. Any reimbursement by the Board for such services shall be based on reasonable charges for services rendered.

(k) The Board is hereby authorized to accept advance payment of assessments for the fiscal year by any person, that shall be credited toward any amount for which such person may become liable. The Board shall not be obligated to pay interest on any advance payment.

§ 1215.52 Exemption from assessment.

(a) Persons that process and distribute 4 million pounds or less of popcorn annually, based on the previous year, shall be exempted from assessment.

(b) To claim such exemption, such persons shall apply to the Board, in the form and manner prescribed in the rules and regulations.

§ 1215.53 Influencing governmental action.

No funds received by the Board under this subpart shall in any manner be used for the purpose of influencing legislation or governmental policy or action, except to develop and recommend to the Secretary amendments to this subpart.

Reports, Books, and Records

§ 1215.60 Reports.

(a) Each processor marketing popcorn directly to consumers, and each processor responsible for the remittance of assessments under § 1215.51, shall be required to report quarterly to the Board, on a form provided by the Board, such information as may be required under this subpart or any rule and regulations issued thereunder. Such information shall be subject to § 1215.62 and include, but not be limited to, the following:

(1) The processor's name, address, telephone number, and Social Security Number or Employer Identification Number;

(2) The date of report, which is also the date of payment to the Board;

(3) The period covered by the report;

(4) The number of pounds of popcorn marketed or in any other manner are subject to the collection of assessments;

(5) The amount of assessments remitted;

(6) The basis, if necessary, to show why the remittance is less than the number of pounds of popcorn divided by 100 and multiplied by the applicable assessment rate; and

(7) The amount of assessments remitted on exports (not including Canada).

(b) The words "final report" shall be shown on the last report at the end of each fiscal year.

§ 1215.61 Books and records.

Each person who is subject to this subpart shall maintain and make available for inspection by the Board or the Secretary such books and records as are deemed necessary by the Board, with the approval of the Secretary, to carry out the provisions of this subpart and any rules and regulations issued hereunder, including such books and records as are necessary to verify any reports required. Such books and records shall be retained for at least two years beyond the fiscal year of their applicability.

§ 1215.62 Confidential treatment.

(a) All information obtained from books, records, or reports under the Act, this subpart, and the rule and regulations issued thereunder shall be kept confidential by all persons, including all employees, agents, and former employees and agents of the Board; all officers, employees, agents, and former officers, employees, and agents of the Department; and all officers, employees, agents, and former officers, employees, and agents of contracting and subcontracting agencies

or agreeing parties having access to such information. Such information shall not be available to Board members or processors. Only those persons having a specific need for such information to administer effectively the provisions of this part shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this part.

(b) No information obtained under the authority of this part may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of the Act and any investigatory or enforcement action necessary for the implementation of the Act.

(c) Nothing in paragraph (a) of this section may be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of persons subject to this part or statistical data collected therefrom, which statements do not identify the information furnished by any person;

(2) The publication, by direction of the Secretary, of the name of any person who has violated this part, together with a statement of the particular provisions of this part violated by such person.

(d) Any person who knowingly violated the provisions of this section, on conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both, or if the person is an officer, employee, or agent of the Board or the Department, that person shall be removed from office or terminated from employment as applicable.

Miscellaneous

§ 1215.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, contracts, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1215.71 Suspension or termination.

(a) Whenever the Secretary finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this subpart or such provision thereof.

(b) The Secretary may conduct additional referenda to determine whether processors favor termination or suspension of this subpart three years after the effective date, on the request of a representative group comprising 30 percent or more of the number of processors who have been engaged in processing during a representative period as determined by the Secretary.

(c) Whenever the Secretary determines that suspension or termination of this subpart is favored by two-thirds or more of the popcorn processors voting in a referendum under paragraph (b) of this section who, during a representative period determined by the Secretary, have been engaged in the processing, the Secretary shall:

(1) Suspend or terminate, as appropriate, collection of assessments within six months after making such determination; and

(2) Suspend or terminate, as appropriate, all activities under this subpart in an orderly manner as soon as practicable.

(d) Referenda conducted under this subsection shall be conducted in such manner as the Secretary may prescribe.

§ 1215.72 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of the Board, including any claims unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreement entered into by it under this subpart;

(3) From time to time account for all receipts and disbursements, and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such other persons full title and right to all of the funds, property, and claims vested in the Board or the trustees under this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered under this subpart shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information or industry information programs, plans, or projects authorized under this subpart.

§ 1215.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule and regulation issued under this subpart, or the issuance of any amendment to such provisions, shall not:

(a) Affect or waive any right, duty, obligation, or liability that shall have arisen or may hereafter arise in connection with any provision of this subpart or any such rules or regulations;

(b) Release or extinguish any violation of this subpart or any such rules or regulations; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

§ 1215.74 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission of such member or employee under this subpart, except for acts of dishonesty or willful misconduct.

§ 1215.75 Patents, copyrights, inventions, publications, and product formulations.

Any patents, copyrights, inventions, publications, or product formulations developed through the use of funds received by the Board under this subpart shall be the property of the United States Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, publications, or product formulations inure to the benefit of the Board and be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, § 1215.72 shall apply to determine disposition of all such property.

§ 1215.76 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested persons affected by the provisions of the Act, including the Secretary.

§ 1215.77 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Subpart B—Rules and Regulations

§ 1215.100 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions in Subpart A—Popcorn Promotion, Research, and Consumer Information Order of this part.

Exemption Procedures

§ 1215.300 Exemption procedures.

(a) Any processor who markets 4 million pounds or less of popcorn annually and who desires to claim an exemption from assessments during a fiscal year as provided in § 1214.52 of this part shall apply to the Board, on a form provided by the Board, for a certificate of exemption. Such processor shall certify that the processor's marketing of popcorn during the previous fiscal year was 4 million pounds or less.

(b) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board then will issue, if deemed appropriate, a certificate of exemption to each person that is eligible to receive one.

(c) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Board, on a form provided by the Board, for a certificate of exemption.

(d) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt popcorn.

Miscellaneous

§ 1215.400 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0581–0093, except for the Promotion Board nominee background statement form which is assigned OMB control number 0505–0001.

Dated: July 16, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 97–19150 Filed 7–21–97; 8:45 am]

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Part VI

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171 and 172

Improvements to Hazardous Materials Identification Systems; Corrections and Responses to Petition for Reconsideration; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 172

[Docket No. HM–206]

RIN 2137–AB75

Improvements to Hazardous Materials Identification Systems; Corrections and Responses to Petitions for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; editorial revisions and responses to petitions for reconsideration.

SUMMARY: In this rule, RSPA is making changes to a final rule published on January 8, 1997, in which RSPA amended the Hazardous Materials Regulations to better identify and communicate the hazards associated with hazardous materials in transportation in commerce. This final rule corrects errors in, and responds to petitions for reconsideration of, the January 8, 1997 final rule. The changes in this final rule include postponement until October 1, 1998, of the effective date of the January 8, 1997 final rule, and October 1, 1999, of the date for compliance with a requirement for new labels on packagings containing materials poisonous by inhalation.

As modified by this final rule, the January 8, 1997 final rule is intended to assist emergency response personnel in responding to and mitigating the effects of incidents involving the transportation of hazardous materials, and to improve safety to transportation workers and the public.

DATES: *Effective date:* The effective date for the final rule published under this docket at 62 FR 1217 on January 8, 1997, is delayed until October 1, 1998. This final rule is effective October 1, 1998.

Compliance date: Voluntary compliance with the January 8, 1997 final rule has been authorized beginning February 11, 1997. Voluntary compliance with this final rule is authorized beginning July 22, 1997.

FOR FURTHER INFORMATION CONTACT: Helen L. Engrum or Paul Polydores, telephone (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On January 8, 1997, RSPA published a final rule (62 FR 1217) in the **Federal Register** under Docket HM–206 that amended the hazard communication requirements in the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, to enhance the identification of hazardous materials during their transportation in commerce. This rule was issued in response to Section 25 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) (Pub. L. 101–615), which required the Secretary of Transportation to initiate a rulemaking to, among other matters, determine methods of improving the existing system of placarding vehicles transporting hazardous materials.

RSPA received more than 20 petitions for reconsideration of that rule and other inquiries and comments identifying errors and requesting clarification. The petitions for reconsideration requested changes to: (1) The effective date for parts or all of the final rule, including postponement or withdrawal of new requirements applicable to materials poisonous by inhalation (PIH) until such time as similar requirements are adopted as international standards; (2) the requirements to display identification number markings on transport vehicles and freight containers containing large quantities of hazardous materials in non-bulk packages and on closed vehicles containing bulk packagings; (3) the reduction from 2,268 kg (5,000 lbs.) to 1,000 kg (2,205 lbs.) of the maximum allowable weight of a mixed load of "Table 2" hazardous materials for which the alternative DANGEROUS placard may be used; and (4) requirements for marking the transport vehicle with the carrier's telephone number, or to have the shipping paper and emergency response information readily available on the transport vehicle, when that vehicle is separated from its motive power and parked at a location other than a consignee's, consignor's, or carrier's facility.

II. Summary of Regulatory Changes

In this final rule, RSPA is postponing for one year, until October 1, 1998, the effective date of the January 8, 1997 final rule. RSPA is also postponing for an additional year, until October 1, 1999, the compliance date for use of the new PIH labels for gases and certain liquids that are materials poisonous by inhalation. The compliance date for use of the new PIH placards remains October 1, 2001. RSPA is also making other changes in response to the petitions for reconsideration or to correct and clarify the January 8, 1997 final rule where appropriate. This final rule clarifies the January 8, 1997 final rule and makes certain corrections to carry out its intent. It imposes no significant regulatory burden and, in many cases, relaxes provisions of the January 8, 1997 final rule.

The preamble to the January 8, 1997 final rule included a table summarizing the amendments to the HMR in that rule and the compliance date for each. 62 FR 1224. That table is republished and revised below to summarize the changes made in this rulemaking, as modified by this document. The revised form of this table below corrects a typographical error in the January 8, 1997 final rule, where the table incorrectly listed October 1, 2001 as the date for compliance with the changes to §§ 172.302 and 173.9, concerning the FUMIGANT marking. In the following table, "revised" means there is a change to the rule published on January 8, 1997 (beyond postponement of the compliance date).

Section	Action	Discussion	Compliance date
§ 172.301	ID No. marking on vehicle loaded with only one hazmat in non-bulk packages at one originating facility.	New requirement; revised	Oct. 1, 1998.
§ 172.313	ID No. marking on vehicle for a single PIH material with ≥1,000 kg in non-bulk packages.	New requirement; revised	Oct. 1, 1998.
§ 172.328	ID No. marking display on closed vehicle containing cargo tanks.	New requirement; revised	Oct. 1, 1998.
§ 172.331	ID No. marking display on closed vehicle containing other bulk packagings (e.g. IBCs).	Expansion of current requirement applicable to portable tanks.	Oct. 1, 1998.
§§ 172.416 & 172.429	PIH labels for gases and certain liquids that are materials poisonous by inhalation.	Replaces POISON label and POISON GAS label design; revised.	Oct. 1, 1999.

Section	Action	Discussion	Compliance date
§ 172.504(b)	Specific placard required when ≥1,000 kg of one class of Table 2 hazmat on a vehicle.	Reduction of 2,268 kg maximum weight for which the alternate DANGEROUS placard is permitted on mixed loads.	Oct. 1, 1998.
§ 172.606(a)	Carrier must instruct operator of motor vehicle to contact the company in the event of a hazmat incident.	New requirement	Oct. 1, 1998.
§ 172.606(b)	Requiring information with parked (dropped) motor vehicle.	New requirement; revised	Oct. 1, 1998.
§§ 172.302 & 173.9	FUMIGANT marking, applying to all modes	Expansion of existing requirements and adoption of international design.	Oct. 1, 1998.
§ 172.502	Prohibited display of extraneous information on placard and in placard holder.	Expansion of existing requirements; revised	Oct. 1, 2001.
§§ 172.540 & 172.555	PIH placards for gases and certain liquids that are materials poisonous by inhalation.	Replaces POISON and POISON GAS placard design; revised.	Oct. 1, 2001.

Any petition for reconsideration that is not granted in this final rule is denied.

III. Editorial Changes and Responses to Petitions

A. Extension of Effective Date

Approximately half of the petitions for reconsideration objected to RSPA's issuance of new labeling and placarding requirements for PIH materials in advance of adoption of similar requirements by the United Nations Committee of Experts. These requirements included a revised POISON GAS label and placard for Division 2.3 materials and a new POISON INHALATION HAZARD label and placard for Division 6.1 materials in Hazard Zones A or B. (Unless the context indicates otherwise, the terms "PIH labels" and "PIH placards" refer, respectively, to the new labels and placards for materials in both Divisions 2.3 and 6.1.) Except for the hazard class number (and the larger size of placards), all of these new labels and placards are identical in format including, when text is included, the words "Inhalation Hazard."

The Hazardous Materials Advisory Council stated that the United States should not require the distinctive PIH labels and placards until an international standard is developed and adopted. Compressed Gas Association, Inc. (CGA) and the Chlorine Institute asked that the date for mandatory use of the PIH labels be delayed until October 1, 2001, when the new placards are required. They stated that inspection and emergency response personnel would be confused when the old POISON GAS placards (all white background with optional "Poison Gas" wording) were on a vehicle containing cylinders with the revised POISON GAS labels (black background of upper diamond and optional "Inhalation Hazard" wording). These petitioners also stated that additional time was needed to obtain and affix the new labels and conduct training; according to CGA, cylinders are often out of their owners' control for extended periods of time.

The Vessel Operators Hazardous Materials Association, Inc. asked that the October 1, 2001 compliance date for use of the PIH placard be made applicable to all shipments by all modes, on the ground that this transition period should apply to all intermodal shipments that include transportation by vessel. The National Welding Supply Association (NWSA) and one of its members stated that the October 1, 2001 compliance date for use of the new POISON GAS placard would not provide any relief because placing the identification number on the placard seemed to be the only practical way of meeting the requirement in § 172.313 for marking the identification number on vehicles containing more than 1,000 kg. of PIH materials. These petitioners indicated that it would be impractical to install permanently-mounted "flip-type" placards now and then change to a new set in 2001. The NWSA member asked that, if RSPA decided not to change the marking and labeling requirements for PIH materials, the compliance date for the identification marking and new POISON GAS label be extended by two years until October 1, 1999.

Other petitioners requested that the date for voluntary compliance with the new requirements concerning PIH shipments be postponed to allow additional time for training. The Los Angeles Police Department (LAPD) stated that the January 8, 1997 final rule allowed the removal of the "Inhalation Hazard" marking from a packaging of PIH materials as soon as February 11, 1997, if the packaging had the new PIH label or placard, which, as noted by a LAPD officer, are not required to contain the "Inhalation Hazard" wording. *See* §§ 172.405(a), 172.519(b)(3). LAPD asked that shippers not be allowed to remove the "Inhalation Hazard" marking until the next printing of the North American Emergency Response Guidebook, but that a delay of 18 months was the "absolute minimum acceptable time for national responder awareness and training." CGA submitted an additional letter in which it stated that it supports LAPD's petition to allow sufficient time for responders to become familiar with new labels, placards, and markings.

Another petitioner focused on the lowering, from 2,268 kg (5,000 lbs.) to 1,000 kg (2,205 lbs.), of the upper weight limit for the alternative use of the DANGEROUS placard for mixed loads of hazardous materials listed in Table 2 of § 172.504(e). It stated that, because shippers and their employees are familiar with the English system of measurement, they will have difficulty remembering the "odd number" of 2,205 lbs. as the equivalent to 1,000 kg for the threshold at which the DANGEROUS placard may not be used. On this ground, it requested a delay until October 1, 2001, for compliance with the lowered 1,000 kg threshold, to allow additional time for shippers "to convert to SI units" and for carriers to train their employees.

Other petitioners asked that the effective date of the entire rule be postponed. American Trucking Associations (ATA) stated that eight months was not sufficient for training employees in the changes in the January 8, 1997 final rule, and it recommended that RSPA delay compliance for one year until October 1, 1998, to provide adequate time for training and implementation.

After carefully considering these petitions, RSPA is postponing for one year, until October 1, 1998, the effective date of the January 8, 1997 final rule. In a new § 171.14(e), RSPA is also postponing for an additional year, until

October 1, 1999, the compliance date for use of the new PIH labels. RSPA plans to issue in 1999 a new edition of the North American Emergency Response Guidebook, which would be available when the new PIH labels and placards will be required.

These postponements will allow sufficient additional time for shippers, carriers, and emergency response personnel to implement the new requirements and train their employees. The postponement of the compliance date for use of the new PIH label will also allow time for the U.N. Committee of Experts on the Transport of Dangerous Goods to consider the United States' proposals for international adoption of the PIH marking, labeling and placarding requirements adopted in the January 8, 1997 final rule.

The one-year postponement in the effective date (until October 1, 1998) applies to the amendment of § 172.504(b), concerning the upper weight limit for use of the alternative DANGEROUS placard. Beyond that, RSPA is not extending the date for compliance with the reduction in the maximum allowable weight (from 2,268 kg to 1,000 kg) of a mixed load of Table 2 hazardous materials for which the alternative DANGEROUS placard may not be used. The International System of Units ("SI" or metric) has been the HMR "regulatory standard" since October 1, 1991 (the effective date of the final rule in Docket No. HM–181), § 171.10(a), and the postponement of the effective date of this change (until October 1, 1998) should be sufficient time for training.

The October 1, 2001 compliance date is retained for use of the new placards for PIH materials, but RSPA is adding a footnote to the Placard Substitution Table in § 171.14(b) to clarify that, for PIH materials, until October 1, 2001, shippers by all modes have the options of using placards that meet the requirements (1) in effect prior to October 1, 1991 (the effective date of changes made in the rulemaking under Docket No. HM–181), (2) adopted in the final rule in HM–181, or (3) adopted in the January 8, 1997 final rule, as modified in this document. (As discussed in the next section, the entries for Division 6.1 materials in the Placard Substitution Table are also being revised.)

RSPA does not believe it is necessary or appropriate to modify the existing voluntary compliance date. The primary concern raised in this regard is the possible removal of the "Inhalation Hazard" marking when the new PIH label or placard is used. RSPA is addressing this concern by revising § 172.313(a) to allow removal of the "Inhalation Hazard" marking only when those same words appear on the label or placard, as applicable.

RSPA also believes that, with the additional year for training before the effective date of October 1, 1998, responders will not be confused by small differences between placards on a transport vehicle and labels on cylinders within the vehicle, inasmuch as the words "Inhalation Hazard" will be required on the cylinder or other packaging (either as a marking or on the label). Some variations have always existed between placards and labels, particularly in light of the transitional provisions in § 171.14(b) that have applied since 1991. Moreover, by providing until October 1, 1999, before use of the new PIH labels is required, RSPA has reduced from four years to two years the period when the PIH label is required before the PIH placard must be used.

B. PIH Labels, Placards, and Marking

As published in the **Federal Register**, the graphics of the new PIH labels and placards shown in the January 8, 1997 rule were inaccurate. The shape of the upper diamond (containing a skull and cross-bones on a black background) is square-on-point. Moreover, it is necessary to increase the distance between the lower point of the upper diamond and the horizontal center line of the placard to allow for display of identification numbers, under the option allowed in § 172.332(a). These errors are corrected in this document. *See* §§ 172.416, 172.429, 172.540, and 172.555.

One petitioner and several persons who telephoned brought to RSPA's attention that certain liquids in Division 6.1, Packing Group II, had been omitted from the PIH materials referenced in the Placard Substitution Table in § 171.14(b), the Label Substitution Table in § 172.101(g), the table of label designations in § 172.400(b), and placarding Table 1 in § 172.504(e). Although these materials do not meet the classification criteria in the UN Recommendations for an inhalation hazard, they are designated as PIH materials in the HMR because they are poisonous by inhalation. Examples of these materials are "Bromoacetone, 6.1, UN 1569, PG II," and "Phenyl Isocyanate, 6.1, UN 2488, PG II."

The four tables in §§ 171.14(b), 172.101(g), 172.400(b), and 172.504(e) are being revised to specify the POISON INHALATION HAZARD label and placard for all materials in Division 6.1 (inhalation hazard, Zone A or B) and to specify the POISON label and placard for materials in Division 6.1 (PG I or II, other than Zone A or B inhalation hazard).

As already stated, § 172.313(a) is being revised to specify that the "Inhalation Hazard" marking may be omitted only when those words appear on the PIH label or placard, as applicable.

RSPA is also revising § 172.313(c) in response to petitions which expressed concern about possible miscommunication of actual risk to emergency responders resulting from too many identification numbers because of the requirement to mark a transport vehicle or freight container with identification numbers of PIH material in non-bulk packagings which total more than 1,000 kg (2,205 lbs.) aggregate gross weight. As revised in this document, § 172.313(c) requires marking the identification number on a transport vehicle or freight container that contains more than 1,000 kg aggregate gross weight of PIH materials in Hazard Zone A or B having the same proper shipping name and identification number, in non-bulk packagings, that are loaded at a single loading facility. RSPA is denying those petitions that asked for a complete elimination of this marking requirement.

In the January 8, 1997 final rule, RSPA revised §§ 171.11(d)(9)(iii), 171.12(b)(8)(iii), and 171.12a(b)(5)(iii) to replace references to the POISON label and placard with references to the new POISON INHALATION HAZARD label and placard. However, RSPA inadvertently failed to add a reference in § 172.402(e)(1), concerning a Class 1 material that also meets the definition for a material poisonous by inhalation in Division 6.1. RSPA is amending § 172.402(e)(1) to add a reference to the new PIH label as a secondary label. This is simply an editorial change and implements the purpose of this rulemaking to replace the POISON label and placard with the new POISON INHALATION PLACARD for Division 6.1 materials in Hazard Zones A and B that are poisonous by inhalation.

For the reasons set forth in the preamble to the January 8, 1997 final rule, RSPA is denying petitions that opposed adoption of the PIH labels and placards. Since 1985, RSPA has worked toward enhancing safety in the transportation of PIH materials by establishing a complete system of transportation controls for these materials, including an improved communication of their presence. As a continuation of that process, RSPA proposed in the August 15, 1994 Notice of Proposed Rulemaking (NPRM), 59 FR 41848, a distinctive label and placard to provide a distinctive warning to

emergency responders of the unique hazardous (extreme toxicity, high volatility) of PIH gases and liquids. This proposal responded to a petition for rulemaking previously submitted by ATA and a graphic design recommended by a LAPD officer. Earlier this year, RSPA proposed the new PIH labels and placards to the U.N. Committee of Experts as an international standard. *See* the discussion in the preamble to the January 8, 1997 final rule, 62 FR 1219.

A majority of the commenters to the NPRM supported adoption of the distinctive PIH labels and placards, although many also expressed support for maintaining harmonization with the U.N. Recommendations. Over many years, RSPA has adopted classification, hazard communication and packaging requirements recommended by the U.N. Committee of Experts, but RSPA believes that, in this matter, the United States should not necessarily wait for an international standard to be established. However, the postponement of the compliance dates until October 1, 1999, for use of the PIH labels, and until October 1, 2001, for use of the PIH placards, provides time for the U.N. Committee of Experts to consider and take steps toward adoption of RSPA's proposal. The desirable goal of international harmonization does not outweigh the important safety benefits to be gained by adopting a distinctive label and placard for PIH materials.

One petitioner asked RSPA to add an editorial note to revised § 177.841(e)(1) to clarify that a package bearing a POISON GAS label may be transported in the same motor vehicle with material marked or known to be foodstuffs, feed, or other edible material, without meeting the additional precautions specified in (e)(1)(i) or (ii). RSPA denies this petition because it believes that the present language of § 177.841(e)(1) is clear. As revised in the January 8, 1997 final rule, only Division 6.1 materials labeled POISON or POISON INHALATION HAZARD are subject to this restriction in § 177.841(e)(1), while the next paragraph, (e)(2), (which prohibits certain materials in the driver's compartment) explicitly covers these materials and also Division 2.3 materials required to have a POISON GAS label.

C. Other Identification Number Marking Requirements

1. *Large quantities of non-bulk materials.* Several petitioners asked RSPA to eliminate or modify the identification number marking requirement in § 172.301(a)(3) for large quantities of non-bulk packages in a transport vehicle. They expressed concern that an increase in identification number displays will cause substantial material and labor costs to industry and create confusion among emergency responders. The petitioners stated that if the requirement is retained, it should be restricted to vehicles fully loaded with a single hazardous material. In addition, several petitioners requested that RSPA except Class 1 materials from the requirement for the identification number display because of safety concerns, and because the North American Emergency Response Guidebook is not cross-referenced by the identification number, but is designed to provide only generic group information for explosives.

In response to these petitions, RSPA is revising § 172.301(a)(3) to apply to a transport vehicle or freight container that is loaded at one loading facility with 4,000 kg (8,820 lbs.) or more of hazardous materials in non-bulk packagings, when all the hazardous materials have the same proper shipping name and identification number. Class 1 and 7 materials are excepted from this requirement. These revisions provide greater consistency with the international standards based on the U.N. Recommendations and the Canadian Regulations on the Transport of Dangerous Goods, without adversely affecting safety.

By applying this identification number marking to transport vehicles and freight containers loaded at one loading facility only with hazardous materials having the same proper shipping name and identification number, in non-bulk packagings, RSPA believes it has adequately addressed the petitioners' concerns with regard to an increase in the number of placards on any single vehicle or container.

The requirement in § 172.301(a)(3) for marking the identification number on a transport vehicle or freight container loaded at one loading facility with more than 4,000 kg of one hazardous material in non-bulk packagings is separate from the marking requirement in § 172.313(c) applicable to PIH materials. The combined potential of these two requirements, as modified in this final rule, is less than estimated by a petitioner who provided an example involving a single load of eight different hazardous materials. The addition of § 172.313(c) will require an identification marking to indicate the presence of more than 1,000 kg of a PIH material; otherwise, the revisions to the HMR in this rulemaking will not require any additional placards or markings for the particular combination of hazardous materials in the example provided by the petitioner.

RSPA denies the petitions to totally eliminate the identification number marking requirement for large quantities of certain hazardous materials in non-bulk packages. Emergency responders should be provided as much immediate specific information as practicable regarding the contents of transport vehicles and freight containers. RSPA is also denying ATA's petition to amend or remove § 172.334(d). That section states that a placard bearing an identification number may not be used to satisfy the *placarding* requirements in subpart F of Part 172 "unless it is the correct identification number for all hazardous materials of the same class in the transport vehicle or freight container on which it is displayed." When different hazardous materials within a hazard class are present in a transport vehicle or freight container, and the identification number of one of the materials must be displayed (*e.g.*, a PIH material), the transport vehicle must bear placards for that hazard class *without* an identification number *plus* either (1) a separate set of placards with the identification number or (2) the separate orange panels or white square-on-point configurations as authorized by § 172.332(a).

2. *Closed transport vehicles or freight containers carrying cargo tanks.* One petitioner requested that RSPA further clarify that the marking requirements in §§ 172.302(a) and 172.328(a)(3) do not require duplicative identification number markings on both the cargo tank and the vehicle, when the markings on the cargo tank would not normally be visible during transportation. The petitioner provided sketches and examples of instances where, in his opinion, no additional information would be communicated by marking the tank portion of the cargo tank motor vehicle, such as when the cargo tank is permanently installed on or within an enclosed vehicle, or when multiple cargo tanks mounted on an open vehicle are so close together that it would be difficult to see the markings on the adjacent sides of cargo tanks.

In response to this petition, RSPA is modifying § 172.328(c) to specify that when a cargo tank is permanently installed within an enclosed cargo body of a transport vehicle or freight container, on the outside of which identification numbers are marked, the identification number marking required on the cargo tank by § 172.302(a) need only be displayed on each side and end of the cargo tank that is visible when it is accessed. At this time, RSPA does not consider it feasible to specify a

minimum distance between cargo tanks, when mounted on an open vehicle and visible during transportation, that would warrant an exception from identification number marking as also suggested by this petitioner.

3. *Identification number marking for organic peroxides.* In the January 8, 1997 final rule, RSPA added materials in Division "5.2 (Organic peroxide, Type B, liquid or solid, temperature controlled," to Table 1 in § 172.504(e), so that placarding is required for any amount. LAPD petitioned RSPA to also require the display of identification numbers for these materials. It stated that the change to the placarding table created a "double meaning" for the ORGANIC PEROXIDE placard, and the emergency responder will not know whether the organic peroxide material within a vehicle is temperature controlled or not.

RSPA is denying LAPD's petition because this change was not proposed in the NPRM, and it is beyond of the scope of this rulemaking. Because this suggestion appears to have merit, RSPA will consider this petition in a future rulemaking.

D. Other Placarding Requirements

1. *DANGEROUS placard.* In the January 8, 1997 final rule, RSPA changed § 172.504(b) by lowering from 2,268 kg (5,000 lbs.) to 1,000 kg (2,205 lbs.) the quantity of one class or division of a hazardous material loaded at one facility for which a specific placard is required. This reduced the upper weight limit for use of the DANGEROUS placard (as an alternative to the specific hazard class placard) for a mixed load of hazardous materials listed in Table 2 in § 172.504(e).

A late-filed petition from a chemical company opposed this reduction in the upper weight limit for use of the alternative DANGEROUS placard. The petitioner stated that the change would result in the use of many additional different placards and would be a financial burden in terms of time spent by company personnel sorting through the numerous shipping papers required on a multi-drop load to determine what combination of placards is required on the outside of the trailer.

For many years, emergency response organizations have expressed concerns that the DANGEROUS placard does not provide sufficient information to identify hazardous materials in a transport vehicle and support elimination of this placard altogether. RSPA rejected total elimination of the DANGEROUS placard, but lowered the upper weight limit for use of the alternative DANGEROUS placard in order to improve safety communication by requiring increased display of specific hazard class and division warnings. This action is responsive to concerns expressed in a 1993 report of the National Academy of Sciences (NAS), under Section 25 of HMTUSA, on methods to improve the existing system of placarding vehicles transporting hazardous materials, thereby providing more effective information to facilitate response to incidents involving hazardous materials in transportation in commerce.

The permitted use of the alternative DANGEROUS placard under § 172.504(b) is governed by the amount of one category of hazardous material loaded "at one loading facility." The use of different placards for a mixed load of hazardous materials requires only that the placard for each class of hazardous materials be removed when the last package of that class is delivered, similar to the requirement that the DANGEROUS placard must be removed when the last packaging of a mixed load of hazardous materials is delivered (even if non-hazardous materials remain to be delivered at further stops).

2. *Prohibited Placarding (safety slogans).* In the January 8, 1997 final rule, RSPA amended § 172.502(a)(2) to prohibit any "sign, advertisement, slogan (such as "Drive Safely") or device that, by its color, design, shape or content, could be confused with any placard * * *" RSPA also specified that this prohibition does not apply until October 1, 2001, to a safety sign or slogan which was permanently marked on a transport vehicle, bulk packaging, or freight container on or before October 1, 1996.

RSPA is changing the latter date, in § 172.502(b)(3), to August 21, 1997 to prevent the unintended effect of the final rule with respect to a safety sign or slogan that may have been permanently marked on a transport vehicle, bulk packaging, or freight container between October 1, 1996 and issuance of the January 8, 1997 final rule. Without this revision, a person who had installed a safety sign on his or her vehicles after October 1, 1996, would be in violation on the effective date of the January 8, 1997 final rule (now postponed until October 1, 1998), while a person who had installed such a safety sign before October 1, 1996 would have three additional years, until October 1, 2001, to remove it. This change will carry out RSPA's intent that there be a reasonable cut-off date after which these slogan displays could no longer be newly installed on vehicles.

E. Carrier Information Contact Requirements

In § 172.606(b) (2) and (3), RSPA added alternative requirements for marking the carrier's telephone number, or having the shipping paper and emergency response information readily available, on a highway transport vehicle that is separated from its motive power and parked at a location other than a consignee's, consignor's, or carrier's facility. As stated in the preamble to the January 8, 1997 final rule, these requirements are intended to enable emergency responders to obtain more complete information about hazardous materials on an unattended motor vehicle.

An individual petitioner asked RSPA to modify these requirements to provide that (1) the telephone number marked on the vehicle must be visible from 50 feet, and (2) that the shipping paper and emergency response information must be available on the front of the transport vehicle.

ATA and the National Tank Truck Carriers, Inc. (NTTC) petitioned RSPA to eliminate (or not adopt) these two alternative requirements. These petitioners stated they believed there was a risk to emergency responders who would approach a trailer involved in a hazardous materials incident to obtain a shipping paper and emergency response information.

NTTC discussed application of this requirement to "spotting" cargo tank trailers containing a residue of a hazardous material, which is a common occurrence at cargo tank cleaning facilities. NTTC stated that, outside of normal working hours, it would be unlikely that an emergency responder could reach the carrier, and that the carrier would be unlikely to have information about the particular commodity and its hazards. NTTC also stated that, in the event of an incident involving an unattended vehicle carrying hazardous materials, emergency responders should not be encouraged to approach the vehicle to look for paperwork.

ATA also stated that if RSPA retains these alternative requirements, an additional one year extension, until October 1, 1998, should be provided to provide sufficient time for compliance with the requirements of § 172.606 (b)(2) and (b)(3).

As already discussed above, RSPA has extended the effective date of this rule until October 1, 1998. RSPA is also adding a new § 172.606(c) to clarify that the requirements in paragraphs (b)(2) and (b)(3) do not apply to an unattended motor vehicle separated from its motive

power that is marked with each identification number of the hazardous materials loaded therein, on an orange panel, a placard, or a plain white square-on-point configuration, and the markings or placards are visible on the outside of the motor vehicle.

RSPA is not eliminating the information requirements in § 172.606(b) for an unattended motor vehicle disconnected from its motive power. RSPA continues to believe that there must be a method of identifying hazardous materials in an unattended transport vehicle disconnected from its motive power when identification number markings are not displayed on the exterior of the motor vehicle. The presence of a carrier's telephone number marked on a motor vehicle, or a copy of a shipping paper and emergency response information attached to a motor vehicle would provide access to such information. In regard to the concerns of NTTC regarding "spotting" at cargo tank cleaning facilities, the requirements prescribed in § 172.606 (b)(1) and (b)(2) are intended to apply to an unattended motor vehicle separated from its motive power when there is no indication on the outside of the motor vehicle as to the contents of the motor vehicle. Bulk packagings, such as a cargo tank, containing a hazardous material or its residue are required to be marked and placarded as prescribed under the HMR.

At this time, RSPA does not consider it necessary to specify a minimum distance from which the carrier's telephone number in § 172.606(b)(2) must be visible, or the location for shipping papers and emergency response information under the option in § 172.606(b)(3).

IV. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a non-significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget.

The regulatory evaluation prepared for the August 15, 1994 NPRM was examined and modified for the January 8, 1997 final rule. Both of these documents are available for review in the public docket. This final rule makes relatively minor, incremental changes in the regulations concerning placarding and other means of communicating the hazards of materials in transportation. In most cases, the changes clarify and relax provisions of the January 8, 1997 final rule. The other changes that carry out the intent of the January 8, 1997 final rule, such as the inclusion of certain Division 6.1 materials within those for which the new PIH labels and placards are required, will result in only minimal costs to offerors of these materials for transportation in commerce. Accordingly, no additional regulatory evaluation was performed.

B. Executive Order 12612

The January 8, 1997, final rule and this final rule were analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements respecting the number, content, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule preempts State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d)) as the Federal requirements. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Federal law 49 U.S.C. 5125(b)(2) provides 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. That 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 October 1, 1998.

C. Regulatory Flexibility Act

This final rule, which responds to petitions for reconsideration and agency review, makes editorial and technical corrections, provides clarification of the regulations, and relaxes certain requirements. Although this final rule applies to all shippers and carriers of hazardous materials, some of whom are small entities, the requirements contained herein will not result in significant economic impacts. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The information collection requirements in 49 CFR Parts 172 through 177 pertaining to shipping papers have been approved under OMB approval number 2137–0035. This final rule does not increase any burden to provide information. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

The January 8, 1997 final rule amended § 173.9 to require that a shipping paper contain hazard warning information concerning the fumigant for an international shipment. This information is a current requirement for international shipments by vessel and insignificantly increases the amount of burden imposed by this collection. RSPA believes that this change in burden is not sufficient to warrant revision of the currently approved information collection.

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.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.14, the section heading and introductory text are revised, paragraph (b) is revised, and a new paragraph (e) is added to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

General. The purpose of the provisions of this section is to provide an orderly transition to certain new requirements so as to minimize any burdens associated with them.

* * * * *

(b) *Transitional placarding provisions.* Until October 1, 2001, placards which conform to specifications for placards in effect on September 30, 1991, or placards specified in the December 21, 1990 final rule may be used, for highway transportation only, in place of the placards specified in subpart F of part 172 of this subchapter, in accordance with the following table:

PLACARD SUBSTITUTION TABLE

Hazard class or division No.	Current placard name	Old (Sept. 30, 1991) placard name
Division 1.1	Explosives 1.1	Explosives A.
Division 1.2	Explosives 1.2	Explosives A.
Division 1.3	Explosives 1.3	Explosives B.
Division 1.4	Explosives 1.4	Dangerous.
Division 1.5	Explosives 1.5	Blasting agents.
Division 1.6	Explosives 1.6	Dangerous.
Division 2.1	Flammable gas	Flammable gas.
Division 2.2	Nonflammable gas	Nonflammable gas.
Division 2.3[1]	Poison gas	Poison gas.
Class 3	Flammable	Flammable.
Combustible liquid	Combustible	Combustible.
Division 4.1	Flammable solid	Flammable solid.
Division 4.2	Spontaneously combustible	Flammable solid.
Division 4.3	Dangerous when wet	Flammable solid W.
Division 5.1	Oxidizer	Oxidizer.
Division 5.2	Organic peroxide	Organic peroxide.
Division 6.1, (inhalation hazard, Zone A or B)[1]	Poison inhalation hazard	Poison.
Division 6.1, PG I and II (other than Zone A or B inhalation hazard).	Posion	Poison.
Division 6.1, PG III	Keep away from food	(none required).
Class 7	Radioactive	Radioactive.
Class 8	Corrosive	Corrosive.
Class 9	Class 9	(none required).

[1] For materials poisonous by inhalation, by all modes of transportation, until October 1, 2001, placards may be used that conform to specifications for placards (1) in effect on September 30, 1991, (2) specified in the December 21, 1990 final rule, or (3) specified in the July 22, 1997 final rule.

* * * * *

(e) Notwithstanding §§ 172.416 and 172.429 of this subchapter specified in the July 22, 1997 final rule, when labels are required by subpart E of part 172 of this subchapter to be affixed to a material poisonous by inhalation, labels that conform to the requirements of this subchapter in effect on September 30, 1997, may be used on packagings offered for transportation or transported until October 1, 1999.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. In § 172.101(g), as amended at 62 FR 1227 effective October 1, 1998, the entries for label codes 6.1 in the Label Substitution Table are revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(g) * * *

LABEL SUBSTITUTION TABLE

Label code	Label name
* * * * *	
6.1 (inhalation hazard, Zone A or B).	Poison Inhalation Hazard.
6.1 (I or II, other than Zone A or B inhalation hazard)[2].	Poison.
6.1 (III)[2]	Keep Away From Food.
* * * * *	

* * * * *

[2] The packing group for a material is indicated in column 5 of the table.

* * * * *

5. In § 172.301, paragraph (a)(3), as added at 62 FR 1227 effective October 1, 1998, is revised to read as follows:

§ 172.301 General marking requirements for non-bulk packagings.

(a) * * *

(3) *Large quantities of hazardous materials in non-bulk packages.* A transport vehicle or freight container that is loaded at one loading facility with 4,000 kg (8,820 pounds) or more aggregate gross weight of hazardous materials in non-bulk packagings, when all the hazardous materials loaded in the transport vehicle or freight container have the same proper shipping name and identification number, must be marked with the identification number specified for the hazardous material in the § 172.101 Table on each side and each end as specified in §§ 172.332 or 172.336. The requirement in this paragraph (a)(3) does not apply to:

(i) Class 1, Class 7, or ORM–D materials; or

(ii) Limited quantities or small quantities of hazardous materials (see § 173.4 of this subchapter).

* * * * *

6. Section 172.313, as added at 62 FR 1228 effective October 1, 1998, is amended by adding introductory text and by revising paragraphs (a) and (c) to read as follows:

§ 172.313 Poisonous hazardous materials.

In addition to any other markings required by this subpart:

(a) A material poisonous by inhalation (see § 171.8 of this subchapter) shall be marked "Inhalation Hazard" in association with the required labels or placards, as appropriate, and shipping name when required. The marking must be on two opposing sides of a bulk packaging. (See § 172.302(b) of this subpart for size of markings on bulk packages.) When the words "Inhalation Hazard" appear on the label, as prescribed in §§ 172.416 and 172.429, or placard, as prescribed in §§ 172.540 and 172.555, the "Inhalation Hazard" marking is not required on the package.

* * * * *

(c) A transport vehicle or freight container loaded at one loading facility with more than 1,000 kg (2,205 pounds) aggregate gross weight of non-bulk packages containing materials poisonous by inhalation in Hazard Zone A and B having the same proper shipping name and identification number shall be marked as required by § 172.332 with the identification number specified for the material, in the § 172.101 Table, on each side and each end of the transport vehicle or freight container.

7. In § 172.328, paragraph (a)(3), as added at 62 FR 1228 effective October 1, 1998, is revised to read as follows:

§ 172.328 Cargo tanks.

(a) * * *

(3) For a cargo tank transported on or in a transport vehicle or freight container, if the identification number marking on the cargo tank required by § 172.302(a) would not normally be visible during transportation—

(i) The transport vehicle or freight container must be marked as required by § 172.332 on each side and each end with the identification number specified for the material in the § 172.101 Table; and

(ii) When the cargo tank is permanently installed within an enclosed cargo body of the transport vehicle or freight container, the identification number marking required by § 172.302(a) need only be displayed on each side and end of a cargo tank that is visible when the cargo tank is accessed.

* * * * *

8. In § 172.400(b), the table, as revised at 62 FR 1228 effective October 1, 1998, is amended by revising the entries for Division 6.1 materials to read as follows:

§ 172.400 General labeling requirements.

* * * * *

(b) * * *

Hazard class or division	Label name	Label design or section reference
* * *	* * *	*
6.1 (inhalation hazard, Zone A or B)	POISON INHALATION HAZARD	172.429
6.1 (PG I or II, other than Zone A or B inhalation hazard)	POISON	172.430
6.1 (PG III)	KEEP AWAY FROM FOOD	172.431
* * *	* * *	*

9. In Section 172.402, paragraph (e)(1) is revised to read as follows:

§ 172.402 Additional labeling requirements.

* * * * *

(e) * * *

(1) Division 6.1, Packing Groups I or II, shall be labeled POISON or POISON INHALATION HAZARD, as appropriate.

* * * * *

10. Section 172.416 is revised to read as follows:

§ 172.416 POISON GAS label.

(a) Except for size and color, the POISON GAS label must be as follows:

BILLING CODE 4910–60–P

(b) In addition to complying with § 172.407, the background on the POISON GAS label and the symbol must be white. The background of the upper diamond must be black and the lower point of the upper diamond must be 14 mm (0.54 inches) above the horizontal center line.

11. Section 172.429, as added at 62 FR 1229 effective October 1, 1998, is revised to read as follows:

§ 172.429 POISON INHALATION HAZARD label.

(a) Except for size and color, the POISON INHALATION HAZARD label must be as follows:

BILLLING CODE 4910–60–C

(b) In addition to complying with § 172.407, the background on the POISON INHALATION HAZARD label and the symbol must be white. The background of the upper diamond must be black and the lower point of the upper diamond must be 14 mm (0.54 inches) above the horizontal center line.

12. In § 172.502, paragraph (b)(3), as added at 62 FR 1230 effective October 1, 1998, is revised to read as follows:

§ 172.502 Prohibited and permissive placarding.

* * * * *

(b) * * *

(3) The restrictions in paragraph (a)(2) of this section do not apply until October 1, 2001 to a safety sign or safety slogan (e.g., "Drive Safely" or "Drive Carefully"), which was permanently marked on a transport vehicle, bulk packaging, or freight container on or before August 21, 1997.

* * * * *

13. In § 172.504(e), as revised at 62 FR 1230 effective October 1, 1998, the entries for Division 6.1 materials in Tables 1 and 2 are revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(e) * * *

TABLE 1

Category of material (Hazard class or division number and additional description, as appropriate)	Placard name	Placard design section reference (§)
* * * * * * *		
6.1 (inhalation hazard, Zone A or B)	POISON INHALATION HAZARD	172.555
* * * * * * *		

* * * * *

TABLE 2

Category of material (Hazard class or division number and additional description, as appropriate)	Placard name	Placard design section reference (§)
* * * * * * *		
6.1 (PG I or II, other than Zone A or B inhalation hazard)	POISON	172.554
6.1 (PG III)	KEEP AWAY FROM FOOD	172.553
* * * * * * *		

* * * * *

14. Section 172.540 is revised to read as follows:

§ 172.540 POISON GAS placard.

(a) Except for size and color, the POISON GAS placard must be as follows:

BILLING CODE 4910–60–P

(b) In addition to complying with § 172.519, the background on the POISON GAS placard and the symbol must be white. The background of the upper diamond must be black and the lower point of the upper diamond must be 65 mm (2⅝ inches) above the horizontal center line. The text, class number, and inner border must be black.

15. Section 172.555, as added at 62 FR 1233 effective October 1, 1998, is revised to read as follows:

§ 172.555 POISON INHALATION HAZARD placard.

(a) Except for size and color, the POISON INHALATION HAZARD placard must be as follows:

BILLING CODE 4910–60–C

(b) In addition to complying with § 172.519, the background on the POISON INHALATION HAZARD placard and the symbol must be white. The background of the upper diamond must be black and the lower point of the upper diamond must be 65 mm (2⅝ inches) above the horizontal center line. The text, class number, and inner border must be black.

16. In § 172.606, as added at 62 FR 1234 effective October 1, 1998, paragraph (c) is added to read as follows:

§ 172.606 Carrier information contact.

* * * * *

(c) The requirements specified in paragraph (b) of this section do not apply to an unattended motor vehicle separated from its motive power when the motor vehicle is marked on an orange panel, a placard, or a plain white square-on-point configuration with the identification number of each hazardous material loaded therein, and the marking or placard is visible on the outside of the motor vehicle.

Issued in Washington, DC, on July 11, 1997, under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 97–18995 Filed 7–21–97; 8:45 am]

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federal register

Tuesday
July 22, 1997

Part VII

The President

Proclamation 7012—Captive Nations Week

Federal Register
Vol. 62, No. 140
Tuesday, July 22, 1997

Presidential Documents

Title 3—

The President

Proclamation 7012 of July 18, 1997

Captive Nations Week, 1997

By the President of the United States of America

A Proclamation

From its earliest days as a Nation, America has been a champion of freedom and human dignity. Our Declaration of Independence was a ringing cry against "the establishment of an absolute tyranny over these States" and affirmed the revolutionary concept that governments derive their powers from the free consent of those they govern. For more than two centuries our Bill of Rights has guaranteed such basic human rights as freedom of religion, freedom of speech, freedom of the press, and freedom from arbitrary arrest. With such a history and heritage, we can feel only outrage that millions of people around the world still suffer beneath the shadow of oppression, their rights routinely violated by their own governments and leaders.

Almost four decades ago, our Nation observed the first Captive Nations Week to express formally our solidarity with the oppressed peoples of the world. Since that time, thanks to our steadfast advocacy for democratic reform and universal human rights, and the courage and determination of countless men and women around the globe, the world's political landscape has undergone a remarkable transformation. Nations once dominated by the Soviet Union and its satellite governments have blossomed into new democracies, establishing free market economies and free societies that respect individual rights. Families and countrymen once divided by walls and barbed wire, now walk together in the fresh air of liberty. The unprecedented gathering of 44 countries at the Euro-Atlantic Partnership Council meeting earlier this month in Madrid symbolizes how far we have come in building a stable, democratic, and undivided Europe.

Yet while countries like Poland, Romania, and Estonia are no longer among the ranks of captive nations, too many others are still held hostage by tyranny, and new nations still fall victim to the scourge of oppression. Tragically, even as the wave of freedom and democratic reform sweeps across Eastern and Central Europe, former Soviet bloc countries, and nations in South America, Asia, and Africa, there are still governments that derive their strength, not from the consent of their citizens, but from terror, repression, and exploitation. Too many leaders still fuel the fires of racial, ethnic, and religious hatred; too many people still suffer from ignorance, prejudice, and brutality.

As we observe Captive Nations Week this year, let us reaffirm our commitment to the American ideals of freedom and justice. Let us strengthen our resolve to promote respect for human rights and self-determination for women and men of every nationality, creed, and race. Let us continue to speak out for those who have no voice. It is our Nation's obligation to do so, as the world's best hope for lasting peace and freedom and as a source of enduring inspiration to oppressed peoples everywhere.

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 20 through July 26, 1997, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities and to rededicate ourselves to supporting the cause of human rights, liberty, peace, and self-determination for all the peoples of the world.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of July, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 173/P.L. 105–27

To amend the Federal Property and Administrative Service Act of 1949 to authorize donation of Federal law enforcement canines that are no longer needed for official purposes to individuals with experience handling canines in the performance of law enforcement duties. (July 18, 1997; 111 Stat. 244)

H.R. 649/P.L. 105–28

Department of Energy Standardization Act of 1997 (July 18, 1997; 111 Stat. 245)

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